



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 30/07- The United Knitting**

**Date of Award: 20 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): **Pen Bunchhea**

#### **DISPUTING PARTIES**

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

Name: **The United Knitting MFG (Cambodia)**

Address: Village 5, Sangkat 4, Khann Mittapheap, Sihanouk Ville

Telephone: 016 588 555 or 012 172 49 88      Fax: 034 933 745

Representative:

- Mr. Long Heang      Dispute Resolution Officer of GMAC

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

Name: **FTUWKC and local FTUWKC at the United Knitting Factory**

Address: #28, Street 222, Sangkat Boeung Rang, Khann Doun Penh, Phnom Penh

Telephone: 092 544 980      Fax: N/A

Representative:

- |                          |                                    |
|--------------------------|------------------------------------|
| 1. Mr. Yan Rath Keopisey | Deputy General Secretary of FTUWKC |
| 2. Uth Samen             | President of local FTUWKC          |
| 3. Mr. Thou Vannak       | Vice-president of local FTUWKC     |
| 4. Kim Sreynith          | General Secretary of local FTUWKC  |
| 5. Mr. Ou Sophat         | Office staff of local FTUWKC       |

## **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

Workers demand the company to pay 50 percent wages to the workers during the time the company had no work in February and the months after.

### **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 hearing was unsuccessful, and the non-conciliation report No.068 K.B.V/KSN, dated 19 March 2007 was submitted to the Secretariat of the Arbitration Council on 23 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:** 5 April 2007 (From 2:00 p.m. to 5:00 p.m.)

**Procedural issues:**

On 15 March 2007, the Department of Labour and Vocational Training in Sihanoukville received a complaint from workers to demand the company to improve working conditions according to the Labour Law. After receiving the complaint, the Department of Labour and Vocational Training assigned an officer to handle the issue at the factory, in Sihanoukville and then at the Department of Labour. The last conciliation was held on 16 March 2007 with the result that two of three issues were resolved. The one unresolved issue was submitted to the Arbitration Council on 27 March 2007 through a non-conciliation report No. 068 K.B.V/KSN, dated 19 March 2007.

Upon receipt of this case, all parties were summoned by the Arbitration Council to a hearing on 5 April 2007 at 2:00 p.m.

Both parties were present for the arbitral hearing. The Arbitration Panel asked for additional information related to this dispute and attempted to further the conciliation but did not receive a successful result. Therefore, the Arbitration Council will consider and settle this based on the 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. Statement to the Arbitration Council, dated 6 March 2007
2. Letter to authorize Mr. Long Heang, Dispute Resolution Officer at GMAC to settle the dispute at the Arbitration Council, dated 27 March 2007
3. Report regarding workers that stamped to enter the factory but did not work, dated 26 March 2007
4. Announcement to all workers in the knitting section that after the employment suspension, they had to come back to work on 12 March 2007, while other sections had to wait for the next stage after the knitting section, dated 1 March 2007.
5. Letter by the company to the Head of the Department of Labour and Vocational Training of Sihanoukville requesting to suspend workers' employment from the day materials ran out in each section until 26 February 2007 at the United Knitting Factory, dated 6 February 2007.
6. Letter by the company to the Head of the department of Labour and Vocational Training of Sihanoukville regarding a request to extend the workers' employment suspension from 26 February to 12 March 2007 at the United Knitting Company, dated 26 February 2007.

Provided by the worker party:

1. Agreement, dated 4 November 2004

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

1. Report of the collective labour dispute resolution at the United Knitting company, No. 068 K.K.B.V/KSN, dated 5 October 2006
2. Minutes of the collective labour dispute conciliation, dated 16 March 2007

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 131 K.K.B.V/AK/VK/LKA dated 30 March 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 130 K.K.B.V/AK/VK/LKA dated 30 March 2007 to invite the employer party to attend the hearing.

## **FACTS**

The United Knitting Company is located in Village 5, Sangkat 4, Khann Mittapheap, Sihanoukville and employs approximately 929 workers.

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

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

- The workers demand the company to provide 50 percent of wages during the time when the company had no work for workers to do in February and the months after.
- Both parties agreed in the hearing that the workers' employment suspension started from 1 February to 19 March 2007, except on 15-16 March which were strike days.
- The workers stated that the actual date when the company suspended the employment contract was on 1 February 2007.
- The company claimed in the hearing that in the past when the company had no work for workers to do for a short time from 1 day to 10 days, it provided workers with 50 percent of wages.
- Minutes of the collective labour dispute conciliation (agreement), dated 4 November 2004; point 6 states, *"The company agrees that if you (workers) worked for 26 days, you will receive a wage of US\$ 45 and US\$ 5 attendance bonus and if the company has no work for you to do, the company has to pay you 50 percent."*
- The company interprets this agreement dated 4 November 2004 [to mean] that when the company has no work for workers to do for a short period from 1 day to 10 days, the company will provide them with 50 percent of their wages but if the company has no work for more than 10 days, the company will not pay the workers.
- The worker party, on the other hand, raises in the hearing that in the past the company had no work for workers to do for 10 days or 20 days or one month or even two months but the company paid 50 percent of wages to the workers according to the agreement between representatives of FTUWKC and the company's representatives, dated 4 November 2004.
- The worker party added that since the time the company started its operations, it had never suspended the workers' employment contracts by making a request in writing to the Labour Inspector or by posting an announcement to the workers, but when the company [had no] work for workers to do, it would tell or inform the workers verbally and provided 50 percent of wages to the workers.

- As mentioned above, the company started suspending work on 1 February 2007. After the employment suspension had already begun, the company sent a letter to the Head of the Department of Labour and Vocational training of Sihanoukville, dated 6 February 2007 regarding a request to suspend the workers' employment contract from the day the material ran out in each section on 6 February to 26 February 2007 (the first time) and another letter on 26 February 2007 regarding a request to extend the [suspension of] workers' employment contracts from 26 February to 12 March 2007 (the second time) by not providing 50 percent of wages to workers as it normally did in the past.
- On 7 February 2007, Mr. Sim Rattanak, Head of the Department of Labour of Sihanoukville and Mr. Chhiv Rieng, Vice-head of the Department of Labour of Sihanoukville, came to inspect the factory. In the report regarding the labour inspection dated 7 February 2007, signed by Mr. Sim Rattanak, Head of the Department of Labour Dispute of Sihanoukville, and Mr. Chhiv Rieng, Vice-head of the Department of Labour of Sihanoukville and the Director of the company, point 11, Notice, states, *"After the inspector examined all documents which led the company to request for employment suspension (as in attached document). Point 12, Advice, states, "The United Knitting Company should try to contact to clients to receive product in order to continue to provide workers with work to do."*
- On 12 March 2007, the date when the company let workers come back to work, the company posted an announcement for workers to come back to work. Workers arrived at the company to go back to work. But on 12 March 2007, which was payday for the workers, the company was late because it could not get [the money] on time from the bank and the company told the workers that it would disperse the wages to the workers on 15 March 2007. In addition, the company told the workers that they did not need to work on 12 March 2007 and told the workers to come back to work on 15 March 2007.
- On 15 March and 16 March 2007 there were two meetings between the company, union, and representatives of workers at the Sihanoukville hall and at the Department of Labour. At that time the workers demanded the company to provide them with 50 percent of their wages in accordance with the agreement dated 4 November 2004. The meeting produced no result except an agreement between both parties that all workers would go back to work on 20 March 2007.
- According to the workers, from 17 to 19 March 2007, they were told by the company not to go to work. The company did not object to the claim.
- On 19 March 2007, Mr. Long Heang and representatives of GMAC went to the factory in Sihanoukville and met with Mr. Chhiv Rieng, Vice-head of the office of Labour

Disputes of Sihanoukville. In the hearing, Mr. Long Heang claimed that, traditionally, no response from the Office of Labour Disputes meant that a request for a labour suspension was accepted, according to the Vice-head of the Office of Labour Dispute.

- The Arbitration Council found that the report of labour inspection states in *point 6, Notice*, that “*After the inspector examined all documents which led the company to request for employment suspension (as in attached document). Point 7, Advice*, states, “*The United Knitting Company should try to contact to clients to receive product in order to continue to provide workers with work to do.*” *Point 8 states*, “*The United Knitting Company should try to contact to clients on time to receive product in order to continue to provide workers with work to do.*” Besides these, there is no point which mentions that the Department of Labour of Sihanoukville allowed the company to suspend the workers’ employment contracts.

### **REASONS FOR DECISION**

The workers demand the company provide 50 percent of wages when it has no work for them to do. Both parties agreed in the hearing that the suspension of the workers’ employment contracts started on 1 February until 19 March 2007, except for 15 - 16 March 2007, which were strike days. To support this demand, the workers raised that in the minutes of the collective labour dispute (agreement), dated 4 November 2004, point 6 states, “*The company agrees that if you (workers) worked for 26 days, you will receive a wage of US\$ 45 and US\$ 5 attendance bonus and if the company has no work for you to do, the company has to pay you 50 percent.*”

Thus, the Arbitration Council will consider if this suspension of workers’ employment is in accordance with the law.

Article 71 of the Labour Law, paragraph 1, point 11, states, “*When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation, this suspension shall not exceed two months and be under the control of the Labour Inspector.*” According to the content of this Article, the Labour Law does allow an employer whose enterprise faces serious economic or material difficulties *which do not exceed two months* to suspend the workers’ employment contracts but this suspension of the employment contract must be under the control of the Labour Inspector, which means that the Labour Inspector is the one to make the decision to approve or reject the request made by the company to suspend the workers’ employment contract after inspection at the company. (See arbitral award 01/04-New Point and 60/04-United Art, issue 1).

Article 72, paragraph 1 of the Labour Law states, *“The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.”*

Based on Article 71, paragraph 11 and Article 72, paragraph 1, of the Labour Law mentioned above, the Arbitration Council considers that an employment contract is legally suspended when it follows the procedures set out in the Labour Law, and the main obligations of the employment contract are affected, which means that the workers do not have an obligation to work for the employer and the employer does not have an obligation to pay the workers' wages, except when there are provisions to the contrary.

In this case, on 6 February 2007, the company made a request to suspend the workers' employment contract from the day the material ran out in each section, which was 6 February to 26 February 2007 (the first time), and another request to extend the suspension from 26 February to 12 March 2007 (the second time) without paying 50 percent of wages to workers as it normally did in the past because there were no purchase orders and the company had no work for the workers to do. The Arbitration Council considers that this reason shows that the company faced an economic difficulty or special difficulty which is an acceptable reason for an employer to suspend workers' employment contracts according to Article 71, paragraph 1, point 11.

In addition, based on the findings of fact, the suspension started from 1 February and ended on 19 March 2007. Thus, this suspension did not exceed 2 months, which is the longest time allowed in Article 71, paragraph 1, point 11, of the Labour Law. In previous cases, for the conditions as stated in Article 71, paragraph 1, point 11, the suspension of employment contracts has to be under control of the Labour Inspector. The Arbitration Council has found that if the employer informed the Labour Inspector and the Labour Inspector approved the suspension of the employment contract, the suspension is legal in accordance with the Labour Law. (See arbitral award 22/05-Ocean Garment, Issue 2; and 46/05-Ocean Garment, Issue 1)

In this case, the employer mentioned in the hearing that on 7 February 2007, Mr. Sim Rattanak, Head of the Department of Labour Disputes of Sihanoukville and Mr. Chhiv Rieng, Vice-head of the Department of Labour Disputes of Sihanoukville, went to inspect the factory. The Arbitration Council found that in the report about the Labour Inspection signed by Mr. Sim Rattanak, Head of the Department of Labour Disputes of Sihanoukville, Mr. Chhiv Rieng, Vice-head of the Department of Labour of Sihanoukville and the Director of the company, *Point 11, Notice*, states, *“After the inspector examined all documents which led the company to request for employment suspension (as in attached document). Point 12, Advice*, states, *“The United Knitting Company should try to contact to clients to receive product in order to*

*continue to provide workers with work to do.” Point 13 states, “The United Knitting Company should try to contact to clients on time to receive product in order to continue to provide workers with work to do.”* There is no other point or content which mentions that the Department of Labour allowed the company to suspend the workers’ employment contracts as requested by the company. Thus, the Arbitration Council finds that even though the employer informed the Labour Inspector of the suspension of the employment contracts this suspension had not been approved and agreed to by the Department of Labour of Sihanoukville yet. However, Mr. Long Heang, Labour Dispute Resolution Officer of GMAC, whom the company authorized to settle the dispute at the Arbitration Council through a letter delegating these rights, dated 27 March 2007, states that on 19 March 2007, he and representatives of GMAC went to the factory at Sihanoukville and met Mr. Chhiv Rieng, Vice-head of the Office of Labour Disputes of Sihanoukville. Mr. Long Heang claimed that, traditionally, no response from the Office of Labour Dispute meant that a request for a labour suspension was accepted, according to the vice-head of the Office of Labour Dispute. The Arbitration Council considers that, although there is such a claim, the Arbitration Council cannot take this claim as a legal basis for decision, as the Council requires the claim to be supported by proper official documents. Thus, the Arbitration Council considers that this employment suspension is not legal in accordance with the Labour Law.

In previous cases, the Arbitration Council determined that for a legal suspension of employment contract, the employer does not need to pay the workers, but if the suspension is not in accordance with the Law, the employer must provide full wages to the workers. (See arbitral award 31/07-Parkview).

In this case, the Arbitration Council considers that the Arbitration Council has the right and the jurisdiction to settle a dispute when there is a dispute and there is a demand. In this case, the workers demand the company to provide them 50 percent of the wages when the company has no work for them to do.

Therefore, the Arbitration Council decides that the employer has to pay 50 percent of wages to the workers as demanded by the workers when it has no work for workers to do, [in this case] from 1 February to 19 March 2007, except on 15-16 March 2007 which were strike days.

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

#### **DECISION**

The employer must pay 50 percent of the wages as demanded by the workers to those workers whose employment contracts were suspended from 1 February to 19 March 2007, except on 15-16 March 2007 which were strike days.

**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 with the Secretariat of the Arbitration Council within this time period.

**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: **Pen Bunchhea**

Signature: .....