



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្យកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 43/08-Tai Yang

Date of Award: 28 April 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **Tai Yang Enterprise Co., Ltd.**

Address: Thnot Muydeum Village, Bek Chan Commune, Ang Snuol District, Kandal Province

Telephone: 092 899 898 or 092 966 508 Fax: N/A

Representative:

1. Mr. Ley Sokchea General Assistant to Administration

Worker party:

Name: **Cambodian Labour Union Federation (CLUF) and local Cambodian Labour Union at the factory (CLU)**

Address: Tror Pang Chhouk Village, Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh

Telephone: 017 616 598 or 015 529 404 Fax: N/A

Representative:

1. Mr. Chey Sovann Officer of CLUF
2. Mr. Bou Bunthoeun Vice-president of CLU at the factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company reinstate two local union leaders, Mr. Sang Phearith and Pho Sokong, electricians, and back pay their wages. The Company does not agree.
- 2- The workers demand that the Company deduct union contribution fees from the wages of union members who have agreed to the deduction. The Company does not agree because the union does not have a valid [registration] certificate yet.
- 3- The workers demand that the Company provide daily wages and perquisites to three workers who participated in the collective dispute resolution of a previous dispute at the Department of Labour Disputes and at the Arbitration Council. The Company follows its Internal Work Rules.
- 4- The workers demand that the Company recognize union registration certificate No. 1310 K.B/V.K dated 21 December 2007 which was signed by the Minister of Labour and Vocational Training. The Company recognizes only [genuine] documents or certificates.

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.163/08 KB/KN, dated 21 March 2008 was submitted to the Secretariat of the Arbitration Council on 24 March 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: 31 March 2008 (at 8:30 a.m.)
- Second hearing: 04 April 2008 (from 8:30 a.m. to 11:30 a.m.)

Procedural issues:

On 28 February 2008, the Department of Labour and Vocational Training of Kandal Province assigned an officer to conciliate a collective labour dispute on five issues with the result that one issue was conciliated. The four non-conciliation issues were referred to the Arbitration Council on 24 March 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the four non-conciliation issues for the first time on 31 March 200[8] at 8:30 a.m. and for the second time on 4 April 2008 from 8:30 a.m. to 11:30 [a.m.]

The employer party requested a postponement of the first hearing date. Both parties were present as invited by the Arbitration Council at the second hearing. The Arbitration Council tried to request more information relevant to this dispute and attempted to further the conciliation on the four non-conciliation [issues] but was not able to resolve the issues. The Arbitration Council notes that the employer party did not [appear to] have an intention or willingness to resolve this dispute through conciliation and compromise even though the worker party was willing to cooperate to settle this dispute (through conciliation and compromise) and the Arbitration Council provided [different] choices and reasons. The Company [representative] stated in the hearing that he came to the hearing only to comply with the Company's request. Thus, he could not make a decision and would like to leave this to the Arbitration Council to decide by issuing an Arbitral Award. Therefore, the Arbitration Council will consider [this case] based on evidence and clarification of 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:

1. Certificate of commercial registration of Tai Yang Enterprise Co., Ltd. No. 3313 PN.BAP, dated 13 September 2000.
2. Letter to request a postponement of the hearing by the Company, dated 1 April 2008.

Provided by the worker party:

1. Certification of union registration of the local union of CLU at Tai Yang II Company, No. 1310 KB/VK, dated 21 December 2007;
2. Letter No. 1848 SSKK, dated 01 November 2007, regarding notification of election of union leaders of the local union of CLU at Tai Yang II Company;
3. Letter No. 1897 SSKK, dated 14 December 2007, regarding request for monthly deduction of 1,000 riel from the wage of 90 members to pay union contribution fees;
4. List of 90 members of CLU at Tai Yang II who request that the Company deduct 1,000 riels from their monthly wage to pay union contribution fees (with thumbprint of each worker);

5. Complaint and request letter by the workers to the union federation, dated 13 February 2008.

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

1. Report No. 163/08 KB/KN, dated 21 March 2008 on the collective labour dispute settlement at Tai Yang Enterprise Co., Ltd.;
2. Minutes of the collective labour dispute conciliation at Y Tai Yang Enterprise Co., Ltd, dated 28 February 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 229 KB/AK/VK/LKA dated 26 March 2008 to invite the employer party to attend the first hearing;
2. Invitation No. 230 KB/AK/VK/LKA dated 26 March 2008 to invite the worker party to attend the first hearing;
3. Invitation No. 238 KB/AK/VK/LKA dated 31 March 2008 to invite the employer party to attend the first hearing;
4. Invitation No. 239 KB/AK/VK/LKA dated 31 March 2008 to invite the worker party to attend the first hearing;

FACTS

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

The Arbitration Council finds that:

- Tai Yang Enterprise Co., Ltd. employs approximately 4,000 workers. The Company has two buildings under separate administration.
- The local union of CLU at Tai Yang II is the claimant in this case.
- The Arbitration Council notes that the employer party does not have an intention and is not willing to resolve this dispute through conciliation and compromise even though the worker party was willing to cooperate and settle this dispute through conciliation with the worker party.

Issue 1: The workers demand that the Company reinstate two local union leaders, Mr. Sang Phearith and Pho Sokong, electricians, and back pay their wages.

- The certification of union registration of the local union of CLU at Tai Yang II, No. 1310 KB/VK, dated 21 December 2007 and the Notification of CLU election at Tai Yang 2 Factory, No. 1848 SSKK, dated 01 November 2007, confirm that Mr. Sang

Phearith is the president of the local union of CLU at Tai Yang II factory and Mr. Pho Sok Kong is an assistant to the local union of CLU at Tai Yang II factory.

- The workers' demand reinstatement of Mr. Sang Phearith and Mr. Pho Sok Kong was decided by the Arbitration Council in the Arbitral Award 11/08-Tai Yang, dated 18 February 2008.

Issue 2: The union demands that the Company deduct 1,000 riel for union contribution fees from the wages of workers who are union members and who requested that the Company make the deduction

- On 14 December 2007, the union submitted a request to the Company to deduct 1,000 riels per month from workers who are union members and who requested that the Company make the deduction.
- There are 90 workers in the list of names of workers who requested that the Company make the deduction (with thumbprints of each worker).
- The Company mentions in the hearing that it agrees to deduct union contribution fees in an amount of 1,000 riels per month from the wages of workers who are union members but the union has to ensure that it is correctly named to [align with] the Company name; the Company has noticed that the union name is the local Worker Union at Tai Yang II. The Company's name, however, is Tai Yang, not Tai Yang II.
- The Company party adds in the hearing that the Company can deduct the union contribution fee but it does not want to do this.
- The union mentions in the hearing that Tai Yang Company has two separate buildings under separate management and administration and the workers of [one] building cannot walk into another building. The union named itself the local Cambodian Labour Union at Tai Yang II, which refers to workers who work in the second building, for administration purposes.
- In the hearing, the union adds that the union is registered by certificate of union registration at Tai Yang II, No. 1310 KB/VK, dated 21 December 2007. Therefore, the Company has to recognize it. However, the union claims that if the union makes a request to the Ministry of Labour to change the union's name to the local Worker Union at Tai Yang, the Company has to allow the union to undertake union activities and union work at both buildings of the Company.

Issue 3: The workers demand that the Company pay daily wages and other bonuses to three workers, Mr. Bou Buntha, Mr. Heng Sarith and Mr. Bou Bunthoeun, who attended the labour dispute resolution at the Labour Department and at the Arbitration Council.

- The Company recognizes that it deducted wages and bonuses from the three union members who attended the labour dispute resolution at the Department of Labour and at the Arbitration Council.

- The Company party mentions in the hearing that the Company's Internal Work Rules specify that if a worker goes somewhere s/he needs to ask for permission from the Company which means from the head of group and the administration; if there is no permission letter from the Company, the security won't allow them to leave.
- In the hearing, the Company adds that it would not deduct wages and bonuses from the three workers but when they go out they need to ask for permission from the Company.
- The worker party mentions in the hearing that they informed the Company before they attended the dispute resolution at the Department of Labour and at the Arbitration Council through invitation letters from the Department of Labour and the Arbitration Council. The Company party also received letters from the Department of Labour and the Arbitration Council.
- The Company party acknowledges that the three workers attended the dispute resolution process with the Company at the Department of Labour and the Arbitration Council.

Issue 4: The workers demand that the Company recognize union registration certificate No. 1310 KB/VK, dated 21 December 2007, signed by the Minister of Labour

- On 28 October the Worker Union Federation arranged an election for leaders of the union named **local Worker Union at Tai Yang II**.
- On 01 November 2007, the union notified the Company about the election of leaders of the the local Worker Union at Tai Yang II and the Company received the notification letter.
- On 21 December 2007, the Ministry issued a certificate of registration for the local Worker Union at Tai Yang II.
- The employer party states in the hearing that the Company recognizes that the certificate is genuine but the Company's name is Tai Yang, not Tai Yang II. That is why the Company considers that the certificate is not correct.

REASONS FOR DECISION

Issue 1: The workers demand that the Company reinstate two local union leaders, Mr. Sang Phearith and Pho Sokong, electricians, and back pay their wage.

This parties in dispute in this case are the same parties who brought case 11/08-Tai Yang, and [the Arbitration Council] has already provided the reasons for its decision in issue 2 of case 11/08 to "reject the workers' demand for reinstatement of Mr. Sang Phearith and Mr. Pho Sok Kong, electricians". Thus, the Arbitration Council considers that the Arbitration Council in case 11/08-Tai Yang has already made a decision on issue 1 of this case.

Res judicata is the principle that the same issue between the same parties may not be reconsidered by a decision making body if that decision making body has already decided the issue.

Based on this principle, the Arbitration Council considers that the Arbitration Council has already decided this issue and the Arbitration Council will not make a decision again (see Arbitral Awards 10/06-North Gaiety; 24/06-Fortune, issue 4; 106/06-Quick Sew, issue 5; 45/07-Wilson, issue 2 and 14/08-Quick Sew, issue 1).

Therefore, the Arbitration Council decides to reject the workers' demand for the Company to reinstate Mr. Sang Phearith and Mr. Pho Sok Kong, electricians.

Issue 2: The union demands that the Company deduct 1,000 riels for union contribution fees from the wages of workers who are union members and who request that the Company make the deduction

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

Although Article 281 states, *"All employers are forbidden to deduct union dues from the wage of their workers and to pay the dues for them."*

The Arbitration Council notes that Article 129 and 281 of the Labour Law seem to be contrary to each other. However, in previous Arbitral Awards, the Arbitration Council held that the intention of Article 281 of the Labour Law was to protect workers' rights and prohibit an employer from interfering in union affairs and bring the union under its influence as stated in Article 280 of the Labour Law. (See Arbitral Awards 05/03-Top One, issue 1; 62/04-Ecent, issue 8; 94/04-Eternity Apparel, issue 4; 99/06-AIA, issue 12 and 16/05-New Point World Trade Cambodia, issue 11).

The Arbitration Council considers that the Labour Law does not prohibit an employer deducting union contribution fees from workers' wages where workers provide written authorisation for the employer to do so. In this case, the employer has an obligation to deduct workers' wages to pay union contribution fees.

Furthermore, clause 5 of Prakas 305/2001 by the Ministry of Social Affairs, Vocational Training and Youth Rehabilitation states, *"Any workers or employee, member of union, may request in writing to employer at least 15 days in advance to deduct his wage to pay the union contribution in compliance with article 129 of labor law"*.

Thus, in accordance with the law as mentioned above, the employer has an obligation to deduct union contribution fees from the wages of workers who are members of a union and who authorise the deduction by providing a written request 15 days in advance.

In this case, the Company recognizes that the union registration certificate of the Worker Union at Tai Yang II, No. 1310 KB/VK, dated 21 December 2007 is genuine and agrees to deduct the wages of workers who are union members and who request that union contribution fees be deducted (according to the name list of workers there are 90 workers, with thumbprints, who are union members and agreed to the deduction). However, the Company has noticed that the union's name, the local Worker Union at Tai Yang II, is not correct because the Company's name is Tai Yang, not Tai Yang II. Thus, the Company requests that the union re-name itself to align with the Company name then it will make the deduction.

The Arbitration Council considers that it cannot interpret whether the certificate of union registration of the local Worker Union at Tai Yang II, No. 1310 KB/VK, dated 21 December 2007 is correct because union registration is within the scope of authority of the Ministry of Labour and Vocational Training. The Arbitration Council considers that in this case the union has to file a complaint for consideration and action by the Ministry of Labour and Vocational Training to demand that the Company implement its certificate.

Therefore, the Arbitration Council decides to reject the union's demand for the Company to deduct 1,000 riels from the wages of union members who agree that the Company make the deduction to pay for union contribution fees.

Issue 3: The workers demand that the Company pay daily wages and other bonuses to three workers, Mr. Bou Buntha, Mr. Heng Sarith and Mr. Bou Bunthoeun, who attended the labour dispute resolution at the Labour Department and at the Arbitration Council.

Article 306 of the Labour Law provides, *"During the period of conciliation, the parties to the dispute must abstain from taking any measure of conflict. They must attend all meetings to which the conciliator calls them. Unjustified absence from any such meeting is punishable by a fine set in the rules of Chapter XVI."*

Clause 20 of Prakas 099 SKBY, dated 21 April 2004, states, *"During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labor Law)... The parties must attend all meetings to which the arbitration panel calls them."*

Clause 10 of Prakas 305 SKBY, dated 22 November 2001, states: *"An employer, who has an obligation to negotiate with a union, shall participate in the meeting with the union representative who is their partner. During the negotiation, the negotiating agent's wages, bonuses and other benefits shall not be deducted."*

The contents of Article 306, Prakas 305 and Prakas 099, mentioned above, mean that the representative in a dispute resolution should attend all meetings to which the conciliator calls them and, during this negotiation meeting, the wages, bonuses and other benefits of the representatives attending such meetings should not be deducted.

In addition, Clause 19 of Prakas 099 SKBY, dated 21 April 2004 regarding the Arbitration Council allows persons who are not parties to a dispute but who are authorised in writing to represent the disputing parties to [appear] at the Arbitration Council to resolve the dispute.

In this case, according to the finding of facts above, the Worker Union Federation received a complaint and request in writing from workers on 13 February 2008 and the union received the certificate of registration of the local Worker Union at Tai Yang II factory, No. 1310 KB/VK, dated 21 December 2007. Therefore, the Arbitration Council considers that the union has a right to represent [the workers] both at the Department of Labour level and at the Arbitration Council level. The Company party in the hearing acknowledged that the union representatives including Mr. Bou Buntha, president of the union, Mr. Heng Sarith, secretary of the union, and Mr. Bou Bunthoeun, 1st vice-president of the union, came to resolve the dispute with the Company both at the Department of Labour and at the Arbitration Council. The union also mentioned in the hearing that they informed the Company before they left to attend the labour dispute resolution at the Department of Labour and the Arbitration Council according to the invitation letters from the Department and the Arbitration Council and the Company also had the invitation letters from the Department of Labour and the Arbitration Council. The Arbitration Council considers that the invitation to attend a dispute resolution is aimed at finding a a solution to the problem. Thus, the practice of the Company of deducting wages and bonuses of Mr. Bou Buntha, president of the union, Mr. Heng Sarith, secretary of the union, and Mr. Bou Bunthoeun, 1st vice-president of the union, is not correct.

In addition, the Arbitration Council notes that in the five years the Arbitration Council has been working to resolve labour disputes, it observes that generally the wages and bonuses of union representatives and worker parties who attend hearings at the Arbitration Council, at the invitation of the Council, are not deducted.

In conclusion, the Arbitration Council decides that the Company must pay daily wages and bonuses to Mr. Bou Buntha, Mr. Heng Sarith and Mr. Bou Bunthoeun for the period that they attended the labour dispute resolution at the Department of Labour and at the Arbitration Council.

Issue 4: The workers demand that the Company recognize union registration certificate No. 1310 KB/VK, dated 21 December 2007, signed by the Minister of Labour

In relation to this demand, the Arbitration Council agrees with the interpretation in issue 2 above that the Arbitration Council cannot interpret whether the union registration certificate of the local Worker Union at Tai Yang II factory, No. 1310 KB/VK, dated 21 December 2007 is correct because union registration is within the scope of authority of the Ministry of Labour and Vocational Training. The Arbitration Council considers that in this

case the union has to file a complaint for consideration and action by the Ministry of Labour and Vocational Training to demand that the company implement its certificate.

Therefore, the Arbitration Council declines to consider the union's demand for the Company to recognize union registration certificate No. 1310 KB/VK, dated 21 December 2007, signed by the Minister of Labour and Vocational Training.

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 reinstate Mr. Sang Phearith and Mr. Pho Sok Kong, electricians.

Issue 2:

- Decline to consider the union's demand for the Company to deduct 1,000 riels from the wages of union members who agree that the Company deduct it to pay union contribution fees.

Issue 3:

- Order the Company to pay daily wages and bonuses to Mr. Bou Buntha, Mr. Heng Sarith and Mr. Bou Bunthoeun for the period they attended the collective labour dispute resolution at the Department of Labour and at the Arbitration Council.

Issue 4:

- Decline to consider the union's demand for the Company to recognize union registration certificate No. 1310 KB/VK, dated 21 December 2007, signed by the Minister of Labour and Vocational Training.

Type of Award: Non binding award

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: