



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព

THE ARBITRATION COUNCIL

Case number and name: 33/08- HS Ent

Date of Award: 19 March 2008

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): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **HS Ent (Cambodia) Co., Pte Ltd.**

Address: National Road No. 4, Tnort Muoy Deum Village, Bekchan Commune, Angsnuol District, Kandal Province.

Telephone: 011 355 666 Fax: N/A

Representative of the employer party who attended the first hearing on 7 March 2007 at 08:00:

Mr. Chan Sothea Chief of Administration

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU)**

Address: Tnort Muoy Deum Village, Bekchan Commune, Angsnuol District, Kandal Province.

Telephone: 017 309 234 Fax: N/A

Representatives:

Representative of the worker party who attended the first hearing on 7 March 2007 at 08:00:

1. Mr. Huy Sopharith Officer of KYFTU
2. Mr. Our Phoeurn Officer of KYFTU

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|-----------------------|--|
| 3. Mr. Pich Sokunthea | Officer of KYFTU |
| 4. Mr. Sit Nov | Vice-president of local Khmer Youth Trade Union (KYTU) |
| 5. Mr. Lor Samnang | Secretary of local KYTU |
| 6. Mr. Duk Saveuon | Committee member of local KYFTU |

Representative of the employer party who attended the second hearing on 18 March 2007 at 14:00:

Mr. Chan Sothea Chief Administration

Representative of the worker party who attended the second hearing on 18 March 2007 at 14:00:

None of the workers or their representative attended the hearing (absent).

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demands that the company pay the union contribution fee that the company did not make deductions for the KYFTU. The company does not agree.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B 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 hearing was unsuccessful and the non-conciliation report No. 116/08 KB/KN, dated 26 February 2008 was submitted to the Secretariat of the Arbitration Council on 27 February 2008.

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: 7 March 2008 (at 8:00 a.m.)
 - Second hearing: 18 March 2008 (at 2:00 p.m.)

Procedural issues:

On 22 February 2008, the Department of Labour and Vocational Training of Kandal Province assigned its official to conduct a conciliation of a collective labour dispute which contained 10 issues with a result that nine of the ten issues were conciliated. The one non-conciliation point was referred to the Secretariat of the Arbitration Council on 27 February 2008.

Upon receipt the case, the Secretariat of the Arbitration Council summoned the employer and worker parties to the hearing and conciliation on the one non-conciliation point. The first hearing was held on 7 March 2007 at 8:00 a.m. and the second hearing was on 18 March 2007 at 2:00 p.m.

Both parties were present in the first hearing on 7 March 2007 at 8:00 a.m. as invited by the Arbitration Council. The Arbitration Council tried to ask for more information relevant to the dispute and attempted to further the conciliation on the remaining one non-conciliation issue. The employer claims at the hearing that it agrees to deduct union contribution fees for KYTU when the union provides to the company an accurate list of workers who are members the union who agree to allow the company to make the deduction as the company had found some irregularities in name list provided by the union last time. In the hearing, the company party agreed to [provide] the name list it had considered irregular. The worker party also agreed to produce the name list of union members who agreed for the company to deduct union contribution fees each month, which was submitted to the company, to the Arbitration Council by 13 March 2007, before the second hearing on 18 March 2007 at 2:00 p.m. The company party provided a name list of 1,150 workers and the problematic name list to the Arbitration Council on 14 March 2007. However, the worker party did not provide workers' name list or other relevant documents to the Arbitration Council.

The second hearing was on 18 March 2007 at 2:00 p.m. The employer party was present at the hearing but the worker party was absent (none of the workers or their representatives attended the hearing).

Therefore, the Arbitration Council will consider as below:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council**Provided by the employer party:**

1. Certificate of commercial registration dated 09 February 2004;
2. Company's Internal Work Rules of HS Ent (Cambodia) Company No. 064 SKBY dated 21 May 2004;

3. Memorandum, statute of HS Ent (Cambodia) company, dated 20 December 2001;
4. List of names of 1,150 workers and the problematic list of names.

Provided by the worker party:

1. Letter No. 887 KB/AK/VK regarding recognition of the new mandate union leaders by the Chief of Labour Dispute Department, dated 24 August 2007;
2. Letter No. 118 SSYK regarding request for the company director to deduct 1,000 riel from the wage of each worker to pay for union contribution fee for KYTU, dated 05 February 2008;
3. List of names of members of the local KYTU at HS Ent (Cambodia) Company who volunteered to have 1,000 riel of their wage deducted each month to pay for union contribution.

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

1. Report of collective labour dispute resolution at HS Ent Factory No. 116/08 KB/KN, dated 26 February 2008;
2. Minutes of collective labour dispute conciliation at HS Ent Factory, dated 22 February 2008

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 161 KB/AK/VK/LKA dated 28 March 2008 to invite the worker party to attend the first hearing;
2. Invitation No. 160 KB/AK/VK/LKA dated 28 March 2008 to invite the employer party to attend the first hearing;
3. Invitation No. 197 KB/AK/VK/LKA dated 14 March 2008 to invite the worker party to attend the second hearing;
4. Invitation No. 196 KB/AK/VK/LKA dated 14 March 2008 to invite the employer party to attend the second hearing;

FACTS

- Having reviewed documents submitted by the parties to the Arbitration Council
- Having examined the report on the collective labour dispute conciliation
- Having listened to the testimonies from both the employer party and the worker party

The Arbitration Council finds that:

- HS Ent (Cambodia) Company employs 940 workers.

- First hearing: KYTU attended the first hearing on 07 March 2007 at 8:00 a.m. as invited by the Secretariat of the Arbitration Council through a letter No. 161 KB/AK/LKA, dated 28 March 2008.
- Second hearing: KYTU did not attend the second hearing on 18 March 2007 at 2:00 p.m. as invited by the Secretariat of the Arbitration Council through a letter No. 197 KB/AK/VK/LKA, dated 14 March 2008. The worker party received the invitation letter of the Arbitration Council and knew the hearing date of the second hearing because in the workers attended the first hearing and agreed with the date of the second hearing.
- Before the second hearing on 18 March 2008 at 2:00 p.m. the Secretariat of the Arbitration Council communicated and gave information regarding submission of documents and attending the hearing with Mr. Pich Sokunthea, officer of KYFTU, and he told [the Secretariat] that he could not attend the hearing because he was not feeling well and asked the Arbitration Council to proceed according to legal procedures.
- KYFTU had never communicated with the Secretariat of the Arbitration Council to inform about the reasons that the union could not come to the hearing or any other reasons for which the union would like to postpone the hearing. This means that KYFTU who is the claimant in this case decided not to participate in this hearing and did not provide sufficient evidence relevant to the non-conciliation points in this case.
- In the hearing, the company party stated that if the workers and the union who are the claimant in this case do not participate in the hearing, it means that the claimant had chosen to stop making the demand. Thus, if the workers demand on this issue again in the future, the company will not resolve it.

REASONS FOR DECISION

The worker union who is the claimant in this case decided not to participate in the hearing as invited by the Secretariat of the Arbitration Council as it had not communicated with the Secretariat of the Arbitration Council about the reasons why the union could not come to attend the hearing or any other reasons in order to postpone the hearing.

Therefore, the Arbitration Council will consider this issue as follows:

Clause 19 of Prakas 099 regarding the Arbitration Council, dated 21 April 2004 states, *“A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.”*

On the hearing day on 18 March 2007 at 1:30 p.m. the Secretariat of the Arbitration Council officer communicated and informed the worker party to come to attend the hearing.

Mr. Pich Sokunthea, officer of KYFTU, said that he already contacted to Mr. Our Phoeurn, officer of KYFTU; he also stated that he could not attend the hearing because he did not feel well. He did not assign a representative or a lawyer to represent him according to Clause 19 of the above Prakas and asked the Arbitration Council to take action according to legal procedures.

Clause 21 of Prakas 099 regarding 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 addition, Rule 4.7 of the Arbitration Council Procedural Rules in the Annex to the Prakas 099 on the Arbitration Council, dated 21 April 2004, 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 either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”*

Based on the letter by the Secretariat of the Arbitration Council to invite the parties to attend the hearing, the Arbitration Council considers that both parties were properly notified by the Secretariat of the Arbitration Council about the date, time and venue of the hearing in accordance with Rule 4.7 above. In addition, they were contacted by phone to remind them about the hearing time. However, on the hearing date only the employer party was present as invited.

Based on Clause 19 and Clause 21 of Prakas 099 on the Arbitration Council and Rule 4.7 of the Prakas and in accordance with the decision of the Arbitration Council in previous cases (see Arbitral Awards 30/05-Maurea and 16/07-Lotus), the Arbitration Council decides to close case if the worker party who is the complainant does not participate in the hearing and does not provide a good reason for the absence to the Arbitration Council or the Secretariat of the Arbitration Council even though they are duly and officially received the invitation letter.

Therefore, the Arbitration Council in this case assumes that the union party who is the claimant has given up their demand.

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

DECISION

- Decide to close case 33/08-HS Ent.

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: **Pen Bunchhea**

Signature: