



KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 22/09-Global Apparel

Date of Award: 10 March 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

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

Arbitrator chosen by the worker party: **Tuon Siphann**

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

DISPUTING PARTIES

Employer party:

Name: **Global Apparel Limited**

Address: Trovang Tuol Village, Kambol Commune, Ang Snuok District, Kandal Province

Telephone: 012 946 045

Fax: N/A

Representative:

- | | |
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| 1. Mr. Ry Vanlo | Acting head of Human Resource Department |
| 2. Mr. Roeun Vannara | Coordination Officer |

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) and local union of C.CAWDU at Global Apparel Factory**

Address: Trovang Tuol Village, Kambol Commune, Ang Snuok District, Kandal Province

Telephone: 012 988 623

Fax: N/A

Representative:

- | | |
|---------------------|--|
| 1. Ms. Meas Vanny | Officer of C.CAWDU |
| 2. Mr. Em Sopheak | Officer of C.CAWDU |
| 3. Mr. Klot Samnang | President of local union of C.CAWDU at the factory |
| 4. Ms. Nov Savin | Union activist |

- | | |
|--------------------|----------------|
| 5. Ms. Rith Vina | Union activist |
| 6. Ms. Hut Sokchea | Worker |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Night shift workers demand that the company maintain their night shift work. The company states that it is not able to run the operation for night shift work.
- 2- The workers demand that the company renew the employment contracts of 260 workers and convert their fixed duration contracts to undetermined duration contracts. Currently the company does not have sufficient orders.
- 3- Night shift workers transferred to day shift demand additional wages of US\$ 30 per month on top of that provided to day shift workers. The company is unable to provide this.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Articles 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. 058/09 KB/KN, dated 10 February 2009 was submitted to the Secretariat of the Arbitration Council on 16 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: 20 February 2009 (at 2:30 p.m.)

Procedural issues:

On 29 January 2009 the Provincial Department of Labour and Vocational Training of Kandal Province received a complaint from workers regarding the demand for the company to improve working conditions. After receiving the claim, the Provincial Department of Labour and Vocational Training of Kandal Province assigned an expert officer to resolve the labour dispute on 29 January 2009 but was not able to resolve the three non-conciliation issues. The three non-conciliation issues were referred to the Secretariat of the Arbitration Council

on 16 February 2009 through the non-conciliation report of collective labour dispute no. 058/09 KB/KN, dated 10 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 three non-conciliation issues on 20 February 2009 (at 2:30 p.m.).

Both parties were present at the arbitration hearing. The Arbitration Council asked for information relevant to this dispute and attempted to further the conciliation on the three non-conciliation issues with the result that 2 out of the 3 issues were conciliated as the worker party requested to withdraw the issues. Thus, the remaining issues are issue 1 and issue 3. However, because the demands in issue 1 and 3 are similar, the worker party agreed to combine the two issues into one. Therefore, in this case the Arbitration Council will consider the dispute 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. Authorization letter by Global Apparel Company to Mr. Ry Vanlo, dated 18 February 2009.
2. Summary statement for case 22/09, dated 18 February 2009.
3. Certificate of commercial registration of Global Apparel Company No. 1810 PN.NTK, dated 17 May 2007.
4. Letter by the Council for Development of Cambodia No. 1295/07 KVK, dated 24 April 2007 to the director of Jusca Garments (Cambodia) Ltd regarding request for changing of the company's name from Jusca Garments (Cambodia) Ltd to Global Apparels Limited and filing a new statute.
5. Letter No. 1810 PN.NTK, dated 17 May 2007 by the Ministry of Commerce to the Board of Director of Global Apparel Company regarding request for changing of the company's name and request to file a new statue.
6. Internal Work Rules of Jusca Garments (Cambodia) Ltd, registration No. 070 KBV, dated 7 December 2004.
7. Employment contract between Jusca Garment and Mr. Huot Kimhorn, dated 10 October 2003.
8. Employment contract between Global Apparel Company and Soeun Sany, dated 24 October 2008.

9. Fixed duration contract between Global Apparel Company and Yav Sivorn, dated 30 October 2008.
10. Report of meeting regarding transfer from night shift work to day shift work, dated 12 January 2009.
11. Report of meeting regarding transfer from night shift work to day shift work, dated 13 January 2009.
12. List of names of night shift workers in Line 15 transferred from night shift to day shift, dated 17 September 2007.
13. List of names of night shift workers in Line 16 transferred from night shift to day shift, dated 17 September 2007.
14. List of names of night shift workers in Line 17 transferred from night shift to day shift, dated 17 September 2007.
15. List of names of night shift workers in Line 18 transferred from night shift to day shift, dated 17 September 2007.
16. List of names of night shift workers in Line 19 transferred from night shift to day shift, dated 17 September 2007.
17. List of names of night shift workers in Line 20 transferred from night shift to day shift, dated 17 September 2007.
18. Letter by the director of Global Apparel Company to night shift workers to inform about changing of shift and location of the workers to work on day shift in the new building or Building 2 of Global Apparel Company, dated 15 January 2009.
19. Letter by the director of Global Apparel Company to night shift workers employed under fixed duration contract regarding changing of the workers' working shift to day shift, dated 20 January 2009.

B. Provided by the worker party: N/A

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

1. Report dated 10 February 2009 on the collective labour dispute settlement at Global Apparel Company, No. 058 KB/KN.
2. Minutes of the collective labour dispute conciliation at Global Apparel Company, dated 7 February 2009.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 090 KB/AK/VK/LKA dated 17 February 2009 to invite the employer party to attend the hearing;
2. Invitation No. 091 KB/AK/VK/LKA dated 17 February 2009 to invite the worker party to attend the hearing;

FACTS

- Having reviewed the report of the collective labour dispute conciliation;
- Having listened to statements by the representatives of the workers and the employer;
- Having reviewed additional documents.

The Arbitration Council finds that:

- Global Apparel Company commenced operation in 2003. Currently the company employs approximately 3,000 workers including 300 workers who previously worked on night shift.
- The company has a total of 7 unions and the local union of C.CAWDU is the claimant in this case.
- Among the 300 workers who are former night shift workers, 253 workers are members of the local union of C.CAWDU at Global Apparel Company. The union does not have most representative status.

Issue 1 and 3: The former night shift workers demand that the company maintain night shift work but if the company requires them to change to day shift work it should pay them an extra US\$ 30 wages per month

- The company provides a night shift rate of 200% for night shift workers who were employed before the amendment to the night shift wage in the Labour Law. For those [workers] who were employed after the amendment to the law the company provides a night shift wage of 130%, in accordance with the amended rate in the law.
- On 7 February 2009 the company decided to discontinue night shift work and required that all night shift workers change to day shift; [this is] due to the impact of the global economic crisis, which means the company does not have sufficient orders from buyers [which means] it is unable to employ workers to work another shift at night. The company established night shift work in order to fulfill [high] workload requirements in the past when it received a lot of orders from buyers.
- The 300 workers employed on night shift have undetermined duration contracts. Clause 6 of their employment contract states:
 - * First shift: From 6:30 a.m. to 3:15 p.m. with a lunch break from 10:30 a.m. to 11:15 p.m.
 - * Second shift: From 7:00 p.m. to 3:30 a.m. with a dinner break from 11:00 p.m. to 11:30 p.m. The time and shift of workers' work is subject to change in accordance with the decision of the company when necessary.

- Point A.3, Clause 2 of the company's Internal Work Rules, dated 7 December 2004, states that the management has the authority to manage and assign the work and shifts of workers.
- The company mentions in the hearing that on 17 September 2007 the company changed 6 groups or 302 workers from night shift to day shift workers and no workers demanded that the company should not make this change. The workers do not object to the claim of the employer but state that they did not make a complaint at that time because they did not quite understand it.
- The company adds that the change to the work shifts of the 300 workers was to ensure ongoing production and to avoid bankruptcy.
- The workers mentioned in the hearing that they have worked on night shift since they first started working and they receive better wages and benefits than on day shift. Working on night shift, the workers can earn approximately US\$ 130 per month while [on day shift] they can earn only US\$ 60 or 70 to 80 per month on average. The change from night shift to day shift has caused some difficulties in their day to day living because they used to rent a bigger room at a higher rate than normal; moreover, they used to send more money home. Therefore, they request that the company maintain their night shift work.
- The workers claim that Article 13 of the Labour Law provides an entitlement to workers to maintain any benefits which are higher than those provided in the law. The workers used to receive a higher wage when they worked on night shift than on day shift and their standard of living was better. The employer should maintain such benefits for them.
- Based on the above claim, the workers state that they would agree to the change from night shift to day shift if the employer agreed to provide additional wages of US\$ 30 per month.

REASONS FOR DECISION

Issue 1 and 3: The former night shift workers demand that the company maintain night shift work but if the company requires them to change to day shift work it should pay them an extra US\$ 30 wages per month.

In this case the company decided to discontinue night shift work and change workers from night shift to day shift due; [this was due] to the impact of the global financial crisis which means the company does not have sufficient orders from buyers to employ workers to work on night shift. The workers, on the other hand, request that the company maintain the night shift work because they receive a higher wage when they work on night shift than on

day shift. Nonetheless, if the company changes [them] to day shift work, it should provide additional wages of US\$ 30 per month.

Therefore, the Arbitration Council will consider whether the change by the employer from night shift work to day shift work is in accordance with the law and is reasonable; and whether the workers transferred from night shift to day shift have the right to demand that the company provide additional wages of US\$ 30 per month.

Is the change by the employer to the worker's work shift from night shift to day shift in accordance with the law and reasonable?

Article 2, paragraph 2 of the Labour Law 1997 states, *"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 held that Article 2, paragraph 2, of the Labour Law means that the employer has the right to direct and manage the company as long as the rights are exercised legally and reasonably. (See Arbitral Awards 62/06-Quick Sew, Issue 5; 108/06-Trinunggal Komara, Issue 1; 33/07-Goldfame, Issue 3; 106/07-M&V 3, Issue 3; 84/08-Trinunggal Komara, Issue 1 and 08/09-Global Apparel).

In previous cases, the Arbitration Council considers that the employer has the right to transfer workers' [to another] work shift as long as the transfer is done legally and is reasonable. (See Arbitral Awards 54/06-Bright Sky; 53/08-Yung Wah I, Issue 4 and 08/09-Global Apparel).

In this case the Arbitration Council agrees with the interpretation in previous cases that the employer has the right to change the work shift of the workers as long as the transfer is conducted in accordance with the law and is reasonable.

Based on the findings of fact, the Arbitration Council considers that the employer has a [valid] reason for changing workers from night shift to day shift; [this is] due to the impact of the global economic crisis which means that the company does not have sufficient orders from buyers and the company is unable to employ workers to work another shift at night. In the past the company established night shift work in order to fulfill work requirements when it received a lot of orders from buyers. The worker party also acknowledges the reason given by the employer party. However, because work on night shift allowed the workers to receive a higher wage than that on day shift, the workers request that the employer maintains their work on night shift.

Based on the findings of fact and evidence as described above, the Arbitration Council finds that the company suffers from the [impact of] the global economic crisis which has caused a decrease in orders from buyers. The workers also acknowledge that the

company faces difficulties. Therefore, the Arbitration Council considers that the fact that the company transfers workers from night shift work to day shift work is reasonable.

In accordance with Article 65 of the Labour Law, *“A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.”* Based on Article 65, the Arbitration Council considers that ordinary law is also applicable to employment contracts, thus Article 22 of Decree 38 regarding Contracts and Other Liabilities, dated 28 October 1988, can be applied to parties to an employment contract.

Article 22 of Decree 38 as mentioned above states that *“A contract is the law between the parties. Amendments to the contract can only be made with the consent of both contracting party. A contract shall be executed with honesty and according to the will of the parties. A contract binds only the parties to the contract.”* According to Article 22 of this Decree, the employer and the workers have an obligation to implement [the terms of an] employment contract agreed upon by both parties as it is the law between the parties.

Clause 6 of the fixed duration contract signed by [the employer and] the 300 workers who used to work on night shift, states:

- * *First shift: From 6:30 a.m. to 3:15 p.m. with lunch break from 10:30 a.m. to 11:15 p.m.*
- * *Second shift: From 7:00 p.m. to 3:30 a.m. with dinner break from 11:00 p.m. to 11:30 p.m. Time and shift of workers' work is subject to change in accordance with the decision of the company when necessary.*

In accordance with this clause of the contract, the workers agreed in advance with the employer to change their work shift from night to day or from day to night if necessary.

Based on the agreement and the interpretation above, the Arbitration Council considers that the employer has changed the work shift of the workers in accordance with this clause of the contract because it suffers from the [impact of the] global economic crisis which is a valid reason. Therefore, the Arbitration Council considers that the change to the work shift of the workers by the company is reasonable and legal.

In conclusion, the Arbitration Council decides to reject the workers' demand for the company to maintain their work on night shift.

Do workers transferred from night shift to day shift have the right to demand that the company provide additional wages of US\$ 30 per month?

In this case, the workers transferred from night shift to day shift demand that the employer provide them with a benefit of US\$ 30 per month in addition to their salary because working on night shift allowed them to receive higher wages than when they work on day shift; and the night shift wages the workers used to receive was a benefit that the employer used to give them which was higher than that provided for in the law. Thus, the employer

should maintain such benefits for them in accordance with Article 13 of the Labour Law, which is about the provision of benefits superior to those provided for in the law.

The new Article 144 of the Labour Law 1997, amended in 2007, states that *“Besides continuous work that is performed by groups of workers with rotating shifts who sometimes work during the day and sometimes at night, the work of the enterprise may have one portion which is performed always at night. Night work shall be paid at a rate of 130% (one hundred thirty percent) of the day time wage.”*

In accordance with the new Article 144 mentioned above, the Arbitration Council considers that the wage rate provided to workers is dependent on the shift the workers work. According to the new Article 144, night shift work provides a higher rate than work on day shift. The Arbitration Council considers that the fact that the workers transferred to day shift and receive a day shift rate does not imply that they lose benefits they used to receive. The fact that they receive less wages is because they changed their work from night shift to day shift. Nonetheless, if the workers are transferred back to night shift, they will receive higher wages than when they work on day shift in accordance with the law. Moreover, the workers' loss of benefits could only have occurred when the transfer was not reasonable and not in accordance with the law. Therefore, the Arbitration Council considers that the fact that the workers receive less wages is not a loss of [any] benefits that the employer used to provide to the workers but this is the wage rate determined by law.

Article 106 of the Labour Law 1997 states, *“For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age.”* According to this Article, workers who work under the same conditions with equal professional skills and output shall receive equal wages.

According to the findings of fact, the workers receive between US\$ 60 or US\$ 70 to US\$ 80 per month when they work on day shift. The workers do not state whether the amount of wages they receive is less than or more than other workers working on day shift. The workers' demand for a benefit of US\$ 30 per month in addition to their wages on day shift is not provided in the Labour Law and the two parties have not signed any agreement regarding this demand.

Therefore, the Arbitration Council considers the workers' demand is for something more than what is provided for by the law, thus it is an interests dispute.

Generally, for an interests demand, the Arbitration Council will always consider whether the union who is the claimant in the dispute 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. 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 the Article.*

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.”*

If a union does not have most representative status, it does not have the legal rights to enter into a CBA on behalf of all workers in the factory (See Article 96, paragraph 2B and Prakas 305, Clause 9, paragraph 1). This right belongs to the registered union with the majority of members which has fulfilled other criteria set out in Article 277 of the Labour Law. Generally, the Arbitration Council declines to consider an interests dispute if the union which brings the dispute does not have most representative status in the factory. (See Arbitral Award 101/08-GDM, Issue 3).

Based on the findings of fact and evidence, the union does not have most representative status. Thus, based on the interpretation above, when the Arbitration Council makes a decision on an interests dispute, the parties will not be able to go on strike or lock out or bring another interests dispute to the Arbitration Council for a period of one year.

Based on the interpretation above, the Arbitration Council considers that the local union of C.CAWDU at Global Apparel Company does not have a legal right to bring an interests dispute to the Arbitration Council. Therefore, the Arbitration Council decides to decline to consider the demand.

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

DECISION AND ORDER

- Reject the demand that the employer maintain work on night shift.
- Decline to consider the demand that workers transferred from night shift to day shift receive a [benefit] of US\$ 30 per month additional to their wages.

Type of Award: Non binding

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: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: