



KINGDOM OF CAMBODIA  
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្យាករណ៍

THE ARBITRATION COUNCIL

**Case number and name: 24/07- Island Glory**

**Date of Award: 3 April 2007**

### **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: **Tuon Siphann**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **Island Glory Industrial Co. Ltd (Island Glory)**

Address: Sangkat Tuol Sangke, Khann Russey Keo, Phnom Penh

Telephone: 012 827 971 Fax: N/A

Representative:

- |                  |                                  |
|------------------|----------------------------------|
| 1. Mr. Kim Ann   | Head of Administration           |
| 2. Ms. Chhun Rem | Head of Group in Cutting Section |

##### **Worker party:**

Name: **Local Cambodia Workers Labour Trade Union at Island Glory Factory**

Address: Sangkat Tuol Sangke, Khann Russey Keo, Phnom Penh

Telephone: 012 187 8904/ 012 434 403

Representative:

- |                   |  |
|-------------------|--|
| 1. Ms. Sok Nakry  | President of local CWLU at Island Glory Factory    |
| 2. Mr. Chhin Sony | Vice President of CWLFU of Island Glory Factory    |
| 3. Mr. Ek Sokchea | Advisor of CWLFU of Island Glory Factory           |
| 4. Mr. Hoeun Dara | A committee member of CWLU at Island Glory Factory |

## **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demand that the company reinstate Mr. Hoeun Dara on the basis of union discrimination.

### **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] was unsuccessful, and the non-conciliation report No.231/07 K.K.B.V/AK/VK, dated 12 March 2007, was submitted to the Secretariat of the Arbitration Council on 12 March 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:** 22 March 2007, from 2:00 p.m. to 4:00 p.m.

#### **Procedural issues:**

On 15 February 2007, the Department of Labour Disputes received a complaint from workers demanding that the company improve work conditions in respect of two issues. After receiving this complaint, the Department of Labour Disputes assigned an officer to handle this dispute with the result that one of the two issues was [successfully] conciliated. The one non-conciliated issue was referred to the Secretariat of the Arbitration Council on 12 March 2007.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party at the factory to attend the hearing and conciliation on in respect of the one non-conciliated issue on 22 March 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further conciliate with respect to the one non-conciliated issue but did not achieve a successfully conciliated result.

Therefore, in this award, the Arbitration Council will consider [the issue] based on 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:**

1. Letter authorizing Mr. Kim Ann as company representative, dated 22 March 2007
2. Summary statement about the workers' demand, dated 22 March 2007
3. Job application of Mr. Hoeun Dara, dated 20 December 2006
4. Probationary contract of Mr. Hoeun Dara, dated 20 December 2006
5. Card of Mr. Hoeun Dara's job interview, dated 19 December 2006
6. Mr. Hoeun Dara's birth certificate, dated 30 July 2005
7. Letter of residence of Mr. Hoeun Dara, dated 20 December 2006
8. Slip to receive employment book and Cambodian employment card of Mr. Hoeun Dara, dated 19 December 2006
9. Letter by the company dismissing Mr. Hoeun Dara, dated 10 February 2007
10. Letter from the Director of Island Glory company, dated 26 March 2007, with signature of union representative to confirm that the card with blue colour at the cutting section is the card of a full-right worker.

#### **Provided by the worker party:**

1. Letter No. 1626 K.K.B.V regarding recognition of union leader, dated 24 October 2005
2. Certificate of union registration, dated 24 October 2005
3. List of names of union leaders, dated 1 January 2007
4. Clarification statement by Mr. Hoeun Dara, dated 20 February 2007
5. Mr. Hoeun Dara's union membership card
6. Copy of Mr. Hoeun Dara's employment card
7. List of names of workers who demand the company to reinstate Mr. Hoeun Dara
8. Minute of collective labour dispute conciliation, dated 8 February 2007.

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

1. Report No. 231/07 K.K.B.V/AK/VK by the Head of the Department of Labour Disputes regarding the collective dispute at Island Glory Company, dated 12 March 2007
2. Minute of the collective labour dispute conciliation, dated 20 February 2007.

#### **Provided by the Secretariat of the Arbitration Council:**

1. Letter No. 111 K.K.B.V/AK/VK/LKA, dated 19 March 2007 to invite the worker party to attend the hearing.
2. Letter No. 112 K.K.B.V/AK/VK/LKA, dated 19 March 2007 to invite the employer party to attend the hearing.

### **FINDING OF FACTS**

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

### **The Arbitration Council finds that:**

- Island Glory Company is located in Sangkat Tuol Sangke, Khann Russey Keo, Phnom Penh and it employs about 1,150 workers.
- The local CWLU at Island Glory Factory which is the complainant in this case has approximately 500 members.
- The company terminated Mr. Hoeun Dara, a Head of cutting from the cutting section, on 10 February 2007. The worker party demands the company reinstate Mr. Hoeun Dara. This complaint was made by CWLFU and local CWLU at Island Glory Company and is supported by about 200 workers.
- Mr. Hoeun Dara is an activist from the local CWLU at Island Glory Factory. The worker party asserts that the employer dismissed Mr. Hoeun Dara because of union discrimination as he participated in a strike on 6 and 7 of February 2007. The company stated that it did not discriminate against the union because, if it discriminated, it would have dismissed all the workers who participated in the strike and are members of the union. The union stated that only Mr. Hoeun Dara was dismissed and the company did not dismiss other union activists who participated in the strike.
- The company stated that the reason that it did not continue Mr. Hoeun Dara's contract was that he did not work well; he did not pay attention to his work (he made mistakes when cutting); he did not follow the Internal Work Rules and he talked during working hours. Thus, the company does not want such a worker. Mr. Hoeun Dara rejects this claim and asserts that he did not make any mistakes and he worked well. He did talk during working hours but it was about work and he has never received any warning from the employer.
- Mr. Hoeun Dara signed a probationary contract of two months with the company which started from 20 December 2006 [and expires on] 20 February 2007. The

company did not notify him [of the termination] because it considers that Mr. Hoeun Dara is a probationary worker. The union responded that Mr. Hoeun Dara is not a probationary worker but a full-right worker because he received a wage of US\$70 per month while a normal probationary worker receives only US\$40 per month. The representative of the company and the Head of the cutting section stated that normally the Heads of cutting receive US\$70 even during the probationary period because they are skilled workers. The worker party also asserted that Mr. Hoeun Dara used a green card which identifies him as a full-right worker. The employer party asserted that a full-right worker's card is sky blue; a probationary worker's [card] is green and a floating worker's [card] is white. During the hearing the Arbitration Council found that the Head of the cutting section who is a full-right worker has a sky blue card and the card of Ms. Sok Nakry who is a full-right worker is also of sky blue colour. However, Mr. Hoeun Dara has a green card which is contradictory to the document submitted to the Arbitration Council which mentions that those workers with green cards are full-right workers.

- The Arbitration Council requested that the company and the union recheck the colour of cards in the cutting section. Based on a letter from the Director of Island Glory Company dated 26 March 2007, with the signature of Nget Sarem, representative of the union, it is clarified that the sky blue cards in the cutting section are the cards of full-right workers.

### **REASONS FOR DECISION**

First of all, because this dispute is related to a demand for the company to reinstate only one worker, Mr. Hoeun Dara, the Arbitration Council will consider if it has jurisdiction with respect to this labour dispute.

In principle, the Minister of Labour and Vocational Training (Department of Labour Disputes) has the duty to decide if a dispute is an individual dispute or a collective labour dispute before referring it to the Arbitration Council. Therefore, the Arbitration Council will abide by the decision of the Minister of Labour and Vocational Training (Department of Labour Dispute), except in cases where the Arbitration Council has an obvious reason to reconsider (see Arbitral Awards 10/03-Jaqushintex, Issue 4; 07/05-Coca Cola, Preliminary Issue; 41/04-Micasa, Preliminary Issue; and 77/06-PCCS).

In this case only one worker, Mr. Hoeun Dara, is directly involved with the demand for the employer to reinstate. In addition, Mr. Hoeun Dara is not a union leader who should receive special protection provided by the law. [The Arbitration Council considers that] this is an obvious reason allowing the Arbitration Council to consider if this is a collective labour dispute within its jurisdiction.

Article 302 of the Labour Law states, “A *collective labour dispute* is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness.”

Based on Article 302 of the Labour Law, in order to decide if a dispute is a collective dispute, the dispute must fulfill three necessary conditions as follows:

(a) It is a dispute which arises between a number of workers and one or more employer

(b) The dispute concerns working condition, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers

(c) This dispute could jeopardize the effective operation of the enterprise or social peacefulness.

In Arbitral Awards 77/06-PCCS and 83/06-Roo Hsing, the Arbitration Council considered that these labour disputes were not collective labour disputes because condition (c) was not fulfilled.

In this case, the Arbitration Council finds that:

Condition (a) is fulfilled because this labour dispute is made by Mr. Hoeun Dara with the union which represents many workers who are its member to settle this labour dispute with the employer.

Condition (b) is also fulfilled because this dispute is related to the dismissal of Mr. Hoeun Dara and the demand for Island Glory Company to reinstate him. This means that the subject of this dispute is related to working relationship of Mr. Hoeun Dara and Island Glory Company.

Condition (c), however, is not fulfilled because this labour dispute cannot lead to an interruption of Island Glory Company operations or jeopardize social peace. Mr. Hoeun Dara is only one worker which is a very small number if compared to the total number of 1,150 workers in Island Glory Company. Although this dispute is supported by the union and about 200 workers who are supportive of the reinstatement of Mr. Hoeun Dara, the workers and the union do not have a direct interest in this labour dispute. This means that only one individual, Mr. Hoeun Dara, has a direct interest in this labour dispute. In addition, the worker party does not show any evidence to prove that this labour dispute can cause an interruption in the operation of Island Glory factory or to jeopardize social peace (see Arbitral Awards 07/06-PCCS and 83/06-Roo Hsing.) Thus, condition (c) is not fulfilled.

In conclusion, the Arbitration Council considers that the dispute involving Mr. Hoeun Dara does not fulfill the conditions in Article 302 regarding [the definition of] collective labour disputes. Thus, the labour dispute regarding the demand for the employer to reinstate Mr. Hoeun Dara is not a collective labour dispute. Therefore, the Arbitration Council does not have jurisdiction to resolve this labour dispute but the Arbitration Council notes that the parties should resolve this labour dispute according to the procedure set in Article 301 of the Labour Law instead.

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

**DECISION**

- Decline to consider the worker’s demand that the company reinstate Mr. Hoeun Dara.

**Type of Award: Binding awards**

This Award is immediately binding upon the parties after the notification of the award.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....