



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 35/07- Flying Dragon III

Date of Award: 8 May 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **You Suonty**

Arbitrator chosen by the worker party: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Sok Mathoeung**

DISPUTING PARTIES

Employer party:

Name: **Flying Dragon 3**

Address: Chom Chao Street, Damnak Thom Village, Sangkat Stoeung Mean Chey, Khann Mean Chey, Phnom Penh

Telephone: 012 885 911

Representative:

- Mr. Ann Udom Head of administration

Worker party:

Name: **C.CAWDU and local C.CAWDU at Flying Dragon 3 Factory**

Address: #60, Street 476, Sangkat Tuol Tompoung, Khann Chamkamorn, Phnom Penh

Telephone: 012 707 509

Representative:

1. Mr. Oum Visal Officer of C.CAWDU
2. Ms. Nath Sieng Leap President of local C.CAWDU
3. Mrs. Keo Peo Secretary of local C.CAWDU

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand that the company deduct union contribution fees for the local C.CAWDU because the request regarding the deduction of union contribution fees is allowed by the Labour Law and Prakas 305 SKBY by the Ministry. The company, on the other hand, states that they cannot make the deduction for the local union; the company did not provide a reason but stated that it would wait to mention it at the Arbitration Council.
2. The union requests that the company pay for the medical treatment of Ms. Nath Sieng Leap, the President of the union, who had a work-related accident. The company party stated that they will not pay for Ms. Nath Sieng Leap's medical treatment because she had a normal sickness and not a work-related accident.
3. The workers demand that the company provide wages and compensation for annual leave for a worker named Penh Srey Mom whom the company terminated on 22 January 2007. The company party, on the other hand, states that they will not pay wages and compensation for annual leave for Ms. Penh Srey Mom because she gave up the job by herself.

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 was unsuccessful, and the non-conciliation report No. 318 KKBV/AK/VK, dated 02 April 2007, was submitted to the Secretariat of the Arbitration Council on 03 April 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: 19 April 2007 (From 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 23 February 2007, the Department of Labour Disputes received a complaint by the local C.CAWDU of Flying Dragon 3 Factory regarding the demand for the company to improve working conditions on three issues. After receiving this complaint, the Department of

Labour Disputes assigned officers to settle this dispute but did not achieve any conciliated results from the three issues. The three non-conciliation issues were submitted to the Secretariat of the Arbitration Council on 3 April 2007.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party at the factory to a hearing and conciliation on the three non-conciliated issues on 19 April 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the three non-conciliation issues but still could not achieve any successful resolution. Therefore, in this award, the Arbitration Council will consider the three issues 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. Agreement between the employer party and the representatives of the workers, dated 26 October 2006.
2. Internal Work Rules of Flying Dragon 3 Company, dated 10 March 2005 and recognized by the Ministry of Labour on 6 April 2005.
3. Announcement by the Flying Dragon 3 Company regarding the abandonment of work of Penh Srey Tom, dated 18 January 2007.

Provided by the worker party:

1. Request for collective labour dispute resolution by C.CAWDU to the Head of Department of Labour Disputes, dated 12 February 2007.
2. Summary statement of the dispute at Flying Dragon 3, dated 10 April 2007, by C.CAWDU.
3. Receipt of medical treatment and medical expenses issued by Khmer-Soviet Friendship Hospital, dated 13, 15, 17, 20 and 21 January 2007.
4. Letter by the local C.CAWDU at Flying Dragon 3 Factory with thumbprints and signatures of union members to request the company to deduct union contribution fees for its members, undated.
5. Suggested agreement by C.CAWDU regarding the deduction of union contribution fees, dated 1 November 2006.

6. Certificate of Registration of the local C.CAWDU at Flying Dragon 3 Factory by the Ministry of Labour, dated 22 April 2003.
7. Letter of recognition of new union leaders of second mandate, by the Ministry of Labour and Vocational Training, dated 2 December 2005.

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

1. Letter No. 318 KKBV.AK.VK by the Department of Labour Dispute to the Minister of Labour and Vocational Training, dated 28 March 2007.
2. Minutes of the collective labour dispute conciliation, dated 20 March 2007.
3. Letter No. 456 KKBV by the Ministry of Labour and Vocational Training, dated 9 April 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 144 K.K.B.V//AK/VK, dated 10 April 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 143 K.K.B.V//AK/VK/LKA dated 10 April 2007 to invite the employer 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 the representatives of the worker party and the employer party

The Arbitration Council finds that:

Issue 1:

- Flying Dragon 3 Garment Factory employs 1,550 workers and has two unions: FTUWKC and C.CAWDU at Flying Dragon 3.
- C.CAWDU at Flying Dragon 3 was registered with the Ministry of Labour and Vocational Training on 22 December 2003. On 2 December 2005, the Department of Labour Disputes issued a letter to recognize the components of new leaders of C.CAWDU at Flying Dragon 3 in its second mandate. As of the hearing day, the union had 814 members.
- Local C.CAWDU at Flying Dragon 3 and Flying Dragon 3 Company signed an agreement on 26 October 2006 in which the union promised to submit documents regarding the request for the deduction of union contribution fees to the company and the company promised to reply to this request on 1 December 2006 at the latest.
- On 1 November 2006, C.CAWDU at Flying Dragon 3 submitted a letter to request the employer to deduct union contribution fees from its members. In the letter, there was

an agreement between C.CAWDU at Flying Dragon 3 and Flying Dragon 3 Company regarding the deduction of wages from union members to pay for the union contribution fee which was signed by the representative(s) of the union but there was no signature of the representative of the employer party.

- The union submitted the list of names of its members and their signatures and thumbprints to confirm their agreement to have the employer deduct the union fees.
- The employer claims that it received the letters from the union regarding the request for the deduction of union contribution fees twice. However, the employer party does not agree to follow the request as the employer has looked at the name list and found that signatures of some of the workers are the same. The employer inquired about this with some workers and they said that [the submitted signatures or thumbprints] were not theirs. The employer continues to claim that those workers submitted a letter to reject their signatures and thumbprints to the company. But the employer did not submit these documents to the Arbitration Council.
- The union also accepts the irregularity of the thumbprints and signatures of its members in the name list to request union contribution fee deductions. Yet, the union demands the company to deduct the contribution fee from the members whom the employer considers are legitimate. The employer party rejects the demand, claiming that the document is unreliable.

Issue 2:

- Ms. Nath Sieng Leap is a worker in the backstitching section and has been working for Flying Dragon 3 for eight years.
- One or two days before 15 January 2007, Ms. Nath Sieng Leap developed a stomachache at home and requested sick leave. When she arrived at the Khmer-Soviet Friendship Hospital, the doctor suspected that she had a lung problem and was sent to the lung department. The results of the check up revealed that she had a lung problem, not a stomachache.
- On 15 January 2007, at 9:15 a.m., Ms. Nath Sieng Leap developed a stomachache again while she was working. At that time, the company took her to Khmer-Soviet Friendship Hospital. Both parties claimed that after handing over the results of her previous visit to the doctor, the doctor sent her to the lung section. Neither party submitted that document to the Arbitration Council.
- Ms. Nath Sieng Leap spent her own money of US\$ 105 for the treatment. She submitted the receipt of treatment to the company for reimbursement. The company does not object to this claim.

- The union party claims that Ms. Nath Sieng Leap's illness is a work-related accident because it happened during the time she was working and she demands that the employer pay for the medical treatment. The employer rejects the demand by claiming that Ms. Nath Sieng Leap's illness is not a work-related accident because she had this problem once in the past.
- The company party claims that it is always responsible for its workers who have work-related accidents.

Issue 3:

- Ms. Penh Srey Tom started working for Flying Dragon 3 Company on 20 October 2003 and received a wage of US\$ 50 per month.
- Ms. Penh Srey Tom received annual indemnity (compensation for annual leave) for previous years except year 2006.
- Ms. Penh Srey Tom was absent from work from 11 to 18 January 2007, without informing the company.
- The company did not receive any information from Ms. Penh Srey Tom until 19 January 2007 and issued a letter to terminate her from work.
- The union party claims that Penh Srey Tom was absent from work to go to see her sick mother at her hometown. When she came back to work on 22 January 2007, the employer did not allow her to go back to work and did not pay her wages for December 2006 and the 10 days of wages she earned in January 2007.
- The union does not provide a reason regarding Ms. Penh Srey Tom's failure to inform the company.
- The employer claims that Penh Srey Tom was absent from work for more than six days, i.e. from 11 January to 18 January 2007 without informing the company. The company adds that if a worker is absent he or she can make a phone call or send information through other workers to the employer.
- Because Penh Srey Tom did not inform the company and was absent for more than 6 days, the head of group informed the administration that she had given up her job and the administration furthered this information to the company Director for the decision to be made to stop recognizing Penh Srey Tom as a worker of Flying Dragon 3, as stated in the factory's Internal Work Rules.
- The employer party accepts that Penh Srey Tom did not receive her salary for December 2006 and another 10 days for January 2007 and [annual leave] indemnity for 2006. The company claims that according to the company's Internal Work Rules, workers who give up their job do not have the right to receive [last] wages and indemnity.

- Ms. Penh Srey Tom demands her wages for December 2006 and another 10 days in January 2007 and [annual leave] indemnity for 2006 which the employer did not pay her after she was terminated.
- Flying Dragon 3 pays workers' salaries on the 13th every month.

REASONS FOR DECISION

Issue 1:

The workers demand the company to deduct the union contribution fees for the local C.CAWDU because the request regarding the deduction of union contribution fee is allowed by the Labour Law and Prakas 305 SKBY by the Ministry.

Clause 5 of Prakas 305 SKBS, dated 22 November 2001 by the Ministry of Labour and Vocational Training states, "*workers who are members of union may request in writing to employer at least 15 days in advance to deduct their wage to pay the union contribution to the union which they are members and the employer shall properly acquiesce to it.*"

Paragraph 2 of Article 129 of the Labour Law states, "*However, the worker can authorize deductions of his wages for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time.*"

According to point 1 of the agreement between the employer and the local C.CAWDU at Flying Dragon 3, in settling the collective labour dispute in case 98/06, dated 22 October 2006, the worker party would submit documents relevant to the request for [the deduction of] union contribution fees after that hearing and the employer would answer to the request within the first week of December 2006, at the latest. The Arbitration Council found that on 11 November 2006, the union party submitted a request for the employer to deduct workers' salary to pay for union contribution fees accompanied by a list of names and thumbprints or signatures of each worker.

In Arbitral Award 62/04 – Y Sin, the Arbitration Council found that: "If the union wants the employer to deduct the membership fee from workers, the union has to submit the appropriate and acceptable documents such as a name list with signatures or fingerprints and collective or individual documents showing that workers agreed to authorise the deduction for the purposes of contributing to the union. Upon receiving the documents, the employer must deduct from the workers' wages and send the money to the union each month. In addition, the union must inform the employer in writing about a change in a worker's authorisation of the deduction". The Arbitration Council in 60/05 – Evergreen agreed with this.

However, the employer party refuses to follow the request because they argue that there was an irregularity with the workers' thumbprints and signatures in the list that the

union submitted. The Arbitration Council in Arbitral Award 60/05 – Evergreen stated, “If the employer has proper and practical reasons regarding the legitimacy of the authorization letter, the employer can ask the union to prove that the workers really authorized the deduction by requiring that the union send in a name list of those who really authorized the deduction. By doing this, the employer is guaranteed that the workers are really members of the union as required by Article 5 of Prakas 305”.

The Arbitration Council considers that a union party is the party who submits the request and list of names with thumbprints and signature to confirm the workers’ approval for the company to deduct from their salaries for the union contribution fee; the union has an obligation to prepare this name list properly and the employer is obliged to [deduct the] union contribution fee for the workers only when the union has submitted the proper authorization letter to the employer. A proper authorization letter is made in writing and reflects the real will of workers.

In this case, the Arbitration Council found that there are three types of documents the union submitted to the employer to request the employer to make deduction: [those] 1) with thumbprints, 2) with signatures and 3) with signatures but no names. In these documents, the Arbitration Council considers that some documents in the list really reflect the workers’ willingness but some do not. The documents that the Arbitration Council considers reflect the real willingness of the workers for the employer to deduct contribution fees are the 41 documents (41 pages) which the Arbitration Council has attached with the Arbitration Council’s seal stamped on them as evidence.

The Arbitration Council also considers that those members who did not sign or print thumbprints by themselves have not shown a real willingness for the employer to deduct their wages to pay for the union contribution fees. Thus, the employer is not obligated to deduct their wages. In order for the employer to follow the union’s request, the Arbitration Council determines that the union has to help facilitate its members to make a letter to prove that they really want to allow the company to deduct this contribution fee with their thumbprints properly. The employer is obligated to deduct the union contribution fee after it receives the correct authorization letter within 15 days.

Issue 2:

The union requests that the company pay US\$ 145 for the medical treatment of Ms. Nath Sieng Leap, President of the union, because it considers [her lung problem] a work-related accident.

Article 248, paragraph 1, of the Labour Law states, “An accident is considered to be work related, regardless of the cause, if it happens [while] a worker [is] working or during the working hours, whether or not the worker was at fault; it is the accident inflicted on the body

of the worker or on an apprentice with or without wages, who is working in whatever capacity or whatever place for an employer or a manager of an enterprise”.

Article 249 of the Labour Law also states, “Managers of enterprise are liable for all work-related accidents stipulated in the Article above regardless of the personal status of each worker”. In the hearing, both parties discussed Ms. Nath Sieng Leap’s illness but did not mention any accident occurring to her which led to a specific [injury]. In addition, the workers do not provide any evidence to prove that she had a work-related accident. Thus, the Arbitration Council considers that this case is not within [the definition of] work-related accident. To clarify this demand by the worker party, the Arbitration Council considers further if she has work-related disease.

In the hearing, both parties agree that Ms. Nath Sieng Leap’s illness is a lung disease and that she experienced it 2 days before 15 January 2005. On 15 January 2005, Ms. Nath Sieng Leap experienced it again when she was working and the company took her to the hospital. In addition, both parties agree that the medical expenses were US\$ 145.

Article 248, paragraph 3, of the Labour Law specifies, “occupational illnesses which are defined in law will be treated in the same way as workplace accidents.”

The Arbitration Council finds that, at present, there are not any Prakas or other legal instruments which define an occupational illness. However, the Arbitration Council can consider the broad definition of occupational illness provided in Protocol 155 of 2002 to the Occupational Safety and Health Convention 1981 as helpful in considering the term “occupational illness”. That Protocol defines “occupational disease” as “any disease contracted as a result of an exposure to risk factors arising from work activity.” As the Occupational Safety and Health Convention 1981 has not been ratified by Cambodia, this convention is not binding in Cambodia.

In this case, the Arbitration Council cannot find the definition of the occupational illness in any specific Cambodian Law and the worker party does not show any specific evidence that this illness is caused by conditions or factors which derive from their workplace. Thus, the Arbitration Council does not have any legal ground or sufficient evidence to order the employer to pay for this medical treatment.

Issue 3:

Ms. Penh Srey Tom demands her wages from December 2006 and 10 days of January 2007 and indemnity from 2006 which the employer has not paid her when she was terminated from work.

The employer claims that it can terminate Ms. Penh Srey Tom because she was absent without informing the company for more than 6 days, which can be treated as resigning, based on point 8 of the company’s Internal Work Rules. Point 8, states that having

given up work by oneself [the worker] is considered to have committed serious misconduct which is a reason for dismissal from work and the worker is not entitled to wages and other benefits.

The Arbitration Council found that Penh Srey Tom was absent without permission for 6 consecutive days, i.e., from 11 to 18 January 2007. The Arbitration Council also found that the employer did not pay her wages for December 2006 and 10 days of January 2007 (the number of days which Penh Srey Tom worked) or her [annual leave] indemnity from 2006.

Thus, the Arbitration Council will consider if Ms. Penh Srey Tom is entitled to these wages and indemnity.

Article 102 of the Labour Law states, "For the purposes of this law, the term "wage", irrespective of what the determination or the method of calculation is, means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered."

Article 103 of the Labour Law states, "Wage includes, in particular: actual wage or remuneration, overtime payments, commissions ..."

In addition, paragraph 2 of Article 167 of the Labour Law states, "If the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker."

Article 166 of the Labour Law states, "Unless there are more favorable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service."

Paragraph 1 of Article 13 of the Labour Law states, "The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void."

In this case, Ms. Penh Srey Tom is a worker in Flying Dragon 3 since 20 October 2003. The worker party and the employer party agree that Ms. Penh Srey Tom worked in December 2006 and another 10 days in January 2007 but the company has not paid her for this period and she did not receive her [annual leave] indemnity for 2006 either by following Point 8 of the company's Internal Work Rules. The employer's claim is not in accordance with the Labour Law regarding wage and indemnity of annual leave.

Thus, according to Article 102, 103, 166 and 167 of the Labour Law, the Arbitration Council determines that Ms. Penh Srey Tom is entitled to receive the wages and annual indemnity which she had earned even though she did commit serious misconduct. Therefore,

the employer party has to pay Ms. Penh Srey Tom her wages for December 2006 and the 10 days in January 2007, as well as indemnity for her annual leave in 2006.

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

DECISION

1. Order the employer to deduct the union contribution fee from workers who are its members and who signed or printed their thumbprints properly [submitted] to the employer [as evidenced in] the 41-page list attached as an annex with the seal of the Arbitration Council.
2. Reject the workers' demand for the company to pay for the medical treatment of Ms. Nath Sieng Leap.
3. Order the employer to pay the wages from December 2006 and 10 days in January 2007 and indemnity for annual leave in 2006 to Ms. Penh Srey Tom within two weeks at the latest from the day this award is enforceable.

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: **You Suonty**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Sok Mathoeung**

Signature: