

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 32/06-Top One**

**Date of Award: 22 May 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: Mar Samborana

Arbitrator chosen by the worker party: Liv Sovanna

Chair Arbitrator (chosen by the two Arbitrators): Tan Try

**DISPUTING PARTIES**

**Employer party:**

Name: Top One Garment Cambodia MFG Co. Ltd. (Top One)

Address: National Road 5, Sangkat Svay Park, Khan Reussey Keo, Phnom Penh

Telephone: 023 369 008 / 012 522 266

Fax: 023 369 006

Representative:

1. Mr. Long Heang                      Officer of GMAC

**Worker party:**

Name: Union Federation of Solidarity, Independence, and Democracy (UFSID) and Local Union of Solidarity of Garment Workers to Top One

Address: #629, Loo Village, Sangkat Svay Park, Khan Reussey Keo, Phnom Penh

Telephone: 016 737 182

Representative:

1. Mr. Un Dara                      President of UFSID
2. Ms. Meas Morodak              President of Local Union of Solidarity of Garment Workers in Top One
3. Ms. Long Poch                  Vice President of Local Union of Solidarity of Garment Workers in Top One
4. Ms. Than Sovann                Secretary of Local Union of Solidarity of Garment Workers

	in Top One
5. Ms. Tum Saroeun	Advisor of Local Union of Solidarity of Garment Workers in Top One
6. Ms. Pheng Kim Lon	Advisor of Local Union of Solidarity of Garment Workers in Top One
7. Ms. Ieng Soeun	Worker at Top One
8. Ms. Luon Sopheap	Worker at Top One
9. Ms. Ny Srey	Worker at Top One
10. Ms. Pheng Chenda	Worker at Top One
11. Ms. Oeun Srey Pov	Worker at Top One

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demanded that the company grant seniority bonus to 94 workers before moving to a new location.
2. The workers demanded that the company transport all the workers from one year and a half to two years when the company move to the new location.

### **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 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators 513/05 (Third 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. 525 KKBV/AK/VK dated 7 April 2006 was submitted to the Secretariat of the Arbitration Council on 10 April 2006.

### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd, Tonle Bassac, Chamkamorn, Phnom Penh.

**Date of hearing:**

**First hearing:** 20 April 2006 (8:00 a.m. – 11:30 a.m.)

**Second hearing:** 10 May 2006 (2:00 – 4:30 p.m.)

**Procedural issues:**

On 31 March 2006, the Department of Labour Disputes received a complaint from UFSID demanding the company grant seniority a bonus to 94 workers before moving [the factory] to a new location and to transport workers for a period of two years when the company relocates. Having received the complaint, the Department of Labour Disputes designated its labour dispute settlement officer in Khan Reussey Keo to conciliate the issue on-site. However, the conciliation failed with respect to the two issues.

On 10 April 2006, the Secretariat of the Arbitration Council received the case and its non-conciliation report No. 525KKBV/AK/VK dated 7 April 2006 from Mr. Koy Tep Daravuth, the Head of the Department of Labour Disputes. Following the receipt of the case, the Secretariat of the Arbitration Council invited the employer and the local union of Top One to attend a hearing to settle the two non-conciliated issues on 20 April 2006 at 8:00 a.m. and on 10 May 2006 at 2:00 p.m. Both parties attended both hearings. During the hearings, the Arbitration Council attempted to further conciliate the two issues, one of which (Issue 2) was successfully conciliated. The employer agreed to transport the workers to the new factory location for an agreed period.

Therefore, in this award, the Arbitration Council will consider only the one remaining issue based on the evidence and findings of fact as follows:

**EVIDENCE**

**Witnesses and experts:** N/A

**Documents, Exhibits and other evidence considered by the Arbitration Council**

Provided by the employer party:

1. Power of attorney from Mr. Chih Long Lin, Managing Director of Top One to Mr. Long Heang, dated 9 April 2006
2. Letter dated 25 March 2006 of the local Union of Solidarity of Garment Workers at Top One to the Chairman of GMAC inviting Mr. Long Heang to attend a meeting to discuss the relocation of Top One and the visits of a buyer from the United States
3. Letter No. 19/2006 TH.V dated 27 March 2006 from the Director of Top One to the Head of the Department of Labour Inspectors concerning a request for changing its old address to a new address

4. Letter No. 20/2006 TH.V dated 27 March 2006 from the Director of Top One to the Head of the Department of Labour Disputes on the request for changing its old address to a new address
5. Letter of invitation dated 10 March 2006 from the local Union of Solidarity of Garment Workers at Top One to the Chairman of GMAC to preside over a meeting with the employer on the issue of relocation.
6. Minute of the meeting between the employer and workers taken on 15 March 2006
7. Registered Internal Work Rules of Top One No. 037 SKBY.AK, dated 25 May 2004
8. Terms of the Collective Bargaining Agreement between the employer and local Union of Solidarity of Garment Workers registered on 015 SKBY.AK dated 5 April 2004
9. Documents providing names and addresses of 83 workers who lodged a complaint at the Arbitration Council for terminating their contracts with the employer.
10. Letter No. 21/2006 TH.V dated 29 April 2006 from the Director of Top One to the Arbitration Council on the clarification of the new address of Top One.

Provided by the worker party:

1. Certificate of most representative status of the local Union of Solidarity of Garment Workers at Top One No. 710 SKBY dated 13 December 2002
2. Statute of the local Union of Solidarity of Garment Workers at Top One
3. Certificate of registration of UFSID
4. Charter of UFSID

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

1. Letter No. 365 KKBV dated 19 April 2006 of H.E. Nhep Bunchin, Minister of Labour and Vocational Training regarding the request for the settlement of a collective labour dispute at Top One
2. Report No. 525 KKBV/AK/VK dated 7 April 2006 on the settlement of a labour dispute by Mr. Koy Tep Daravuth, Head of the Department of Labour Disputes
3. Minute of the collective labour dispute settlement dated 31 March 2006

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing No. 161 LKA, dated 18 April 2006
2. Letter of invitation to the employer party to attend the hearing No. 162 LKA, dated 18 April 2006

3. Letter of invitation to the worker party to attend the hearing No. 183 LKA, dated 8 May 2006
4. Letter of invitation to the employer party to attend the hearing No. 184 LKA, dated 8 May 2006

### **FACTS**

- Having examined documents submitted to the Arbitration Council
- Having reviewed the non-conciliation report
- Having listened to the arguments raised by the employer party and the worker party

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

- Top One Garment MFG Co., Ltd. employs approximately 730 workers.
- The Union of Solidarity of Garment Workers at Top One was provided with most representative status through a certificate of most representative status No.710, dated 13 December 2002.

### **Issue 1: The demand for payment of seniority bonus to 94 workers before the relocation of the factory.**

- The company has a specific plan to move on 25 May 2006 to a new location, situated in La Kambor village, Svay Park district, Khan Reussey Keo, which is three kilometers away from the current location at Svay Park village, Sangkat Svay Park, Khan Reussey Keo.
- In the hearing, the worker party confirmed that the seniority bonus stated in the demand refers to the indemnity for dismissal as mentioned under Article 89 of the Labour Law. The union representative asserted that the company would move to a new location; therefore, the workers requested that the company terminate their employment contracts, pay them their severance pay, and recommence calculating their seniority at the new factory. The employer party did not agree to the request, contending that the company did not wish to terminate the employment contracts of any workers and had made his best effort to settle the issue on transportation based on the actual circumstances, as had been agreed by both parties. Accordingly, the employer recognized that the seniority bonus as demanded by the workers refers to the indemnity for dismissal as confirmed by the workers.

- The union submitted to the Secretariat of the Arbitration Council the workers' request for the termination of employment contracts of 83 workers, with the statement of reasons for the request and other information relative to their current address and commencement date of employment. At the hearing, both parties agreed that the request for termination had not been submitted to the employer. The Arbitration Council determines that the workers who requested for the indemnity for dismissal is 83, as mentioned in the enclosed name list.
- At the hearing, both parties have confirmed that the employment contracts of the workers are of undetermined duration. The worker party mentioned that the 83 workers submitted the request to the Arbitration Council to determine the termination of their employment contracts. They also mentioned that if the award of the Arbitration Council would not entitle them to the indemnity for dismissal, they wished to continue working at the new factory. However, if the award would entitle them to it, they could stop working for the company or make a new application to work at the factory and restart calculating their seniority.

### **REASONS FOR DECISION**

The worker party demanded that the company provide indemnity for dismissal to 83 workers before moving the factory to a new location.

Article 89 of the Labour Law provides that "If the labour contract is terminated by the employer alone, except in the case of serious offense by the worker, the employer is required to give the dismissed worker...an indemnity for dismissal..."

In the present case, the Arbitration Council finds that the employer did not terminate any of the workers. Therefore, the indemnity for dismissal under Article 89 of the Labour Law is not applicable in this case.

Furthermore, Article 90 of the Labour Law stipulates that "The indemnity for dismissal must be granted to the workers...even though the contract was not terminated by the employer, but the latter, through his incitements, pushed the worker into ending the contract himself..." According to the Article, a worker is entitled to the indemnity for dismissal even though the termination of the labour contract is undertaken by the worker, in circumstances where the termination results from the incitement of the employer, which pushed the worker into ending the contract.

Through the analysis of the above articles, in all cases, the workers can be entitled to the indemnity for dismissal provided that the termination is carried out by the employer or the employment contract is ended by the worker through the incitement of the employer. The Arbitration Council has previously considered that a worker's resignation, instigated by the relocation of their workplace, which resulted in prejudice to the workers [was a constructive dismissal] (see 65/04-New Point 2).

In this case, the employer plans to move to a new factory [location], three kilometers from the current location. The act of moving constitutes a change in the terms of the employment contract which may result in prejudice to the workers in terms of transportation [costs].

The Arbitration Council received from the union an application for the termination of the employment contract of 83 workers. At the hearing, the worker party and the employer party agreed that the request had not been submitted to the employer. The employer party confirmed that the company had not received any letter of request for termination of a labour contract from any of the workers. The Arbitration Council does not have the authority to terminate the contracts of the 83 workers.

Article 65 of the Labour Law provides that "A labour contract establishes working relations between the worker and the employer..." Therefore, it is only the parties to a contract that can terminate it. (See 25/05-CHP, 48/05-Manhattan, 70/05-Gold Fame, and 76/05-Global Footwear.)

To terminate the employment contract, the worker must either submit their resignation to the employer or the employer must terminate the contract. In the case where the worker is not satisfied with the decision of the employer concerning the termination of the contract and related matters, or the worker has resigned because of the employer's actions and seeks an indemnity for dismissal, and the dispute is referred to the Arbitration Council, the Arbitration Council will consider the legitimacy of the contract termination as to whether it is consistent with the law and equity.

In this case, the termination of employment contract undertaken by the 83 workers has yet not occurred. The Arbitration Council cannot find or determine the actual reason and prejudice arising from the contract termination as a basis for determining the indemnity for dismissal demanded by the 83 workers because it is not clear whether the workers will actually resign or not when the factory relocates. Because the payments that result from the termination of an employment contract are existing rights of the contracting parties under the law, the dispute in

this regards is a rights dispute. In principle, the Arbitration Council does not entertain a rights dispute which has not yet occurred. (See 10/03-Jacqsintex and 19/06-Xing Hong). To be consistent with its previous ruling, in this case, the Arbitration Council decides not to consider the application by the workers for the termination of the employment contracts of the 83 workers.

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

**DECISION**

- Decline to consider the demand raised by the union and the workers asking the employer to pay the seniority bonus (indemnity for dismissal) to 83 workers prior to the relocation of the factory.

**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: Mar Samborana

Signature: .....

Arbitrator chosen by the worker party:

Name: Liv Sovanna

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: Tan Try

Signature: .....