



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព

THE ARBITRATION COUNCIL

Case number and name: 158/08-M & V 4

Date of Award: 20 January 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **M & V 4 Company International Manufacturing Ltd**

Address: Trovang Cheksa Village, Kampong Chhnang Commune, Kampong Chhnang District, Kampong Chhnang Province

Telephone: 026 988 818 or 016 707 046 Fax: N/A

Representative:

1. Mr. Yin Nak Head of administration
2. Mr. Oun Chhantak Chinese interpreter

Worker party:

Name: **Local union of Labour Development Union (LDU) in M & V 4 Factory**

Address: Trovang Cheksa Village, Kampong Chhnang Commune, Kampong Chhnang District, Kampong Chhnang Province

Telephone: 016 767 070 or 013 332 062 Fax: N/A

Representative:

1. Mr. Leang Sunheang Vice-president of Cambodian Labour Union Federation
2. Mr. Sok Sambath President of Labour Development Union Federation
3. Mr. Bun Vanna General Secretary of LDUF

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|--------------------|---|
| 4. Mr. Nen Sarorn | 2 nd Vice-president of LDUF |
| 5. Mr. Eng Sam Ang | Vice-president of local union of LDU in the factory |
| 6. Mr. Khim Sokkea | Secretary of the local union in the factory |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Leaders of Labour Development Union demand that the company reinstate Mr. Eng Sam Ath, vice-president of the union, and Mr. Khim Sokkea, secretary of the union, and renew their fixed duration contract. The company states that it cannot reinstate the two workers because their fixed duration contract has expired.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 384/08 KB/KChh, dated 8 December 2008 was submitted to the Secretariat of the Arbitration Council on 30 December 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 5 January 2009 (from 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 28 November 2008 the Labour Department in Kampong Chhnang Province received a complaint from local union of LDU at M & V Company, Kampong Chhnang branch, regarding the demand for the company to improve certain working conditions. After receiving the claim, the Labour Department assigned an officer to conduct conciliation on this collective labour dispute but did not receive a successful conciliation result on one issue. The one non-conciliation issue was referred to the Secretariat of the Arbitration Council on 30 December 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 5 January 2009 at 2:00 p.m.

Both parties were present on the date of the arbitral hearing. The Arbitration Council asked for information relevant to this dispute and attempted to further the conciliation on the one non-conciliation issue but did not receive any conciliation result. Therefore, the Arbitration Council will consider this dispute based on the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Letter to authorise Mr. Yin Nak, Head of administration of M & V Company to communicate and resolve collective labour dispute at the Arbitration Council on the case of collective labour dispute in M & V Company, branch 4, in Kampong Chhnang Province in case 158/08, dated 2 January 2009.
2. Summary statement of defense, dated 2 January 2009.
3. Notification to Mr. Eng Sam Ang, worker employed under fixed duration contract (termination of contract).
4. Notification to Mr. Khim Sokkea, worker employed under fixed duration contract (termination of contract).
5. Mr. Eng Sam Ang's fixed duration contract of two months duration, from 10 August to 30 November 2008.
6. Mr. Khim Sokkea's fixed duration contract of two months duration, from 10 August to 30 November 2008.
7. Warning letter to Mr. Khim Sokkea because he washed his own clothes on 22 November 2008.
8. Warning letter to Mr. Eng Sam Ang because he washed his own clothes on 22 November 2008.
9. List of administrative resolution.
10. List of payment for termination of employment contract.
11. Letter by LDUF to the director of M & V Company regarding notification about composition of leadership of the local union of LDU in M & V Company (Kampong Chhang) No. 510/08 SAK, dated 24 November 2008.

B. Provided by the worker party:

1. Certificate of union registration of local union of LDU in M & V factory, dated 28 October 2008.
2. Statute of local union of LDU in M & V factory No. 1530 KB/VK, dated 28 October 2008.
3. Letter by the president of LDUF No. 513/08 SAK to the Head of the Labour Department of Kampong Chhnang Province regarding request for the company to resolve the case which the director of M & V Company (Kampong Chhnang) terminated leader of local union of LDU, dated 28 November 2008.
4. Letter No. 512/08 SAK, dated 25 November 2008, by LDUF to the Director of M & V Company regarding request for a meeting on 27 November 2008 at 2:00 p.m. to resolve some issues.
5. Letter No. 510/08 SAK, dated 24 November 2008, by LDUF to the Director of the company regarding notification of the leadership components of local union of LDU at M & V (Kampong Chhnang), legally registered on 28 October 2008.
6. Letter No. 515/08 SAK, dated 19 December 2008, to H.E. Vong Soth, Minister of Labour, regarding request for intervention in order to speed up the process of dispute resolution.
7. Letter by Mrs. Seng Sophal regarding her resignation from President of local union of LDU at M & V factory, dated 10 October 2008.
8. Minutes of inquiry on M & V International Garment Ltd, dated 5 December 2008.
9. Minutes of inquiry on workers International Garment Ltd, dated 5 December 2008.
10. Minutes of collective labour dispute conciliation at M & V International Garment Ltd in Kampong Chhnang Province, dated 5 December 2008.

C. Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report of collective labour dispute resolution at M & V 4 Company No. 384/08 KB/KChh, dated 8 December 2008.
2. Minutes of collective labour dispute resolution at M & V 4 Company, dated 5 December 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the worker party to attend the hearing No. 779 KB/AK/VK/LKA, dated 30 December 2008.
2. Letter of invitation to invite the employer party to attend the hearing No. 778 KB/AK/VK/LKA, dated 30 December 2008.

FACTS

- Having examined documents submitted to the Arbitration Council
- Having reviewed the report of collective labour dispute conciliation
- Having listened to statements by the worker party and the employer party
- Having examined additional documents

The Arbitration Council finds that:

- M & V 4 Company, branch 4, in Kampong Chhnang Province employs a total number of approximately 2758 workers including 8 workers in washing section.
- Local union of LDU is the claimant in this case.
- Employment contracts of four of the eight workers in washing section were not renewed.
- Among the four workers whose contracts were not renewed by the company, 2 of them agreed to accept the non-renewal but the other two - Mr. Eng Sam Ang and Mr. Khim Sokkea - do not agree and demand that the company renew their contracts based on the claim of union discrimination.

Issue in dispute: The union demand that the company renew employment contract for Mr. Eng Sam Ang, Vice-president of local union, and Mr. Khim Sokkea, Secretary of local union

- Mr. Eng Sam Ang and Mr. Khim Sokkea work in the washing section.
- Mr. Eng Sam Ang started his employment on 2 May 2008. Initially he signed a probationary contract of two months and then signed a fixed duration contract of three months. After that, the company renewed his contract for two more months from 2 October to 30 November 2008.
- Mr. Khim Sokkea started his employment on 2 May 2008. Initially he signed a probationary contract of two months and then signed a casual employment contract of three months. Finally, he signed a fixed duration contract of 2 months from 2 October to 30 November 2008.
- Mr. Eng Sam Ang and Mr. Khim Sokkea received a total wages of approximately US\$ 65 per month including US\$ 50 of main wage.
- The company and the worker parties acknowledge that during the period the company did not renew the contract for the workers, the company did not have overtime work.
- The production line in the company starts from the knitting section which comprises approximately 1000 workers, then moves to approximately 60 workers in the checking and mending section, then to the collar insertion section which has approximately 20 workers, after that to the overlocking section with approximately 600 workers, then to the front panel section of approximately 300 workers to attach

the front pieces of shirts, next is to the washing section with approximately 8 workers and if necessary to the dying section of approximately 10 workers, after that to the ironing section with approximately 200 workers and to the packing section with approximately 100 workers. The company states that it did not renew the fixed duration contracts for certain workers including 4 workers in the washing section, 100 workers in the ironing section and all workers in the packing section. Generally, the company does not have much work to do during October, November and December of every year.

- The union mentions in the hearing that it demands that the company renew the fixed duration contracts for Mr. Eng Sam Ang, president of local union and Mr. Khim Sokkea, secretary of local union, claiming that the company discriminates against the union because:
 - On 24 November 2008, LDUF submitted a letter of notification regarding the leadership composition of local union of LDU in M & V (4) in Kampong Chhnang Province, that Mr. Eng Sam Ang was the president of the local union and Mr. Khim Sokkea was secretary of the union, through the ***certificate of registration No. 1530 KB/VK, dated 28 October 2008***. The company decided not to renew their contract immediately after receiving the notification letter.
 - The company recruited new workers to replace Mr. Eng Sam Ang and Mr. Khim Sokkea. Mr. Eng Sam Ang and Mr. Khim Sokkea only state that the company recruited new workers to replace them but did not explain clearly the facts and argument or provide evidence related to the recruitment of new workers to replace them.
- The company objects to the claim raised by the workers.
- The company mentioned in the hearing that it did not renew fixed duration contracts for Mr. Eng Sam Ang and Mr. Khim Sokkea because their employment contracts have expired, not anything related to union discrimination because:
 - On 22 November 2008, the company issued 7 day prior notification letter regarding the non-renewal of fixed duration contracts to Mr. Eng Sam Ang and Mr. Khim Sokkea. The company told them that there would be no work in the coming months and that their employment contract would expire on 30 November 2008. (The 30th fell on Sunday so their employment contract expired on 29 November 2008). The [letter of] prior notification of the non-renewal of employment contract was endorsed by the thumbprints of Mr. Eng Sam Ang and Mr. Khim Sokkea. The company party states that Mr. Eng Sam Ang and Mr. Khim Sokkea endorsed their thumbprints to accept the

notification of non-renewal dated 22 November 2008. However, Mr. Eng Sam Ang and Mr. Khim Sokkea object to this statement raised by the employer and claim that they endorsed their thumbprints on 24 November 2008 and at that time they saw the date part was left blank (no mention of any date) on the prior notification regarding non-renewal of the employment contract.

- On 24 November 2008, the company received a notification regarding the leadership composition of local union of LDU. The company states that the decision not to renew employment contract for Mr. Eng Sam Ang and Mr. Khim Sokkea was made before the date the company received the notification letter about the leadership composition of the union. Thus, the non-renewal was not due to union discrimination.
- The company states that on 24 November 2008, [the two workers] came to their workplace in the washing section but did not work. The section supervisor asked them why they did not work. They responded that when they received the letter of notification regarding the non-renewal of their employment contracts, they lost their motivation to work and requested that the company pay their termination payments. However, the accounting section could not provide the payment to them because the supposed expiration date had not yet occurred. Then they went to talk with the administration department and the administration department informed the Director of the company. The Director of the company responded that the only possibility for the accounting department to make immediate payment to them was for them to resign. When the accounting department prepared the payment for them, they did not come to take it claiming that they had other work to perform and that they would come to take it on 29 November 2008. However, they did not come to take the termination payment until 25 December 2008 [].

REASONS FOR DECISION

In the hearing the union and worker party claims that the company did not renew fixed duration contracts for Mr. Eng Sam Ang and Mr. Khim Sokkea for the reason of discrimination against union leaders. The company claims that the non-renewal for Mr. Eng Sam Ang and Mr. Khim Sokkea was because the company did not have work and their employment contracts had expired. The Arbitration Council will consider the following:

1. Does the decision to not renew Mr. Mr. Eng Sam Ang's and Mr. Khim Sokkea's contract constitute discrimination against union leaders?
2. Is the non-renewal of Mr. Mr. Eng Sam Ang's and Mr. Khim Sokkea's fixed duration contract in accordance with the Labour Law?

1. Does the decision to not renew Mr. Mr. Eng Sam Ang's and Mr. Khim Sokkea's contract constitute discrimination against union leaders?

Article 12 of the Labour Law states, *“Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of:*

- ...

- membership of workers' union or the exercise of union activities to be invocation in order to make a decision on:

- ...

- discipline or termination of employment contract.”

Article 279 of the Labour Law states, *“Employer are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”*

In relation to union discrimination, in previous cases the Arbitration Council ordered the employer to reinstate the workers because the terminations of workers were due to union discrimination that violates Article 12 and 279 of the Labour. The Articles prohibit the employer from using the reason of union membership or union activities to be an invocation of hiring or disciplinary action or termination of workers' employment contract. (See also Arbitral Awards 28/07-Dae Kwang, issue 3 and 123/07-E Garment, issue 1).

In this case, the Arbitration Council agrees with the decision of the Arbitration Council in previous cases that the employer should reinstate the workers if the termination was due to union discrimination that violates Article 12 and 279 of the Labour that prohibit the employer from using the reason of union membership or union activities to be an invocation of hiring or disciplinary action or termination of workers' employment.

Moreover, in previous cases, the Arbitration Council determines that the worker party has the burden to prove the claim that the employer has engaged in union discrimination. (See Arbitral Awards 90/06-Evergreen, issue 1; 112/06-River Rich, issue 1 and 01/07-Supreme, issue 1). This means that for a specific case, it requires sufficient evidence to support the workers' demand that union discrimination really exists. (See Arbitral Awards 19/04-Kbal Koh, issue 1; 17/07-Charm Textile, issue 1).

In this case, the Arbitration Council agrees with the decision of the Arbitration Council in previous cases that the workers has the burden to provide evidence to prove the claim that the employer has discrimination against union.

In this case, the union and worker party claim that the company decided not to renew the fixed duration contracts for Mr. Eng Sam Art and Mr. Khim Sokkea upon receipt of

notification letter submitted by LDUF regarding the composition of the union leadership of local union of LDU in M & V 4 in Kampong Chhnang Province on 24 November 2008 informing the employer that Mr. Eng Sam Ang was the president of the local union and Mr. Khim Sokkea was secretary of the union, through certificate of registration No. 1530 KB/VK, dated 28 October 2008. However, the company party claims that the letter giving 7-days prior notice of the non-renewal of the fixed duration contracts for Mr. Eng Sam Ang and Mr. Khim Sokkea was issued before the union federation informed the company about the leadership composition of local union of LDU in the factory. The prior notice was given on 22 November 2008 because the company would not have work to do in the coming months.

Mr. Eng Sam Ang and Mr. Khim Sokkea claim that on the prior notification letter given to them for their signature there was a blank space for the date, i.e., it did not mention date of the letter. However, they did not provide specific or consistent evidence for the Arbitration Council to consider or believe that they actually endorsed their thumbprints on the prior notification letter regarding non-renewal of their contract on 24 November 2008 and that the letter did not mention the date. Moreover, the Arbitration Council found that local union of LDU in M & V (4) was in receipt of its legal registration certificate No. 1530 KB/VK since 28 October 2008 but it did not notify the company about the leadership composition of the union until 24 November 2008. This leads the Arbitration Council to consider that there must be some irregularities regarding this issue.

Therefore, the Arbitration Council considers that through the facts provided by the parties, there is no evidence that can convince the Arbitration Council to believe that the non-renewal of the fixed duration contracts for Mr. Eng Sam Ang and Mr. Khim Sokkea constituted discrimination against the union.

Therefore, the Arbitration Council considers that the non-renewal of fixed duration contracts for Mr. Eng Sam Ang and Mr. Khim Sokkea was not relevant to discrimination against union leaders.

2. Is the non-renewal of Mr. Mr. Eng Sam Ang's and Mr. Khim Sokkea's fixed duration contract in accordance with the Labour Law?

Article 73(1) of the Labour Law states, *"A labour contract of specific duration normally terminates at the specified ending date..."*

Article 73(6) of the Labour Law states, *"At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing is set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract."*

In this case, the company paid severance pay to Mr. Eng Sam Ang and Mr. Khim Sokkea in accordance with Article 73 of the Labour Law and they came to receive the payment on 25 December 2008.

Therefore, the Arbitration Council decides to reject the demand of the union that the company should renew employment contract for Mr. Eng Sam Ang and Mr. Khim Sokkea.

Based on the above facts, legal principles, and reasoning the Arbitration Council makes its decision as follows:

DECISION AND ORDER

Reject the demand of the union that the company should renew the employment contracts for Mr. Eng Sam Ang and Mr. Khim Sokkea.

Type of Award: Non binding award

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: