



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 21/09-Yung Wah 2

Date of Award: 6 March 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

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

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

DISPUTING PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co., Ltd II**

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 510 966

Fax: N/A

Representative:

- | | |
|-----------------------|------------------------|
| 1. Mr. Ng Min Chuan | Office Manager |
| 2. Mr. Som Uy Pisey | Administration Officer |
| 3. Mrs. Ly Muy Chheng | Administration Officer |

Worker party:

Name: **Cambodian Labour Union Federation (CLUF) and local union of Cambodian Labour Union (CLU) at Yung Wah II Factory**

Address: #30C, Street 371, Troppang Chhouk Village, Sangkat Toeuk Thla, Khan Russey Keo, Phnom Penh

Telephone: 011 685 826

Fax: N/A

Representative:

- | | |
|-----------------------|---------------------------------|
| 1. Mr. Seng Meng Hong | Officer of CLUF |
| 2. Mr. Phin Thuok | President of CLU at Yung Wah II |

3. Mr. Ker Sothea	President of CLU at Yung Wah IV
4. Mr. Min Vuthy	Vice-president of CLU at Yung Wah II
5. Mr. Sao Sambo Veasna	Vice-president of CLU at Yung Wah IV
6. Mr. Seng Vechna	Secretary of CLU at Yung Wah II
7. Mr. Prak Chanthorn	Secretary of CLU at Yung Wah IV

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company provide each worker with one copy of their employment contract. The company will copy the contract which is relevant to the individual worker.
- 2- The workers demand that the company arrange another election of worker delegates because the mandate of the old workers delegates expired three years ago (Yung Wah II). The company will notify the workers regarding this issue on 03 February 2009.
- 3- The workers demand that the company build an additional canteen inside the premises of Yung Wah factory for workers in Buildings 3 and 4 as the company promised to do this. The company does not agree to the demand because it has been facing financial problems due to the global economics crisis.
- 4- The workers demand that the company accept medical certificates issued by the Labour Hospital of the Ministry of Labour and Vocational Training and other health centers when they take sick leave and maintain their wages and attendance bonus and that they do not need to obtain a prior permission letter from the Administration Office and the company doctor. The company does not agree.
- 5- The workers demand that the company should withdraw its lawsuit in the Kandal Provincial Court against the leaders of Cambodian Labour Union without imposing any condition on them because the union leaders were just acting as conciliators in order for the workers to obtain benefits they were entitled to under the law. The company does not agree.
- 6- The workers demand that the company pay them in lieu of annual leave and the payment should be calculated on the average wage earned. The company does not agree.
- 7- The workers demand that the company should pay their wages between the seventh and ninth of the following month. The company does not agree.
- 8- The workers demand that the company should forgive those workers who commit serious misconduct such as stealing one or two [items of] clothing from the company; the company should only terminate their employment contracts but not bring a lawsuit

against them and arrest them [so that they are taken into] custody. The company does not agree.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) 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. 065/09 KB/KN, dated 11 February 2009 was submitted to the Secretariat of the Arbitration Council on 12 February 2009.

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: 24 February 2009 (at 9:30 a.m.)

Procedural issues:

On 21 January 2009 the Provincial Department of Labour and Vocational Training of Kandal Province received a complaint from CLUF containing 13 issues. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve this labour dispute on 3 February 2009 and as a result 5 out of 13 issues were conciliated. The 8 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 12 February 2009.

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 8 non-conciliation issues on 24 February 2009 (at 9:30 a.m.). Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 8 non-conciliation issues. As a result, the union parties agreed to withdraw issues 4, 5, 6 and 8 from this case and the two parties reached agreement in their negotiations on three other issues: issues 1, 2 and 7. There is only one remaining issue, issue 3.

Therefore, in this case the Arbitration Council will consider this non-conciliation issue based on the evidence and reasoning 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. Internal Work Rules of Yung Wah II Company, registration No. 008/06 KBV, dated 29 May 2006.
2. Certificate of commercial registration of Yung Wah Company No. 981 PN.NTK, dated 27 March 1998.
3. List of names of workers who accept employment contract with Yung Wah Company.
4. Letter by Yung Wah Company No. 335/08 YW to the head of the Provincial Department of Labour and Vocational Training of Kandal Province regarding request for legal solution regarding election of worker delegates at Yung Wah II, dated 17 March 2008.
5. Minutes of meeting regarding election of worker delegates, dated 15 March 2008.
6. Arbitral Award 54/07-Yung Wah I, dated 27 July 2007.
7. Internal Announcement No. 405/08, dated 21 October 2008.
8. Letter of objection to Arbitral Award 72/08-Yung Wah II by Yung Wah Company, dated 17 June 2008.
9. Arbitral Award 72/08-Yung Wah II, dated 12 June 2008.
10. Authorization letter by the director of Yung Wah Company to authorize Mr. Ng Min Chuan, dated 24 February 2009.

B. Provided by the worker party:

1. Certificate of union registration of CLU at Yung Wah II, dated 1 October 2007.
2. Letter of temporary permission to permit operation of medical consulting room, No. 063/02 KBB, dated 19 March 2008.

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

1. Report dated 11 February 2009 on the collective labour dispute settlement at Yung Wah II Company, No. 065 KB/KN.
2. Minutes of the collective labour dispute conciliation at Yung Wah II Company, dated 3 February 2009.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 086 KB/AK/VK/LKA dated 16 February 2009 to invite the employer party to attend the hearing;
2. Invitation No. 087 KB/AK/VK/LKA dated 16 February 2009 to invite the worker party to attend the hearing;

FACTS

- Having examined documents submitted to the Arbitration Council;
- Having reviewed the report of the collective labour dispute conciliation;

- Having listened to the statements by the representatives of the workers and the employer.

The Arbitration Council finds that:

- Yung Wah II garment company employs approximately 5000 workers (as per the non-conciliation report).
- CLU has approximately 300 members and the union does not have most representative status.
- The Arbitration Council found that issue 3 of the workers' demand is for the company to build an additional canteen in Buildings 3 and 4 inside the premises of Yung Wah II Company as promised by the company in the past.
- The workers, represented by CLU, claim that CLU had an agreement with the employer of Yung Wah II regarding the building of the canteen but the employer did not keep its promise. CLU brings this claim to demand that the employer keep its promise.
- The company party acknowledges that there was a demand to build a canteen but the company [responded that it] was not able to build an additional canteen as the company already has a canteen. Regarding [the alleged] promise made by the company to build a canteen, the company only stated that it would bring this request for discussion but it did not make a promise that the company would build a daycare center.
- CLU and the employer do not provide [a copy] of any agreement made between the two parties to the Arbitration Council.
- The union party states that the current canteen is far from their place so it is difficult for them to go there.
- The employer party, on the other hand, states that the distance is only 50 meters from Building 2 to Buildings 3 and 4.
- The union acknowledges the existence of the canteen but continues to claim that it is not big enough to accommodate all the workers. The canteen can accommodate only the workers working in Building 2 while those in Buildings 3 and 4 are unable to fit into the crowd of workers in Building 2. The workers state that at lunch time workers in Buildings 3 and 4 do not have a proper place to eat their food. Some of them go to eat outside of the factory premise, others eat at the building yard and some of them even need to eat in front of the flooded and smelly toilets.
- The employer states that it cannot provide as requested by CLU, adding that the company is facing financial difficulties due to the world economic crisis. Thus, the company does not have sufficient budget to build a canteen. Moreover, the company

already has a canteen for the workers to have their meal and the canteen is a big size with better conditions than that at other factories as it can accommodate 2000 people.

- Clause 8(c) of the company's Internal Work Rules, dated 26 May 2006, states, *"During lunch time, all workers should have their lunch in the canteen provided by the company, away from their workplace; when using the toilet care should be taken to observe good hygiene."*

REASONS FOR DECISION

Issue 3: The workers demand that, as promised, the company build an additional canteen inside the premises of Yung Wah II factory for workers in Buildings 3 and 4

Based on the above findings of fact, the workers claim that Yung Wah II Company already has a canteen but it is not sufficient to accommodate all workers in the factory to have their meal at the same time. For this reason, the workers demand that the company build an additional canteen for workers working in Buildings 3 and 4.

In previous Arbitral Awards, the Arbitration Council found that there is no law or legal provision that requires an employer to build a canteen for workers (see Arbitral Awards 24/04-South Bay, Issue 1; 60/07-Suitway, Issue 8 and 81/07-Supreme, Issue 8).

However, in this case the Arbitration Council found that Clause 8(c) of the Company's Internal Work Rules, dated 26 May 2006, states, *"During lunch time, all workers should have their lunch in the canteen provided by the company, away from their workplace; when using the toilet care should be taken to observe good hygiene."*

Based on the contents of Article 8 of the Internal Work Rules above, the company has an obligation to build a canteen for its workers.

In this case, the employer already has a canteen but the workers demand that the company build an additional canteen for workers in Buildings 3 and 4 because the current canteen cannot accommodate all workers and it is far from where they work. However, the employer claims that the canteen is only 50 meters from Buildings 3 and 4 and the canteen is a big size with better conditions than that of other factories as it can accommodate 2000 people.

Furthermore, the Arbitration Council does not find any evidence to prove that the parties had entered into an agreement that requires the employer to build an additional canteen as claimed by the workers.

The Arbitration Council considers that the workers' demand for the company to build an additional canteen is a demand for something more than the employer's legal obligation. Thus, the Arbitration Council considers that the workers' demand for the employer to build a canteen is an interests dispute.

Generally, for an interests demand, the Arbitration Council will consider whether the union, who is the claimant to the dispute to the Arbitration Council, has most representative status because the Arbitration Council considers that most representative status gives the union legal standing to enter into a CBA with the company and legal rights to bring an interests dispute to the Arbitration Council for resolution (see Arbitral Awards 57/04-Evergreen, Issue 1; 08/07-Siu Quinh, Issue 3).

In order to receive most representative status, Article 277 of the 1997 Labour Law states that the union needs to be registered and fulfill other requirements stated in this Article. In this case, the Arbitration Council found that CLU at Yung Wah II does not have most representative status in the factory. In case 08/07-Siu Quinh, Issue 3, it is explained that *“This right belongs to the registered union with the [majority of the workers as] members who have fulfilled other criteria as well, as stated in Article 277 of the Labour Law.”* Therefore, in order to be consistent with previous Arbitral Awards, the Arbitration Council finds that this union does not have sufficient legal standing to represent all workers in order to resolve an interests dispute on behalf of all workers in Yung Wah II.

In addition, Clause 43 of Prakas 099, dated 21 April 2004 states that, *“An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.”*

Based on the contents of Article 43 of Prakas 099, dated 21 April 2004 and previous Arbitral Awards, the Arbitration Council finds that if the Arbitration Council issues an Arbitral Award on this issue it will become a CBA applicable to all workers in the company and it will cause other workers to lose their right to strike to make a demand for an interests dispute in the future which can lead to unfairness and injustice for other workers. (See Arbitral Award 06/04-Chou Sing, Issue 1; 09/05-Kin Tai, Issue 2; and 48/06-Build Up, Issue 2)

In conclusion, the Arbitration Council declines to consider the workers' demand for the company to build an additional canteen in Buildings 3 and 4.

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

DECISION AND ORDER

Issue 3: Decline to consider the demand for the company to build an additional canteen in Buildings 3 and 4.

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: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: