KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 31/07- Parkview

Date of Award: 12 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: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **Parkview Cambodia Garment Factory**

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

Telephone: 023 890 401 or 023 890 402 Fax: 023 890 405

Representative:

1. Mr. Mao Veasna Assistant to administration
2. Ms. Yin Sopheap Interpreter

Worker party:

Name: **Union of Independence and Democracy, Khmer Youth Trade Union, and National Industrial Trade union of Cambodia**

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

Telephone: 011 750 126 or 011 489 139 Fax: N/A

Representative:

Union of Independence and Democracy

1. Mr. Som Piseth President of local union
2. Mr. Nop Sokhai Vice-president of local union
3. Mr. Kun Kimhean Worker representative

4. Mr. Keo Phyrum Worker
5. Kan Manlen Worker
6. Theang Ratha Worker

Khmer Youth Trade Union

1. Mr. Heang Ren Officer of Khmer Youth Federation Trade Union
2. Mr. Sim Phally Officer of Khmer Youth Federation Trade Union
3. Mr. Som Saran President of Khmer Youth Trade Union
4. Mr. Sam Oeurn Vice-president of Khmer Youth Trade Union
5. Ms. Khun Lang Secretary of Khmer Youth Trade Union
6. Mr. Rath Veasna Worker delegate
7. Ven Dy Worker Delegate
8. Meas Vichny Worker delegate
9. Den Sokun Worker
10. Yean Chheng Lorn Worker
11. Sok Leap Worker
12. Chim Ratha Worker
13. Ouch Sophat Worker
14. Sor Mary Worker
15. Buth Hong Worker

National Industrial Trade union of Cambodia

1. Mr. Ou Sitha President of NIFTUC
2. Tes Sarin Head of group
3. Mr. Hort Menghuo Worker
4. Mr. Kou Sinon Worker
5. Peo Sokhok Worker
6. Chhamm Sreymom Worker
7. Sun Narim Worker
8. Sok Sophea Worker
9. Mao Khoeun Worker
10. Uth Sophea Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

The workers demand the company to provide workers with [one hundred percent] of their wages during an employment contract suspension if the suspension does not follow legal procedures. If the company follows legal procedures in suspending employment contracts, the workers demand the company to provide fifty percent of their wages, and that

the company should not require the workers to come to stamp in. The employer party, on the other hand, mentions that the company continues to suspend the employment of the workers at Parkview Garment Company. It provides five dollars per month as workers allowance and requires workers to come to stamp in twice per week. For the above mentioned demand of the workers, the company [states that it] is not able to provide.

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. 289/07 K.K.B.V/AK/VK dated 27 March 2007 was submitted to the Secretariat of the Arbitration Council on that same date.

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: 3 April 2007 (From 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 21 March 2007, the Department of Labour Disputes received a complaint by workers at Parkview Company to demand the company to suspend employment contracts according to legal procedure. After that, the Department of Labour Disputes assigned an officer to conduct a conciliation and settlement of the labour dispute and the last conciliation was held on 26 March 2006 with no resolution of the one issue in the dispute. The one non-conciliated issue was referred to the Arbitration Council on 27 March 2007 through the non-conciliation report No. 289 K.K.B.V/AK/VK, dated 27 March 2007.

After receiving the case, all parties in the dispute were summoned by the Arbitration Council to the hearing on 29 March 2007 but the hearing was postponed. Then the Arbitration Council summoned the parties to a hearing on 3 April 2007 at 2:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council provided a chance for both parties to attempt conciliation and tried to facilitate and provide various choices in this conciliation but did not achieve a resolution. In the hearing the Arbitration Council required the parties to submit documents, such as the company's Internal Work Rules, company's statute and documents related to the suspension of the workers'

employment to the Arbitration Council by 6 April 2007. However, up until the deadline, the Arbitration Council did not receive any documentary evidence from any party.

Therefore, the Arbitration Council will consider and settle the non-conciliation issue based on the evidence and findings of fact as follows:

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EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter to authorize Ms. Yin Sopheap and Mr. Mao Veasna, dated 3 April 2007
- The company's announcement regarding the temporary closure of the company for two months, which means the suspension of workers' employment contracts for two months, dated 7 March 2007

Provided by the worker party: N/A

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

- Report of the collective labour dispute resolution at Parkview company, No. 289 K.K.B.V/AK/VK, dated 27 March 2007
- Minutes of the collective labour dispute conciliation, dated 26 March 2007

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 124 K.K.B.V/VK/LKA dated 28 March 2007 to invite the employer party to attend the hearing.
2. Invitation letter No. 125 K.K.B.V/VK/LKA dated 28 March 2007 to invite the worker party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- Parkview Company currently employs about 660 workers

- There are three unions in Parkview Company: the Union of Independence and Democracy, Khmer Youth Trade Union, and National Industrial Trade Union of Cambodia
- Parkview Company does not have a history of suspending workers' employment contracts and never had any agreement regarding employment suspensions either. Recently, the company did not have any orders to provide any product for the company to produce, so on 7 March 2007 the company issued an announcement to all workers that the company had decided to close the factory temporarily for two months which means that the company suspended the workers' employment for two months ([there was] no mention of the beginning and ending dates of the suspension). However, in the hearing, the worker party and the employer party agreed that the suspension was from 9 March to 9 May 2007.
- On 7 March 2007, the union and worker representatives attended a meeting with the company, in the presence of the Labour Inspector from the Ministry of Labour, to discuss a solution regarding the employment suspension, but the meeting produced no result because the workers did not agree to have the company suspend their employment contracts.
- The employer claims that around 7, 8, or 9 March 2007, the company sent a letter regarding the employment suspension to the Labour Inspector of the Ministry of Labour. The Arbitration Council required the employer to submit this document by 6 April 2007 at the latest, but by the deadline the Arbitration Council did not receive this document or any related document from the employer party.
- For this suspension of the workers' employment, the employer was able to provide US$ 5 allowance per month to the workers and required the workers to come to stamp in twice per week, every Tuesday and Friday, to see that the workers did not go to work for other factories.
- The company closed the door and did not allow the workers to work from 9 April 2007 [onward].

REASONS FOR DECISION

The worker party demands the company to provide 100% [of the wages] to the workers in the case that the company suspended the employment contracts without following the Labour Law properly and demands the company to provide 50% [of the wages] per month in the case that the company did suspend the employment contract in accordance with the Labour Law. [The workers further demand] that the company should not require the workers to come to stamp twice per week. The company party states that the company is

able to provide an allowance of US$ 5 per month and requires the workers to stamp in twice per week, every Tuesday and Friday.

Did the employer suspended workers' employment properly according to the Labour Law?

Paragraph 11 of Article 71 of the Labour Law 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 contents of this Article, the Labour Law does allow the employer whose enterprise faces serious economic or material difficulties to suspend their workers' employment contracts but the employment contract suspension must be under the control of the Labour Inspector. (See Arbitral Awards 01/04-New Point, and 60/06-United Arts, Issue 1).

Paragraph 1 of Article 72 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 paragraph 11 of Article 21 and paragraph 1 of Article 72 of the Labour Law mentioned above, the Arbitration Council considers that the employment contract is legally suspended when it follows the procedure of 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 either, except [when] there are provisions to the contrary. In this case, if Parkview Company suspended the workers' employment contracts under the control, and in receipt of approval, of the Labour Inspector, the company does not have an obligation to pay the workers' wages during the time of the employment suspension.

In this case, recently Parkview Company did not have any orders from their buyers and the company did not have work for workers to do. At the same time, the company had no income. The Arbitration Council determines that [these circumstances] caused Parkview Company to face economic difficulty or a special difficulty, which is a lawful reason why an employer is may suspend workers' employment contracts, if the company follows legal procedures in suspending employment contract properly.

The company started suspending workers' employment contracts for the first time by issuing an announcement on 7 March 2007 to the workers that the company decided to close the factory temporarily for two months from 9 March to 9 May 2007. The employer party stated that around 7, 8, or 9 March 2007 the company sent a letter regarding the suspension of the employment contracts to the Labour Inspector, but the employer did not provide this

document to the Arbitration Council. Because the employer did not provide evidence to support the claim, the Arbitration Council determines that the employer did not inform the Labour Inspector about the suspension of the workers' employment contracts. Thus, the Arbitration Council determines that Parkview Company did not follow the legal procedures of the Labour Law in suspending the workers' employment contracts.

In previous cases, the Arbitration Council decided that when a suspension is not in accordance with point 11 of Article 71 of the Labour Law, the employer has the legal obligation to pay full wages, of 100 percent, to the workers (see award 21/03-Loyal, Issue 8; 01/04-New Point; 60/04-United Arts, Issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in the above mentioned cases. Therefore, the Arbitration Council decides that Parkview Company has a legal obligation to pay 100 percent of wages to the workers because the company's suspension of the workers' employment contracts were not in accordance with the Labour Law.

The Arbitration Council considers that for the decision in this award, there is no need to discuss if the workers are entitled to 50 percent of their wages or if the employer has the right to require the workers to stamp in twice per week with a provision of US$ 5 in the case that the suspension of work was done in accordance to the law because the Arbitration Council has determined above that the employer did not legally suspend the contracts by following procedure of the Labour Law. However, for the benefits of the parties, the Arbitration Council will consider these questions hypothetically:

The Arbitration Council notes that if the employer legally suspended the employment contracts according to the Labour Law, the employer would not have an obligation to pay the workers during the time of a suspension of an employment contract. (See discussion on paragraph 11 of Article 21 and paragraph 1 of Article 72 of the Labour Law above). Therefore, the workers would not have the right to receive 50 percent of their wages during the time of the employment suspension.

Another hypothetical discussion related to this question is whether, according to the law, the workers have an obligation to come to stamp in twice per week during a legal suspension [of the employment contracts] when the employer pays them only US$ 5 per month.

This requirement for the workers to come to stamp in is an obligation of the workers to come to work for their employer. If the employer requires the workers to come to stamp in during an employment suspension, this means that the workers' obligation to work for the employer still continues. As long as the workers' obligation to work for the employer still continues, there is no suspension of an employment contract (see Arbitral Award 15/06-Xing Tai). Therefore, if the employer requires the workers to come to stamp in during the time the

parties consider as a period of suspension of the employment contracts, the employer also has an obligation to pay full wages to workers. In conclusion, during the period of a legal suspension of employment according to the legal procedure, the workers do not have an obligation to work for the employer, including the obligation to come to stamp in.

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

DECISION

The employer has to provide 100 percent of wages to workers for the duration of the employment suspension which is not in accordance with the Labour Law, from 9 March 2007 to the day the company allows the workers to come back to work.

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: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....