



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព

THE ARBITRATION COUNCIL

Case number and name: 25/07- Parkview

Date of Award: 3 April 2007

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): **Nhean So Munin**

DISPUTING PARTIES

Employer party:

Name: **Parkview (Cambodia) Garment Factory Ltd.**

Address: Trea Village, Sangkat Chom Chao, Khann Dangkor, Phnom Penh

Telephone: 023 890 401/ 011 531 353 Fax: 023 890 405

Representative:

- | | |
|------------------------|-----------------|
| 1. Mr. Yoon Dong Cheol | General Manager |
| 2. Ms. Yin Sopehap | Interpreter |
| 3. Mr. Chum Thirith | Secretary |

Worker party:

Name: **Khmer Youth Federation Trade Union and Local Khmer Youth Trade Union at Parkview Factory**

Address: Phnom Penh

Telephone: 011 489 193

Representative:

- No representative attended the hearing.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

The workers demand that the company deduct 1,000 riels for the union contribution fee from each union member of Khmer Youth Trade Union. The employer party on the other hand, states that the company cannot do the contribution fee deduction on behalf of the union because the company does not have enough office staff to do this work.

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. 228 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:

- 23 March 2007 (at 2:00 p.m.)

Procedural issues:

On 4 January 2007, the Department of Labour Disputes received a complaint from Khmer Youth Federation Trade Union regarding a demand that Parkview company deduct the union contribution fee of 1,000 riel from union members on behalf of Khmer Youth Trade Union. After receiving this complaint, the Department of Labour Dispute assigned an officer to handle this dispute and the last conciliation was held on 31 January 2007. There was no conciliated resolution. The Secretariat of the Arbitration Council received this case from the Department of Labour Dispute on 12 March 2007.

Upon receipt of this case, the Secretariat of the Arbitration Council invited the employer party and the worker party at the factory to attend the hearing and conciliation in respect of the one non-conciliated issue on 23 March 2007 at 2:00 p.m.

The employer party was present as invited by the Arbitration Council but the worker party did not assign its representative to attend the hearing. A representative of the Khmer Youth Trade Union told an officer of the Secretariat of the Arbitration Council a short time before the hearing started that the worker party would not attend the hearing.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party: N/A

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

1. Report of the collective labour dispute resolution at Parkview Company No. 228 K.K.B.V/AK/VK, dated 12 March 2007 (with written account No. 049 K.K.B.V/AK, dated 23 February 2007).
2. Minute of the collective labour dispute resolution, dated 31 January 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 114 K.K.B.V/AK/VK/LKA dated 20 March 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 113 K.K.B.V/AK/VK/LKA dated 20 March 2007 to invite the employer party to attend the hearing.

FINDING OF FACTS

- Having examined documents that the Arbitration Council has received
- Having reviewed the report of the collective labour dispute conciliation

The Arbitration Council finds that:

- Parkview Company is located in Trea Village, Sangkat Chom Chao, Khann Dangkor, Phnom Penh and it employs approximately 600 workers.
- Khmer Youth Trade Union received an invitation letter to attend the hearing No. 114 KKBV/AK/LKA, dated 20 March 2007, from the Secretariat of the Arbitration Council.

From the time it received the invitation letter to the time of the hearing, the Khmer Youth Trade Union did not contact the Secretariat of the Arbitration Council to request a postponement of the hearing. Only when it was immediately prior to the scheduled hearing time, an officer of the Secretariat of the Arbitration Council contacted the parties to remind them about the time of the hearing.

REASONS FOR DECISION

Clause 19 of Prakas No. 099 regarding the Arbitration Council, dated 21 April 2004, states, *“A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.”*

In this case, the Khmer Youth Trade Union told the Officer of the Secretariat of the Arbitration Council a short while before the hearing started that the worker party would not attend the hearing. When the hearing started, the worker party did not appear at the hearing as invited by the Secretariat of the Arbitration Council and did not have a representative nor a lawyer to represent them as stated in clause 19 of the above mentioned Prakas.

Clause 21 of Prakas No. 099 regarding the Arbitration Council, dated 21 April 2004, states, *“In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.”*

In addition, Rule 4.7 of the Arbitration Council’s procedure Annexed to the Prakas on the Arbitration Council No. 099, dated 21 April 2004, states, *“If a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”*

Based on the invitation letter by the Secretariat of the Arbitration Council inviting the parties to attend the hearing, the Arbitration Council considers that both parties were properly informed by the Secretariat of the Arbitration Council about the date, time and venue of the hearing in accordance with Rule 4.7 mentioned above and in addition, the parties were telephoned in order to remind them about the time of this hearing. However, on the hearing day, only the employer party came to the hearing as invited.

Based on Clause 19 and clause 21 of Prakas No. 099 on the Arbitration Council and Rule 4.7 of this Prakas, and based on the [Arbitral Awards] of the Arbitration Council in previous cases (see [Arbitral] Awards 30/05-Mourea, and 16/07-Lotus), the Arbitration Council decides to close the case as the worker party, who is the complainant, failed to attend the hearing and did not provide any reasonable reasons to the Arbitration Council or

the Secretariat of the Arbitration Council regarding this absence even though it has properly received an official invitation.

Therefore, the Arbitration Council in this case assumes that the union party who is the complainant has given up its complaint.

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

DECISION

- Close case No. 25/07-Parkview.

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: **Nhean So Munin**

Signature: