



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 18/07-Trinungal Komara

Date of Award: 6 March 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ly Tayseng**

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

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **Trinunggal Komara Company**

Address: Plot 4, Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh

Telephone: 023 881 427

Representative:

- | | |
|-----------------------|-------------------------------|
| 1. Mr. Lim Chhor Khay | Representative of the Company |
| 2. Mr. Tep Chharavan | Head of Administration |

Worker party:

Name: **FTUWKC**

Address: 28 B, Street 222, Sangkat Boeung Rang, Khann Doun Penh, Phnom Penh

Telephone: 012 263 543

Representative:

- | | |
|-----------------------|--|
| 1. Mr. Pring Kuy Heng | Acting President of FTUWKC at Trinunggal Factory |
| 2. Mr. Fa Saly | Officer of FTUWKC federation |
| 3. Mrs. Khiev Savy | President of FTUWKC at Trinunggal Factory |
| 4. Mrs. Ngak Somaly | Vice-president of FTUWKC at Trinunggal Factory |

ISSUES IN DISPUTE

(In the non-conciliation report)

1. The workers demand the company to transfer Mr. Tep Chharavan from the administration department. The company party cannot transfer Mr. Tep Chharavan from his position.
2. The workers demand the company to retain the daily bonus of 500 riel per person for those groups that received this before. The company does not agree to the workers' demand.
3. The workers demand the company to build a daycare center or provide US\$ 10 per month for milk. The company does not agree to the workers' demand.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour 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. 099 dated 11 May 2006 (Fourth 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 hearing was unsuccessful, and the non-conciliation report No. 151 K.K.B.V/AK/VK dated 15 February 2007 was submitted to the Secretariat of the Arbitration Council 15 February 2007.

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: 27 February 2007 (from 8:00 a.m. to 10:00 a.m.)

Procedural issues:

On 12 January 2007, the Department of Labour Disputes received a complaint from FTUWKC at Trinunggal Komara Company regarding the demand for the company to improve working conditions on nine points. After receiving this complaint, the Department of Labour Disputes assigned an officer to resolve this labour dispute. As a result six of the nine issues were conciliated. The remaining three non-conciliated issues were referred to the Arbitration Council on 15 February 2007.

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 three non-conciliated

issues on 27 February 2007 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation but did not receive any conciliated results. In the hearing, the worker party decided to withdraw issue 3 of their demand from this case. Therefore, in the award, the Arbitration Council will consider only issue 1 and issue 2 based on the evidence and finding of facts as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter to authorize Mr. Lim Chhor Khay as the representative of the company, dated 31 March 2003.
- Brief statement regarding the workers' demand, dated 21 February 2007
- Notification letter regarding strike, dated 12 January 2007
- Minutes of the collective labour dispute conciliation, dated 12 January 2007
- Notification regarding the provision of cash instead of building a daycare center, dated 23 August 2004
- Internal Work Rules of the company, registration No. 087 SKBY.AK, dated 18 August 1999
- Letter No. 007/99 KVK, by the Committee of Investment of Cambodia regarding a request to change the company's name, dated 4 January 1999
- Letter No. 2507/98 KVK, the Committee of Investment of Cambodia regarding a request to establish a company named Trinunngal Komara Garment Industry Co., LTD, dated 2 December 1998
- Letter No. 2508/98 KVK, dated 2 December 1998, by the Committee of Investment of Cambodia regarding a request to invest on the project of garment factory of Trinunngal Komara Garment Industry Co., LTD.
- Investment license No. 2508/98 KVK by the Committee of Investment of Cambodia, dated 21 September 1999
- Letter No. 106 PN.NTK, dated 12 January 1999 regarding the certificate of commercial registration
- Company's statute and memorandum
- Company's certificate of commercial registration

Provided by the worker party:

- Letter No. 138 K.K.B.V/VK regarding recognition of union leaders, dated 4 August 2005
- Certificate of most representative status of FTUWKC at Trinunggal Komara Garment Factory, No. 319 KKBV, dated 29 March 2006.
- Workers' request letter, dated 5 January 2007
- Letter to reject the result of negotiation, dated 12 January 2007
- Letter to withdraw Issue 3, dated 27 February 2006
- Letter of notification of strike, dated 14 February 2007
- Minutes of the collective labour dispute conciliation, dated 12 January 2007

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

- Report of the collective labour dispute resolution at Trinunggal Komara Company, No. 151 K.K.B.V/AK /VK by the head of the Department of Labour Dispute, dated 15 February 2007
- Minutes of the collective labour dispute conciliation, dated 12 January 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 066 K.K.B.V/AK/VK/LKA dated 19 February 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 067 K.K.B.V/AK/VK/LKA dated 19 February 2007 to invite the worker party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- Trinunggal Komara Company is located in Plot 4, Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh and employs about 1,200 workers.
- This company has two unions: Cambodian Union and FTUWCK. FTUWCK, the claimant party, has about 700 members and has most representative status in the factory.

ISSUE 1: Workers demand the company to transfer Mr. Tep Chharavan out from Administration Department.

- The worker representatives mentioned in the hearing that the reason the workers request to transfer Mr. Tep Chharavan from his position is that they are not happy with his

attitude and actions because he does not keep his promises with workers, but they did not allege any actual incident. The Arbitration Council questioned whether if Mr. Tep Charavan ever used improper language or caused any serious problems to workers. The union representative said no, and Mr. Tep Charavan himself also said no.

- The employer representative mentioned in the hearing that the company cannot transfer Mr. Tep Chharavan.

Issue 2: The workers demand the company to retain daily bonus of 500 riel for each worker who used to receive it.

- The worker representatives claim that the company provided a daily bonus of 500 riel to each worker from 2005 onward but did not have any agreement in writing. This was practiced from 2005 until 1 January 2007.

- From 1 January 2007, the company decided to stop giving the daily bonus of 500 riel to each worker because of an economic crisis, as there was a reduction in the production lines from 28 lines to 18 lines, according to the company's claim. The union representatives say that the production line did decrease in 2006 but that in early 2007 it increased. The company did not reply to the workers' claim.

- Early this year, the company changed its method of providing bonuses to the groups which achieve the objective the company set. For example, the cutting groups, if within 8 hours they cut 2,000 trousers, the company will provide 1,000 riel bonus and if they can make 2,400 trousers, the company provides 2,000 riel. According to the worker representatives, the cutting groups accept this new method and for the present practice workers in four cutting groups achieve this objective and receive from 1,000 riel to 2,000 riel each. One cutting group cannot achieve this new objective and does not receive the bonus.

- In the hearing, the worker representatives mention that they are not demanding for the cutting section as this group already has a new practice in which they can achieve a bonus. But this demand to retain the 500 riel bonus is for those groups which used to receive bonuses in the past, such as the cleaning section, the needle changing section, the button-hole sewing section, the warehouse section, the checking section, and the sample section. The company representative states that it cannot provide this bonus but it will find a new method to provide bonuses to these groups. The worker representatives do not agree and request to keep the old practice for these groups.

REASONS FOR DECISION

Issue 1: Workers demand the company to transfer Mr. Tep Chharavan from the Administration Department.

Article 65 of the Labour Law states, *“A labour contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.”*

Because this contract is subject to ordinary law, Decree 38 regarding contracts also covers this contract. Article 22 of Decree 38 regarding contracts and responsibilities outside of contracts states, *“A contract is considered the law for the parties. A contract can be changed only when it is agreed by the parties. A contract is effective only to the parties.”*

According to this, only the parties to the labour contract have the right to modify this labour contract. Therefore this means that the hiring or the switching of the any worker's work in the company is the exclusive right of the employer who is a party to the contract.

In addition, Article 2 of the Labour Law states, *“All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously.”*

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc. under the supervision and direction of the employer”.

Therefore, to be consistent with prior cases, the Arbitration Council determines that the management in the factory or enterprise is the exclusive right of the employer; as long as the management is in accordance with the law and is reasonable. See 06/06-M&V, Issue 1; 18/06-GHG, Issue 2; 108/06-Trinunggal Komara, Issue 1. However, in this case, the workers demand that the company transfer the administration manager of the company, Mr. Tep Chharavan. Based on the above explanation, the Arbitration Council determines that it does not have the power to order the employer to transfer any worker at all since this is an exclusive right of the employer who is the party to the labour contract conferred on the employer pursuant to Article 2 of the Labour Law.

Therefore, the Arbitration Council decides to reject this demand.

Issue 2:

In this case, the workers demand that the company maintain the 500 riel daily bonus for each worker based on the reason that the company provided this in the past. Therefore, the Arbitration Council will consider whether the workers have the right to demand the company to maintain the 500 riel daily bonus for them.

Regarding this issue, FTUWCK has most representative status. Thus, the Arbitration Council considers that the union has the right in accordance with law to demand the company to maintain the provision of the 500 riel bonus to workers who used to receive it in the past.

Does the employer have right to change the method of providing this bonus?

Article 2 of the Labour Law states, *“All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously.*

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc. under the supervision and direction of the employer”.

In previous cases, the Arbitration Council determined that the management in the factory or enterprise is the exclusive right of the employer, as long as the management is in accordance with the law and is reasonable. See 06/06-M&V, Issue 1; 18/06-GHG, Issue 2; 108/06-Trinunggal Komara, Issue 1.

In this case, the Arbitration Council considers that the employer has the right to manage and to change work in the factory or enterprise. In this case, the company decided to stop providing the 500 riel bonus to workers from 1 January 2007 onward and changed the method of providing bonuses to any group which achieved the objective set by the company. For this new method, the company applied it only to the cutting section and workers in the section accepted the new method. However, the company has not yet determined a new method for the sanitation section, needle changing section, button-hole stitching section, warehouse section, checking section, and sampling section.

Therefore, the Arbitration Council determines that the company should maintain the present practice [of providing the 500 riel bonus] until there is an agreement on a new method to provide bonuses to these sections because both parties accept that the practice of providing 500 riel per day has been practiced generally but that there is no agreement in writing regarding this matter and that the company has never told the workers about conditions and duration of this practice either. Because this has been practiced for a very long time and it was practiced generally, the Arbitration Council considers that the company should discuss with the workers regarding the change of this practice and the new method, as practiced in the cutting section for example, in order to avoid problems that may happen.

Article 312 (2) of the Labour Law states, *“The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes”.*

Clause 34 of Prakas 99, dated 21 April 2004 states that the Arbitration Council has the power and authority to provide any civil remedy or relief which it deems just and fair.

As a principle of equity, the Arbitration Council considers that the employer should maintain the provision of the 500 riel per day bonus to workers who used to received this 500 riel bonus in the past, for example in the sanitation section, needle changing section, button-hole stitching section, warehouse section, checking section, and sampling section, until there is an

agreement between the workers and the company on the establishment of a new system of bonus provision such as in the cutting section as an example.

In conclusion, the Arbitration Council decides that the employer should maintain the provision of the 500 riel bonus to workers who used to receive this until there is an agreement on a new principle.

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

DECISION

1. Reject the workers' demand that the company transfer Mr. Tep Chharavan.
2. Order the employer to retain the provision of the daily bonus of 500 riel per person for groups of workers who used to receive this in the past until there is an agreement on a new plan.

Type of Award: Non binding awards

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

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: