



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 29/09-Fortune

Date of Award: 21 July 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

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

Chair Arbitrator (chosen by the two Arbitrators): **Koy Neam**

DISPUTING PARTIES

Employer party:

Name: **Fortune Garment Woolen Knitting Factory Ltd.**

Address: Setbo Village, Setbo Commune, Saang District, Kandal Province

Telephone: 012 522 266/012 626 868

Fax: N/A

Representative:

- | | |
|----------------------|---------------------------------|
| 1. Mr. Ham Phea | Attorney at law |
| 2. Mr. Fung Kin Chor | Director of the company |
| 3. Mr. Sok Hak | Vice-director of the company |
| 4. Mr. Long Heang | Officer of employer association |
| 5. Mr. Kong Kim Cheu | Advisor to the company |
| 6. Mr. Rim Vireak | Assistant lawyer |

Worker party:

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

Address: #6C, Street 476, Sangkat Tuol Tompoung 1, Khan Chamkamorn, Phnom Penh

Telephone: 012 282 653

Fax: N/A

Representative:

1. Mr. Oum Visal	Dispute Resolution Officer of C.CAWDU
2. Mr. Lon Samet	President of local union of C.CAWDU at Fortune Factory
3. Mr. Yan Saran	Vice-president of local union of C.CAWDU at Fortune Factory
4. Mr. Chon Vantha	Secretary of local union of C.CAWDU at Fortune Factory
5. Mr. Than Sophorn	Treasurer of local union of C.CAWDU at Fortune Factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- [The workers demand that] the company provide an air-conditioned room with table, chair, whiteboard, filing cabinet, computer and printer for exclusive use by the union. The company party does not agree to the demand but what it is capable to offer to the union is, as what has been practiced so far, the room where worker delegates used to hold meetings.
- 2- [The workers demand that] the union should be able to use the canteen hall in the factory compound to perform union activities as long as it informs the administration department two days in advance. The company party does not agree to the demand.
- 3- [The workers demand that] the company should not use floating workers (casual workers). However, in case the company has an urgent production need that requires more workforce, it can recruit a number of workers equal to 5 percent of the total workforce in each section and they should not be employed for a period longer than 10 days per month. Those casual workers who are employed for longer than 10 days per month should be converted to regular workers. The company states that it will follow the law.
- 4- [The workers demand that] the company should discuss with the union within one week in advance before subcontracting work to other factories in order to make sure the amount of product to be outsourced really cannot be completed by workers [in the factory] by the deadline. The company party does not agree to the demand because this is an internal affair of the company.
- 5- [The workers demand that] the company and the union, with direct participation of workers in the concerned production groups, set up a committee to assess the piece rate before issuing the rate to the workers and that the agreed rate should be posted at each table so that it is known to all workers. The company does not agree to this demand because this will involve internal information about the company's revenues and expenses.
- 6- [The workers demand that] the employer put workers in the packing section, the final checking section and the lamp checking section on piece rate work like workers in

other sections. The employer follows point 5 of the agreement dated 17 December 2007.

- 7- [The workers demand that] the employer provide 1,000 riels for meal allowance for one hour voluntary overtime work. The employer states it follows the law.
- 8- [The workers demand that] the employer allow them to take one additional day off before and one additional day after national holidays such as Khmer New Year and Pchum Ben. The employer states that it follows the yearly Parkas issued by the Ministry of Labour and Vocational Training.
- 9- [The workers demand that] the company provide them 19 days of annual leave for the first year of employment and one additional day every three years of employment. The employer states that it follows the law.
- 10- [The workers demand that] the employer provide seven days for special leave to workers who need to attend to important personal commitments such as their own marriage or the marriage of a sister/brother or son/daughter or sickness or death of husband/wife, children or parents. The employer follows the law and related Parkas of the Ministry of Labour and Vocational Training.
- 11- [The workers demand that] when they take long sick leave up to three months, the employer should maintain their wages and other benefits. The employer states that it follows the existing practice.
- 12- [The workers demand that] the minimum wage of probationary workers should be US\$ 55 per month and that of permanent workers should be US\$ 60 per month. The employer states that it follows the law.
- 13- [The workers demand that] the employer should provide an additional US\$ 2 to seniority bonus per year. The employer states that it follows the law.
- 14- [The workers demand that] the employer should host a party for worker every year on the 8th of March. The employer states that it is not able to provide this.
- 15- [The workers demand that] the employer should increase the attendance bonus to US\$ 10 per month. The employer states that it follows the law.
- 16- [The workers demand that] the company allow women workers to take 100 working days off for maternity leave and that after they return to work the workers should be entitled to 90 minutes per day, which is divided into two [45 minute] periods, for breast feeding for a period of 2 years.
- 17- [The workers demand that] the employer should pay the total amount of maternity leave payment before the women workers take the leave. The employer states that it follows the existing practice.
- 18- [The workers demand that] the company should allow workers whose pregnancy is three months and over to leave work 15 minutes earlier and take a half-day off each

month to undertake health checks. The employer states that it follows the existing practice.

19- [The workers demand that] whenever workers have a grievance or when a dispute arises, union representative designated by union must be able to accompany workers in every stage of the resolution procedure until the case is completely resolved. The employer states that it follows procedures of the law.

20- [The workers demand that] both parties should agree to forward cases that cannot be solved through conciliation to the Arbitration Council for final resolution that both parties are required to abide by (binding Arbitral Awards). The employer states that it follows procedures of the law.

21- [The workers demand that] during the period of dispute resolution process both parties should agree to maintain the original situation [before the dispute] to remain unchanged until the procedure is completed. The employer states that it follows procedures of the law.

The employer party does not agree on issues 27, 28, 29, 30, 31, and 32.

22- [The workers demand that] the company needs to hold a meeting with the union within two months in advance of a closure of the company or a termination of production activity in any section. The employer states that it follows procedures of the law.

23- [The workers demand that] the company needs to pay termination payments to workers in accordance with Articles 75, 89, 91, 103, 116 and 117 of the Labour Law should the company close its operation. The employer states that it follows procedures of the law.

24- [The workers demand that] any provision that provides workers with less benefits than what is provided in the collective bargaining agreement (CBA) shall not be applied; however, better provisions of rights or benefits are not prohibited. The employer is able to provide only in accordance with the CBA but cannot offer more than this.

25- [The workers demand that] the company should print the CBA and distribute it to all workers covered by such CBA so that everyone can read and implement it. The employer is able to provide only in accordance with the CBA but cannot offer more than this.

26- [The workers demand that] both parties should have meeting to negotiate the CBA again within 3 months before its expiration. In case one party fails to participate in

the negotiation, the validity of the CBA should be renewed for the same period as the initial CBA. The employer does not agree to the demand.

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. 088/09 KB/KN, dated 26 February 2009 was submitted to the Secretariat of the Arbitration Council on 2 March 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:

- First hearing: 10 March 2009 (at 2:00 p.m.)
- Second hearing: 12 June 2009 (at 2:00 p.m.)
- Third hearing: 26 June 2009 (at 2:00 p.m.)
- Fourth hearing: 3 July 2009 (at 2:00 p.m.)

Procedural issues:

On 2 February 2009, the Provincial Department of Labour and Vocational Training of Kandal Province received a complaint dated 22 December 2009 from C.CAWDU regarding the demand for the company to respond to requests by workers in Fortune Factory. After receiving this complaint, the Provincial Department of Labour and Vocational Training assigned its expert officer to resolve this labour dispute on 19 February 2009. On 19 February 2009, the Provincial Department of Labour and Vocational Training of Kandal Province conducted conciliation on 38 issues (issues proposed by the workers for negotiation with the company, which then failed to reach an agreement). Six of the issues were conciliated and 32 issues were not. The 32 non-conciliation issues were referred to the Arbitration Council on 2 March 2009.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the worker union parties to the hearing and conciliation on the 32 non-conciliation issues on 10 March 2009. Both parties were present as invited by the Arbitration Council. Because this case involved negotiation for a collective bargaining agreement (CBA)

and the parties had rules regarding negotiations for the CBA, the Arbitration Council issued an Arbitral Order in accordance with the parties' negotiation for the CBA ordering the parties to continue the CBA negotiation with assistance from a third party in the process.

After the negotiation through assistance from the third party, the parties received a conciliation result on five more issues of the 32 issues. Thus, only 27 issues remained for the Arbitration Council to resolve. The Arbitration Council resumed the hearing on 12 June 2009 and another subsequent hearing during which the parties were asked to provide evidence and present their demand. The last hearing was held on 3 July 2009. The Arbitration Council decided on the demand based on 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. Authorisation letter by Mr. Fung Kin Chor, director of Fortune Garment company, to Mr. Kong Kim Cheu and Mr. Long Heang to resolve the labour dispute, dated 2 March 2009.
2. Authorisation letter by Mr. Fung Kin Chor, director of Fortune Garment company, to Mr. Ham Phea, attorney at law, to resolve the labour dispute, dated 2 July 2009.
3. Summary statement by Fortune Garment, dated 4 March 2009.
4. Internal Work Rules of Fortune Garment and Woolen Knitting Factory, No. 059/03 SKBY, dated 10 October 2003.
5. Minutes of collective labour dispute conciliation at Fortune Factory, dated 28 November 2005.
6. Collective Bargaining Agreement, first stage, between Fortune Garment company with local union of C.CAWDU at Fortune Factory, dated 4 November 2008.
7. Collective Bargaining Agreement, second stage, between Fortune Garment company with local union of C.CAWDU at Fortune Factory, dated 17 January 2009.
8. Agreement between C.CAWDU with Fortune Garment Factory, dated 7 December 2007.
9. Summary statement by Fortune Factory, dated 9 June 2009.
10. Statistics showing decrease in number of garment factories in 2009, dated 19 January 2009.

B. Provided by the worker party:

1. Summary statement of case in Fortune Factory, dated 10 June 2009.

2. Letter by C.CAWDU to the director of Fortune Garment company regarding request for some documents related to CBA negotiation process, No. 053/09 SBK, dated 22 June 2009.
3. Letter by C.CAWDU to the director of Fortune Factory regarding request for information related to expenses and income of Fortune Factory, dated 13 June 2009.
4. Agreement on CBA between Fortune Garment company and local union of C.CAWDU at Fortune Factory.
5. The final unresolved issues regarding CBA negotiation between Fortune Garment company and local union of C.CAWDU at the company.
6. Letter by C.CAWDU to the Arbitration Council to inform the Council that Fortune Factory did not respond to their request, No. 62/09 SBK, dated 2 July 2009.
7. Letter by C.CAWDU to the director of Fortune Garment company regarding request for some relevant documents for CBA negotiation process, No. 57/09 SBK, dated 26 June 2009.

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

1. Report No. 088/09 KB/KN dated 26 February 2009 on the collective labour dispute settlement at Fortune Factory.
2. Minutes of the collective labour dispute conciliation at Fortune Factory, dated 19 February 2009.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 127 KB/AK/VK/LKA dated 3 March 2009 to invite the employer party to attend the first hearing;
2. Invitation No. 128 KB/AK/VK/LKA dated 3 March 2009 to invite the worker party to attend the first hearing;
3. Invitation No. 340 KB/AK/VK/LKA dated 4 June 2009 to invite the employer party to attend the second hearing;
4. Invitation No. 341 KB/AK/VK/LKA dated 4 June 2009 to invite the worker party to attend the second hearing;
5. Invitation No. 362 KB/AK/VK/LKA dated 15 June 2009 to invite the employer party to attend the third hearing;
6. Invitation No. 362 KB/AK/VK/LKA dated 15 June 2009 to invite the employer party to attend the third hearing;
7. Invitation No. 391 KB/AK/VK/LKA dated 26 June 2009 to invite the employer party to attend the fourth hearing;
8. Invitation No. 392 KB/AK/VK/LKA dated 26 June 2009 to invite the worker party to attend the fourth hearing;
9. Arbitral Order of the Arbitration Council No. 001/09 KBA, dated 19 March 2009.

10. Arbitral Order of the Arbitration Council No. 003/09 KBA, dated 12 June 2009.

11. Arbitral Order of the Arbitration Council No. 005/09 KBA, dated 26 June 2009.

FACTS

- Having reviewed the report of collective labour dispute conciliation
- Having listened to statements by the worker party and the employer party
- Having examined additional documents

The Arbitration Council finds that:

- Currently, Fortune Factory employs a total number of 2,700 workers.
- The local union of C.CAWDU received most representative status in Fortune Factory through certificate No. 002/08 KB, dated 8 January 2008.
- In June 2008 the local union of C.CAWDU held CBA negotiations with the employer in which it raised approximately 100 issues. After the period of negotiation, the employer agreed on some issues while the union withdrew some issues and the total number of issues that remained was only 38. The remaining 38 issues were referred to the Provincial Department of Labour of Kandal Province for facilitation and conciliation. As a result, 6 issues were conciliated and the remaining 32 issues were referred to the Arbitration Council on 2 March 2009.
- On 19 March 2009 the Arbitration Council issued an order for the parties to continue to negotiate in accordance with the Internal Rules for CBA Negotiation Between Management of Fortune Garment company and Local Union of C.CAWDU at Fortune Garment Company, dated 30 May 2008, which was signed by the two parties. The Arbitration Council ordered the parties to start the negotiation on the remaining issues in order to establish a CBA under facilitation by an arbitrator or expert and this should be ready by 7 May 2009.
- On 12 June 2009, the Arbitration Council summoned the parties to the hearing and to submit relevant documents. The parties appeared at the hearing as invited by the Arbitration Council. However, due to lack of documents, the Arbitration Council decided to reschedule the hearing date. On that same date, the Arbitration Council issued an Order that required the parties to submit documents. The Order states: “1) *Order the local union of C.CAWDU at Fortune Factory, which union has most representative status in the factory, to submit to the Arbitration Council evidence regarding the financial status of Fortune Garment company to prove that the union has financial capacity to accommodate the union’s demand by 24 June 2009.* 2) *Order the employer party, “Fortune Garment company” to provide financial information as requested by the local union of C.CAWDU...*”

- On 13 June 2009 the union party submitted a request letter as ordered by the Arbitration Council but the employer did not provide the document requested. In the second hearing held on 26 June 2009, in response to the question of the Arbitration Council to whether the employer had received the Arbitral Order issued by the Arbitration Council, the employer stated that it did not receive it.
- In this second hearing the Arbitration Council decided to reschedule the hearing again and issue a new Arbitral Order and handed it to the employer party in the hearing. The employer received the document but refused to sign to acknowledge receipt of it.
- On 3 July 2009 the Arbitration Council conducted the hearing again. The employer party insisted that it could not provide document requested by the union and it did not give any response to the union, only claiming that they are confidential documents of the company and it was unable to give them to the union.
- On 13 June 2009 the local union of C.CAWDU at Fortune Factory made a letter to request information related to income and expenses of the company but did not receive any response from the company.
- On 26 June the local union of C.CAWDU submitted another letter to the company to request for financial document of the company, status of buying order and amount of product exported in 2007, 2008 and the first half of 2009. The employer did not respond to the letter.
- The worker party mentioned in their statement that “... *normally* [the employer side only hold discussions among themselves]... *it is only when the union interrupts that the employer stops and then only responds that it cannot provide what is demanded, that the company implements the law or previous agreement or that the union is demanding for too much and it should stop making such demands, but the employer does not provide any reason to the union...*” However, the worker party does not have any evidence or specific documents to support their claim that the employer is actually able to provide what they have demanded.
- The employer party, on the contrary, states that “*The company has offered as much as possible as the number of issues in dispute has decreased from over a hundred issues to only 27 issues. The remaining issues are the union’s demands that are much higher than what is provided by the Labour Law so that the employer party is unable to accommodate the demand...*” The employer does not provide any evidence to prove that it is unable to provide as demanded either.

REASONS FOR DECISION

In this case, the local union with most representative status requested to have a CBA negotiation since June 2008. However, because the parties could not reach an agreement to establish the CBA, the issues were referred to the Arbitration Council in order for the Council to decide in accordance with the Law.

The Arbitration Council considers that majority of the issues submitted to the Arbitration Council are interests disputes.

Generally, the Arbitration Council considers an interests dispute only when the union who brings the dispute has most representative status in the factory. The Arbitration Council considers that most representative status of a union provides the legal qualification for the union to establish a CBA with the company and the legal right to bring a dispute for resolution by the Arbitration Council. In addition, in order to receive this most representative status, Article 277 of the Labour Law 1997 requires that the union is registered and fulfills other conditions mentioned in this Article.

Therefore, in order to be consistent with previous cases, the Arbitration Council considers that local union of C.CAWDU has sufficient qualification to bring interests disputes to the Arbitration Council for a resolution.

In addition, Clause 43 of Prakas 099 SKBY, dated 21 April 2004 states, *“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.”*

The Arbitration Council has found that if the Arbitration Council issues an award to resolve an interests dispute, it will become a CBA that applies to all workers in the factory and cause other workers to lose their right to strike on other dispute related to benefits in the future; this may create unfairness for other workers. (See *Arbitral Awards 57/04-Evergreen; 60/04-United Art, issue 3; 08/07-Siu Quinh, issue 3; 33/07-Goldfame, issue 2; and 51/07-Goldfame, issue 4*).

Article 312, paragraph 2, of the Labour Law states, *“The Arbitration Council legally decides on disputes ... The Council’s decisions are in equity for all other disputes.”*

In case 114/08-Whitex, issue 2, the Arbitration Council interpreted that *“Article 312, paragraph 2, of the Labour Law above grants authority to the Arbitration Council to resolve all other disputes based on equity. However, the Arbitration Council considers that it will implement the principle of equity only when the worker party provides reasons and reasonable testimony for the Arbitration Council to believe that:*

- 1. the parties has attempted their best to negotiate to establish a CBA and*
- 2. they have provided credible testimony to prove that the basis of the demand for money is reasonable and the other party is capable of providing it.”*

The Arbitration Panel in this case agrees with the interpretation of the Arbitration Council in previous cases. The Arbitration Council has found that in order to make a decision on an interests dispute, the Arbitration Council makes decision on the evidence and [arguments] of the parties. Moreover, the Arbitration Council considers that the parties' obligations with regard to establishing a CBA is stated in Clause 11 of Prakas 305 SKBY, dated 22 November 2001 regarding the Representativeness of Professional Organizations of Workers and Employees in Enterprises and Establishments and the Right of Collective Negotiation to Conclude a Collective Agreement for Enterprises and Establishments states, *"To conclude a collective agreement, the parties' negotiation obligations are:*

- A. An obligation to coordinate an orderly, acceptable negotiation procedure.*
- B. An obligation to make offers and counter-offers reasonably and with due consideration.*
- C. An obligation by the employer to provide the union's representative or unions' representative the means to facilitate the representative's negotiation mission.*
- D. An obligation by the employer to give all information related to the negotiation requested by the union which takes part in the negotiation."*

The Arbitration Council considers that parties have very important roles to determine each condition they want in the CBA and each party has the rights to accept or not to accept the request of the other parties. However, the Arbitration Council also considers that the parties have obligation to make concession and reasonable refutation in order to reach the establishment of a CBA.

The Arbitration Council considers that in the hearing the employer party did not make an effort to make concession or make reasonable refutation in response to the request for evidence by either the Arbitration Council or the union. The Arbitration Council found that the employer party did not make an concession to the worker party when the later made concession by withdrawing 11 issues from the case. The Arbitration Council also notes that the acts of the workers imply an intention to continue the procedure in order to establish the CBA.

Furthermore, the employer only states that *"We cannot provide to the workers more than what was already provided"* and it does not provide any reason to prove it is incapable of responding to the workers' demand. The employer should have shown evidence supportive to its claim that it is unable to provide as demanded. The Arbitration Council found that the workers requested certain evidence such as documents relevant to the financial status of the company, buying orders and amounts of product exported in 2007, 2008 and the first half of 2009. The employer did not respond to the letter. The Arbitration Council considers that if [providing] the evidence could affect the confidentiality of the company, the

employer could make a request to maintain such confidentiality. However, the employer did not do so.

The Arbitration Council considers that the act of employer is not appropriate and it did not negotiate or participate in the hearing in good-faith to establish a CBA.

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

DECISION AND ORDER

- Order the employer to negotiate in good faith with the union in order to form a collective bargaining agreement within three months from the date this Arbitral Award enters into force.

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: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Koy Neam**

Signature: