



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 27/07- M&V 3

Date of Award: 10 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: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **M & V International Manufacturing Ltd. (Branch 3)**

Address: National Road 2, Prek Ta Long Village, Sangkat Chak Angre Krom, Khann Mean
Chey, Phnom Penh

Telephone: 023 425 041 Fax: 023 425 001

Representative:

1. Mr. Yin Nak Head of Administration of the Company
2. Mr. Long Heang Officer of GMAC

Worker party:

Name: **C.CAWDU and Local CAWDU at M&V 3 Factory**

Address: No. 6 c, Sangkat Tomnob Toeuk, Khann Chamkarmorn, Phnom Penh

Telephone: 012 988 623/ 012 653 303 Fax: N/A

Representative:

1. Mr. Ek Sopheakdey General Secretary of C.CAWDU
2. Mr. Vann Phea President of CAWDU at M&V 3
3. Ms. Rath Sothy Vice-president of CAWDU at M&V 3
4. Huon Sophorn Union Activist

5. Chey Touch	Union Activist
6. Vet Nhao	Union Activist
7. Khon Sothy	Union Activist
8. Porch Chantha	Union Activist

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand that the company dismiss Lay Socheat because he incites workers to commit serious misconduct.
2. The workers demand that the company re-elect worker representatives.
3. The workers request the company to not deduct US\$ 5 regular attendance bonus from workers who take leave with proper permission.

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. No. 1256 K.K.B.V./AK/VK, dated 19 March 2007, was submitted to the Secretariat of the Arbitration Council on 19 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: 26 March 2007 (From 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 17 January 2007 the Department of Labour Disputes received a complaint from the workers regarding a demand for the company to improve work conditions. After receiving this complaint, the Department of Labour Disputes assigned officers to settle this labour dispute and conducted a last conciliation on 24 January 2007 with the result that 10 of the 10 issues not [successfully] conciliated. However, in this report, the Department of Labour Disputes mentioned that the Department found that there were seven issues which the Department settled once already (as stated in the agreement and decision of the Arbitration

Council). Therefore, there are only three non-conciliated issues which had to be sent to the Secretariat of the Arbitration Council on 19 March 2007.

After receiving 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 in respect of the three non-conciliation issues on 26 March 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the worker party requested the Arbitration Council resolve all 10 of their demands again. The Arbitration Council tried to explain to the worker party that the Arbitration Council would consider their request in the Arbitral Award on whether the Arbitration Council has jurisdiction to settle all the 10 issues as requested by the worker party. However, on the hearing day would conduct the hearing only on the three non-conciliated issues stated in the non-conciliation report of the Department of Labour Disputes sent to the Secretariat of the Arbitration Council on 19 March 2007. The worker party did not agree to the request by the Arbitration Council even though the Council tried to explain to them about the procedure for dispute resolution at the Arbitration Council. The Arbitration Council asked the worker party to decide whether they would attend the hearing procedure on the three non-conciliated issues stated in the non-conciliation report by the Department of Labour Disputes. The worker party answered that they would not attend the hearing. After finishing their words, the worker party walked out of the hearing room.

Therefore, in this case, the Arbitration Council will make consideration 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 to authorize Mr. Yin Nak and Mr. Long Heang by the Director of MV Company, dated 22 March 2007
2. Certificate of commercial and company registration, No. 1311 PN.PBK.KN, dated 11 July 1995
3. Company's Internal Work Rules, registration No. 045 SKBY.AK, dated 2 May 2006
4. Letter No. 336 K.K.B.V/AK/VK, dated 6 September 2005 regarding the election of the 4th mandate worker delegate.
5. Minutes of the election of the 4th mandate worker delegate, dated 27 June 2005
6. Statement of clarification on dispute issues, dated 22 March 2007
7. Minutes of the meeting on the workers' 10 requests, dated 26 December 2006
8. Attendance list of participants in the meeting on 26 December 2006

Provided by the worker party:

1. Letter No. 1120 K.K.B.V regarding recognition of union leaders, dated 13 September 2006
2. Certificate of union registration, dated 13 September 2006
3. Statute of CAWDU at M&V3 Factory, dated 13 September 2006
4. Letter No. 207 S.B.K.K/06, dated 12 December 2006, regarding the number of union activists and leaders of CAWDU at M&V 3 Factory

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

1. Report of the non-conciliation No. 1256 K.K.B.V/AK/VK, by the head of Department of Labour Dispute, dated 19 March 2007
2. Minutes of the collective labour dispute conciliation, dated 24 January 2007
3. Complaint letter by C.CAWDU, dated 16 January 2007

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 118 LKA KKBV/AK/VK/LKA dated 22 March 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 119 LKA dated 22 March 2007 to invite the employer party to attend the hearing

FINDING OF FACTS

- M&V 3 is located along National Road No. 2, Prek Talong Village, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh and it employs 2,974 workers.
- CAWDU is the complainant in this case and decided not to attend the hearing and did not show any evidence regarding the three non-conciliated issues in this dispute. (See Procedural Issue above).

REASONS FOR DECISION

In this case, the worker party decided not to participate in the hearing of the Arbitration Council because the Arbitration Council would not add the issues not mentioned in the non-conciliation report sent to the Secretariat of the Arbitration Council on 19 March 2007. Therefore, the Arbitration Council will consider this case as follows:

Rule 4.7 of the Procedural Rules of the Arbitration Council in the Annex to Prakas 099 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 case 115/06-Archid, the Arbitration Council interpreted this rule as, *“the departure of the union from the hearing room before the commencement of the Arbitration Council*

hearing process can be considered as a failure to appear in person or to be represented at an Arbitration proceeding”.

In this case, the Arbitration Council agrees with the interpretation of the arbitration panel in the Arbitral Award 115/06-Archid.

Besides Rule 4.7 and the Arbitral Award 115/06-Archid, Clause 21 of Prakas 99 on 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 Arbitral Award 16/07-Lotus the Arbitration Council interpreted Clause 21 to mean that there are three conditions needed to be fulfilled to make the Arbitration Council decide to close the case, *“The first condition, that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for this lack of appearance.”*

In this case, the Arbitration Council will consider if the three conditions are fulfilled.

1. Condition 1: Party is properly notified

Based on section (D), documents received from the Secretariat of the Arbitration Council, the Arbitration Council finds that the party did receive proper invitation from the Secretariat of the Arbitration Council to attend the arbitration hearing. Therefore, first condition is fulfilled.

2. Condition 2: Party does not appear at the hearing

The Arbitration Council considers that the term **“appear at the hearing”** in Clause 21 Prakas 99, dated 21 April 2004, means that the party has to (1) be present at the hearing and (2) participate in the hearing process to the end.

In this case, the worker party was present at the hearing but did not participate in the arbitration hearing process to the end. The arbitration hearing process contains of four steps as follows:

- a. Stage of self-introduction and explanation of interest conflicts
- b. Stage of explanation of procedures and confirmation of the issues in the dispute
- c. Stage of conciliation, if the parties agree to have the Arbitration Council conduct a conciliation again
- d. The stage of hearing the merits of the case

In this case, the worker party participated only in stage (a) and stage (b) but not stage (c) and (d). This shows that the worker party did not participate in the arbitration hearing to the end. Therefore, the Arbitration Council determines that the worker party did not **appear at the hearing** according to the meaning of the second paragraph of Prakas 21. Thus, condition 2 is not fulfilled.

3. Condition 3: Party does not provide proper reason for this lack of appearance

In this case, the worker party requested the Arbitration Council to add the other seven issues which were not mentioned in the non-conciliation report No. 1256 K.K.B.V/AK/VK, dated 19 March 2007 by the head of Department of Labour Disputes, otherwise they would not participate in the hearing. The Arbitration Council mentioned that it cannot settle other issues besides those mentioned in the non-conciliation report, thus, the Arbitration Council would settle only the three issues mentioned in the non-conciliation report. The Arbitration Council had not even finished the explanation properly when the worker party walked out of the hearing. Thus the Arbitration Council considers such act as a failure to provide proper reason for not appearing at the hearing. Thus, the third condition is fulfilled, i.e., the party does not provide proper reason for this lack of appearance.

In conclusion, the three conditions stated in the above mentioned Clause 21 are fulfilled.

In addition, in this case, the Arbitration Council provided a chance for C.CAWDU and CAWDU at M&V 3 Factory to defend the demands of workers who ask them to legally represent them but the Coalition of the Union and the [local] Union who are the complainants in this case chose not to participate in this hearing and gave up the chance to present evidence to support their claim. Such decision does not show any willingness of the worker party in taking their labour dispute to be settled.

Therefore, the Arbitration Council decides to close case 27/07-M&V 3.

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

DECISION

- Close case 27/07-M&V3 by not considering the three issues demanded by the worker party.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: