



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 47/07- South Bay

Date of Award: 11 June 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **LY TAYSENG**

Arbitrator chosen by the worker party: **AN NAN**

Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **South Bay [Enterprise (Cambodia) Co. [Ltd.]**

Address: Building E, New Street, Chom Chao Corner, Sangkat Chom Chao, Khann Dangkor,
Phnom Penh

Telephone: 012 58 91 28

Fax: N/A

Representative:

- | | |
|---------------------|-----------------------------|
| 1. Ms. Sun Guohjong | Head of Administration |
| 2. Ms. Ling Shuly | Assistant to Administration |

Worker party:

Name: **Local C.CAWDU at South Bay Factory**

Address: E Building, New Street, Chom Chao Corner, Sangkat Chom Chao, Khann Dangkor,
Phnom Penh

Telephone: 012 282 653

Fax: N/A

Representative:

- | | |
|---------------------|--|
| 1. Mr. Touch Sokong | President of local C.CAWDU at South Bay Factory |
| 2. Mr. Chin Sophon | Vice-president of local C.CAWDU at South Bay Factory |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demands the company to reimburse medical check fee of 10100 riel to all workers. The company does not agree to the demand because, according to Internal Work Rules, the company accepts workers to work only when they already had medical check.
2. The workers demand the company to take card-punching machine out, that they do not need to punch their cards when they go in and out of toilet. The company does not agree because it requires all workers to punch their cards when they go in or out of the toilet to prevent workers from sleeping, smoking, sitting idly in the toilet.
3. The workers demand the company to change workers from one section to another only when there is prior agreement from workers. The company does not agree to the demand because it follows the company's Internal Work Rules.

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 which took place on 30 April 2007 was unsuccessful, and the non-conciliation report No. 382 KKBV/AK, dated 30 April 2007 was submitted to the Secretariat of the Arbitration Council on 30 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: 28 May 2007 (From 8:00 a.m. to 12:00 p.m.)

Procedural issues:

On 19 March 2007, Department of Labour Disputes received a complaint by C.CAWDU, dated 13 March 2007 regarding the demand for the company to improve 3 points regarding working conditions. After receiving the complaint, Department of Labour Dispute assigned an officer to conciliate this issue and the last conciliation was conducted on 20 April

2007 with a result that three of three issues were not conciliated. The three non-conciliated issues were sent to the Secretariat of the Arbitration Council on 30 April 2007.

After receiving 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 28 May 2007 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

At the hearing, the Arbitration Council attempted to further the conciliation on the three remaining issues and, as a result, the 2nd issue was conciliated. Therefore, in this case, the Arbitration Council will consider on the issue 1 and issue 3 based on evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party:

- Internal Work Rules of South Bay Company, dated 24 February 2005

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

1. Report of the collective labour dispute resolution at South Bay Company, No. 382 K.K.B.V/AK, dated 30 April 2007.
2. Minutes of collective labour dispute conciliation, dated 20 April 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 192 K.K.B.V/AK/VK/LKA dated 23 May 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 191 K.K.B.V/AK/VK/LKA dated 23 May 2007 to invite the employer party to attend the hearing.

FACTS

- Having reviewed 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:

- South Bay Company which is located in Building "E", Vattanak Park, Sangkat Chom Chao, Khann Dang Kor, Phnom Penh, employs 638 workers.

- Based on minute of the collective dispute conciliation, dated 20 April 2007, there are 200 workers who are complainants.

Issue 1:

- All workers demand the employer to reimburse the medical check fee which the workers have paid by themselves, since 2001. The workers are making this demand for all workers who are working in the enterprise but they do not show evidence to the Arbitration Council to prove that other workers who are not members of C.CAWDU of South Bay Company make this demand.

- As a practice, the employer requires the workers who have been working for the enterprise for two months to have their medical check.

- Both parties agree that in the past the union and the employer brought the same issue to the Arbitration Council in case 11/05-South Bay, issue 1, and the Arbitration Council ordered the employer to reimburse medical check fees to workers as required by the Law.

Issue 3: The workers demand the company to change workers from one place to another place only when it receives prior agreement from workers

- The workers mention in the hearing that on 05 April 2007, nine workers in the ironing section demanded the company to improve working conditions and, among them, Som Kosal and Chhin Channa, were the ones who were the most outspoken demanders. Afterwards, the company transferred them to the warehouse section. The workers request that the company not do this again in the future which means that all changes of workers from one section to another should have an agreement from workers first.

- The workers also demand that the company take Som Kosal and Chhin Channa back to the ironing section. This point of the demand is not mentioned in the non-conciliation report sent from the Ministry of Labour.

- The employer party testified that the company transferred the work of Som Kosal and Chhin Channa from the ironing section to the warehouse section because the warehouse section needs more staff and, in addition, the two workers do not listen to the commands of the manager and are lazy; but the employer does not provide clear evidence regarding this accusation. The workers insist that the transfer of the two workers was because they were the outspoken demanders and demand that the company not do this again in the future which means that all transfers of workers from one section to another should have an agreement from workers first; the company does not agree because transfers are the right of the company.

- The worker party mentions that in the warehouse section they receive less wage than in the ironing section as the ironing section works according piecework while it is a fixed payment at the warehouse section. The company recruited two more workers for the ironing section. The company does not deny what the workers alleged.

REASONS FOR DECISION

Issue 1: The workers demand the company to reimburse 10,100 riel medical check fee for all workers

Before making a decision on this demand of the workers, the Arbitration Council will consider which workers in the enterprise is this demand applicable with. The worker party mentions that this demand is for all workers in the enterprise.

Article 268 of the Labour Law states, *“In order for their professional organization to enjoy the rights and benefits recognized by this law, the founders of those professional organizations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labor for registration...”*

The Arbitration Council considers that all the rights this professional organization receives, when registered, according to the Labour Law includes the right to represent its members. In this case, local C.CAWDU at South Bay factory has been registered. Thus, the union has legal rights to represents its members. This rights of representation includes the right to represents its members in bringing disputes to the Arbitration Council for resolution.

However, the union party does not show any evidence to the Arbitration Council to prove that there are other workers in the enterprise who have come to ask the union to bring this dispute for resolution. Therefore, the Arbitration Council decides that the Arbitral Award on the point of medical check fee will be applied only to workers who are members of the local C.CAWDU of South Bay Company.

In this case, the Arbitration Council finds that the workers' demand for the employer to reimburse the 10,100 riel medical check fees is the same as the demand in case 15/05-South Bay, issue 1.

Based on the **Principle of Res Judicata, a dispute already considered cannot be brought for reconsideration if it is the same dispute between the same parties to the dispute.**

In case 10/06-North Gaiety, the Arbitration Council translated the term Principle of Res Judicata as “គោលការណ៍អាជ្ញាធានសេចក្តីសំរេច”. Actually, the correct translation of the term should be “គោលការណ៍អាជ្ញាអស់ជំនុំ”. In that case, the Arbitration Council interprets that *“In principle, the settlement of a dispute, through either judicial or non-judicial means, must*

comply with the principle of res judicata. Res judicata is the principle that the same issue between the same parties may not, generally, be reconsidered once it has been decided on the merits. The public policy basis for this principle is to prevent inconsistent results, and to promote finality by bringing an end to a dispute.”

In Arbitral Award 24/06-Fortune, issue 4 and 106/06-Quick Sew, issue 5, the Arbitration Council determined that “following the principle of *res judicata*, the same issue which the Arbitration Council has already decided, the Arbitration Council cannot re-decide it.”

In this case, the Arbitration Council agrees with the interpretation of the arbitrators in previous cases. In this case, the Arbitration Council finds that the issue of this demand is the same to issue 3 of the Arbitral Award 15/05-South Bay which the Arbitration Council already heard and issued an award.

Thus, the Arbitration Council considers that it cannot reconsider and re-decide this issue as requested by the worker party. Therefore, the Arbitration Council decides to decline to consider the workers’ demand for the company to reimburse the 10,100 riel medical check fee.

Issue 3: The workers demand the company to transfer workers from one section to another section only when it has prior agreement from the workers

In this case, the workers demand that the company should transfer workers from one section to another only when it has prior permission from the workers but in the hearing the workers also demand that the company take two workers, Som Kosal and Chhin Channa, back to the ironing section. Thus, the Arbitration Council will consider this as follows:

1. The workers demand the company to have prior agreement from the workers before transferring them from one section to another

Article 2 of the Labour Law states, “*Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.*”

In previous cases, the Arbitration Council considers that this Article 2 means that the employer party has the right to manage and direct the company and this rights includes the right to transfer workers from one place to another but the employer has to fulfill some conditions such as: (1) no reduction of wage, (2) not to transfer workers to a faraway place, (3) not to change workers from night shift to day shift or vice versa and (4) no substantial change of skill. (See Arbitral Awards 17/03 and 18/03-Ho Hing, issue 1 and 18/06-Best Tan, issue 7).

In this case, the workers do not make their demand clear whether they are demanding the employer not to transfer workers in any specific cases. This demand was

because the company transferred two workers, Mr. Som Kosal and Mr. Chhin Channa from ironing section to warehouse section. The workers demand that the company not do this again in the future which means that all transfer of workers from one section to another in the future should have an agreement from the workers first. The Arbitration Council considers that this particular demand by the workers is not a demand about problems that have already happened but it is a hypothetical demand for the dispute which may happen in the future.

Arbitral Award 14/06-Seng Yong, issue 2, the Arbitration Council rejected the workers' demand for the employer not to transfer workers from the warehouse section to another section because this was a demand for a future event and it is not clear when it will happen and what will be the actual facts.

In addition, in previous cases, the Arbitration Council determined that "The Arbitration Council was established to resolve labour dispute not to resolve problems that have not yet happened." (See Arbitral Award 10/03-Jaqushintex, issue 2).

Thus, based on the above mentioned reasons, the Arbitration Council decides to reject the workers' demand for the company to transfer workers from one section to another only when there is prior agreement from workers.

2. The workers demand the company to take two workers, Som Kosal and Mr. Chhin Channa, back to ironing section

In this case, the workers demand the company to take Mr. Som Kosal and Mr. Chhin Channa back to work in the ironing section mentioning that this transfer was not proper.

Article 312 of the Labour Law states, "*The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, are the direct consequence of the current dispute.*"

In this case, the demand for the company to take the two workers, Som Kosal and Chhin Channa, back to the ironing section is a dispute which is not mentioned in the non-conciliation report by the Ministry of Labour. This dispute is not one which happened after the report was made which is the direct consequence of the dispute in this case. The Arbitration Council considers that the term "**direct consequence**" is only when it is a consequence which is born out of the points of the dispute in the non-conciliation report. In this case, the demand for the company to take Mr. Som Kosal and Mr. Chhin Channa back to the ironing section is not a consequence of the dispute because the transfer of the two workers happened before the non-conciliation report was made and before the conciliation by the Ministry of Labour.

Therefore, the Arbitration Council decides to decline to consider this issue.

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

DECISION

Issue 1: Decline to consider the workers' demand for the company to reimburse 10,100 riel medical check fee to all workers.

Issue 2:

- Decline to consider the workers' demand for the company to transfer workers from one section to another section only when there is prior agreement from the workers.

- Decline to consider the workers' demand for the employer to take Mr. Som Kosal and Mr. Chhin Channa back to work in the ironing section.

Type of Award: Non binding awards

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **LY TAYSENG**

Signature:

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: