



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 45/08-E Garment

Date of Award: 28 April 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

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

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

DISPUTING PARTIES

Employer party:

Name: **E Garment Co. Ltd. (E Garment Company)**

Address: Number 3 Village, Svay Rorlom Commune, Saang District, Kandal Province

Telephone: 012 389 998/012 757 671

Fax: N/A

Representative:

- | | |
|----------------------|-------------------------------|
| 1. Mr. David Chinava | Representative of the Company |
| 2. Mr. So Sok Ang | Representative of the Company |
| 3. Mr. Leav Piseth | Administration Officer |

Worker party:

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

Address: Number 3 Village, Svay Rorlom Commune, Saang District, Kandal Province

Telephone: 012 882 870/092 902 569

Fax: N/A

Representative:

- | | |
|---------------------|--|
| 1. Mr. Chan Sophal | Officer of KYFTU |
| 2. Mr. Ly Samnang | Officer of KYFTU |
| 3. Mr. Hong Sambath | President of KYTU at the Company |
| 4. Mr. Rom Veasna | Committee Member of the Union at the Company |

5. Ms. Saroeun Sim	Committee Member of the Union at the Company
6. Ms. Nov Veasna	Committee Member of the Union at the Company
7. Ms. Pan Sophorn	Committee Member of the Union at the Company
8. Ms. Sin Sreyleak	Committee Member of the Union at the Company
9. Duch Sreyrov	Committee Member of the Union at the Company
10. Ms. Thim Mom	Committee Member of the Union at the Company
11. Ms. Teng Meng	Committee Member of the Union at the Company

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers request that the resignation of a new administration staff [member] named So Sok Ang, who applied for resignation on 20 March 2008 and applied to come back to work on 22 March 2008, be sent to the Arbitration Council.

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 was unsuccessful, and the non-conciliation report No. 173/08 KB/KN was submitted to the Secretariat of the Arbitration Council on 26 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: 3 April 2008 (From 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 25 March 2008 the Department of Labour and Vocational Training of Kandal Province assigned its official to conduct conciliation on a collective labour dispute of 4 issues and successfully conciliated 3 issues. The one non-conciliation issue was referred to the Secretariat of the Arbitration Council on 26 March 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to the hearing and conciliation on the non-conciliation issue on 3 April 2008 at 2:00 p.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to seek more information relevant to this dispute and attempted to further the conciliation on the non-conciliation issue but was not able to resolve the issue. Therefore, the Arbitration Council will consider [this issue] based on the evidence and statements 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. Power of attorney to Mr. David Chinava as a representative of the Company to solve labour dispute, dated 22 March 2008;
2. Medical certificate of Nov Veasna, a worker, issued by Svay Rorlom Health Center, dated 08 February 2008;
3. Warning letter by the Company to Nov Veasna, a worker, dated 11 February 2008;
4. Leave request by Sou Chenda, a worker, dated 26 March 2008;
5. Warning letter by the Company to Kay Phyum, a worker, dated 1 March 2008;
6. Warning letter by the Company to Leng Sithon, a worker, dated 17 March 2008;
7. Warning letter by the Company to Teng Rin, a worker, dated 21 March 2008;
8. Warning letter by the Company to Thngeuk Davy, a worker, dated 1 March 2008;
9. Warning letter by the Company to Khem Srey, a worker, dated 26 February 2008;
10. Warning letter by the Company to Nov Veasna, a worker, dated 11 February 2008;
11. Internal Work Rules of the Company, registration No. 007/06 KBV, dated 23 May 2006.

Provided by the worker party:

1. Minutes of collective labour dispute conciliation, dated 20 March 2008;
2. Certificate of union registration of the local union of KYTU at E Garment Company No. 1035 KKBV/VK, dated 9 October 2006.

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

1. Report No. 173/08 KB/KN, dated 25 March 2008 on the collective labour dispute settlement at E Garment Company;
2. Minutes of the collective labour dispute conciliation at E Garment Company, dated 25 March 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 235 KB/AK/LKA dated 31 March 2008 to invite the worker party to attend the hearing;
2. Invitation No. 234 KB/AK/LKA dated 31 March 2008 to invite the employer party to attend the hearing;

FACTS

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

The Arbitration Council finds that:

- E Garment Company employs approximately 2,000 workers.
- On 20 March 2008, Mr. Thoul Neang, Chief of the Department of Labour and Vocational Training of Kandal Province conducted conciliation of a collective labour dispute and, as a result, 8 issues were conciliated. There was no unresolved issues (minutes of collective dispute conciliation, dated 20 March 2008).
- Issue 8 of the conciliated issues stated, “for the collective benefit, the new administration officer named So Sok Ang agreed to resign from work”.
- On 20 March 2008, Mr. So Sok Ang submitted his resignation letter (the reason for resignation was for the collective benefit of workers and the factory). The resignation letter contained a notation from the Company referring to “7 days notice”.
- On 22 March 2008, Mr. So Sok Ang submitted a letter to withdraw his resignation letter and decided that he would not resign.
- On 25 March 2008, Mr. Lim Sarom, Vice-Chief of the Department of Labour at Kandal Province conducted a collective labour dispute conciliation and 3 out of 4 issues were conciliated. The non-conciliation point involved the resignation of the new administration officer, So Sok Ang on 20 March 2008 and the withdrawal of his resignation on 22 March 2008.
- The workers mentioned in the hearing that they demanded that the Company terminate Mr. So Sok Ang because the minutes of the collective labour dispute conciliation dated 20 March 2008 state in relation to issue 8, “for the collective benefit, the new administration officer named So Sok Ang agreed to resign from work”. The minutes contained the signatures of representatives from the Ministry,

union and the Company and the Company stamped the minutes which means that the Company agreed to terminate Mr. So Sok Ang from work.

- Mr. So Sok Ang stated in the hearing that he entered into contract with the Company on 08 January 2008 as head of Human Resources and submitted his resignation letter on 20 March 2008; thus, he had to fill in a resignation form in accordance with his contract with the Company. However, the workers continued to insist that the Company terminated Mr. So Sok Ang from work although he was resigning. For this reason, he submitted [another letter] to withdraw his resignation.
- The Company party mentioned in the hearing that it has no intention to terminate Mr. So Sok Ang and, as he submitted a resignation letter, it had not taken any action to terminate him.
- The Company party adds that it never called Mr. So Sok Ang to ask him to improve [his performance] or gave him a warning and the fact that the Company entered into contract with Mr. So Sok Ang to work as head of Human Resources was so that he would improve employment order in the administration section and such changes always cause some workers to feel unhappy with him.
- The worker party mentions in the hearing that they demanded that the Company terminate Mr. So Sok Ang because they do not like him as he uses improper words toward workers, shouts at workers, warns workers incorrectly [and not in accordance with] the Internal Work Rules and is too strict in allowing workers to take leave.
- A worker named Teng Meng in the weaving section who started work on 22 March 2006 mentioned in the hearing that her sister, Teng Rin, in the overlocking section lost her head wrap on 21 March 2008. According to the Internal Work Rules, this should warrant a verbal warning. However, Mr. So Sok Ang gave her a written warning [and made her endorse] her thumbprint.
- Nov Veasna, a worker in the hook and eye section, who started working on 7 August 2007, mentioned in the hearing that he was sick and went for a [medical] check without asking for permission from the Company; then in order to get permission for leave he provided a medical certificate from Svay Rorlom Health Center to Mr. So Sok Ang to prove that he had a stomach ache and was allowed to take 3 days off from 8 February to 12 February 2008. Mr. So Sok Ang stated that he should have been terminated from work but must be warned first; that he wanted money from the Company and brought in a fake certificate, and added that his salary would be deducted.

- Sin Sreyleak, a worker in the overlocking section, who began her work on 28 May 2006, stated in the hearing that the heads of all sections dare not give workers permission to take leave, even it is only one day or half a day, after the administration called all heads of sections for a meeting.
- Sou Chenda, chief of weaving, delivered her baby and asked to extend her leave for one more month; the head of the section allowed that but finally the Company allowed only half a month.
- In the hearing, Mr. So Sok Ang responds to worker Nao Veasna that on 8 February 2008 Nao Veasna brought a medical certificate from Svay Rorlom Health Center to him and the certificate mentions that he had stomachache and was allowed to take 3 days off from 8 February to 12 February 2008 which means that Nao Veasna was not yet sick but went to have a check before he was sick. This was why Mr. So Sok Ang considered that there was some irregularity about the certificate from the Health Center.

REASONS FOR DECISION

Issue 1: The workers demand that the Company terminate Mr. So Sok Ang because issue 8 of the [minutes of the] collective labour dispute conciliation dated 20 March 2008, state, “for the collective benefit, the new administration officer named So Sok Ang agreed to resign from work”

In the hearing the Company party mentioned that the Company does not have any intention to terminate Mr. So Sok Ang and that the Company has not taken any action to terminate him yet since he applied for resignation. The workers, on the other hand, mention that they request the Company terminate Mr. So Sok Ang because the workers do not like him as he uses improper language, shouts at workers, warn workers incorrectly [and not in accordance with the] Internal Work Rules and he is too strict in giving workers permission to take leave.

Thus, the Arbitration Council will consider: (1) Do the workers have the right to demand that the Company terminate Mr. So Sok Ang? (2) and the Arbitration Council will consider the minutes of the collective dispute conciliation dated 20 March 2008 which states, “for the collective benefit, the new administration officer named So Sok Ang agreed to resign from work”

1. Do the workers have the right to demand that the Company terminate Mr. So Sok Ang?

Article 65 of the Labour Law states, “*a labor contract establishes working relations between the worker and the employer.*” Thus, only the parties to a contract can terminate the contract. This means that an employer has a right to hire or terminate workers in the

Company and the worker who is also a party to the contract has the right to terminate their employment contract.

Decree 38 of 1988, Article 22, states that *“A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties. A contract shall be executed with honesty and according to the will of the parties.”*

In previous cases, the Arbitration Council determined that it has no right to order the employer party to terminate a worker from work as demanded by worker party. (See Arbitral Awards 04/03-Li Da, issue 1; 14/03-Chou Sing, issue 1; 17/03-Ho Hing, issue 4; 06/04-Chou Sing, issue 4; 15/04-Lucky Zone, issue 2; and 16/04-Yada Printing, issue 1).

In cases 14/03-Chou Sing, issue 1, 17/03-Ho Hing and 18/03-Ho Hing, issue 4, the Arbitration Council considers that even though a worker committed serious misconduct as stated in Article 83 of the Labour Law, the Arbitration Council considers that the Labour Law does not require the employer to terminate the worker. On the other hand, the Labour Law just grants rights to the employer to terminate the worker. The Arbitration Council notices that there are some exceptions when the Arbitration Council can order the employer to terminate or transfer a worker from work, for example, if the worker is a danger to the health and safety of other workers. (See case 14/03-Chou Sing, issue 1).

In this case, based on the finding of facts stated above, the workers demand that the Company terminate Mr. So Sok Ang because he uses improper language, shouts at workers, warns workers incorrectly [and not in accordance with the] Internal Work Rules and he is too strict in giving workers permission to take leave. The Arbitration Council considers that, the Company should take action to resolve the problem and for each specific incident should take disciplinary action in accordance with the Company's Internal Work Rules and according to the type of mistake; and if Mr. So Sok Ang continues to implement the Company's Internal Work Rules incorrectly, it is reasonable that the Company terminate him.

The Arbitration Council considers that Mr. So Sok Ang has some deficiencies and has [committed some] mistakes in performing his work [and] that was why the workers made a demand that the Company terminate him. However, the Arbitration Council considers that his mistakes as mentioned by the workers cannot be considered to be serious misconduct sufficient to warrant dismissal according to Article 83 of the Labour Law.

The Arbitration Council considers that it may order the employer to transfer or terminate Mr. So Sok Ang from his work if the Arbitration Council finds that this person is a danger to other workers in the Company. In this case, the Arbitration Council finds that Mr. So Sok Ang is not such a person who may cause danger or risk to other workers and in the hearing the workers did not mention that Mr. So Sok Ang had affected the health and safety of workers or caused any danger to other workers in the factory.

Therefore, in this case, the Arbitration Council agrees with the interpretation of the Arbitration Panels in previous cases that the Arbitration Council does not have any authority to order the employer party to terminate Mr. So Sok Ang from work as demanded by the worker party.

2. The minutes of the collective dispute conciliation dated 20 March 2008 which state, “for the collective benefit, the new administration officer named So Sok Ang agreed to resign from work”

The worker party and the Company party have different interpretations of the above minutes of the collective dispute conciliation. The worker party states that at the time the representative from the Ministry of Labour went to the Company to conduct the conciliation with the Company, the union and worker representative the Company agreed to terminate Mr. So Sok Ang according to his resignation; and the minutes were signed by representatives from the Ministry, the union and the Company; and the Company stamped its seal indicating that it agreed with the minutes which means that the Company agreed to terminate Mr. So Sok Ang from work. However, the Company states that it does not have an intention to terminate Mr. So Sok Ang and it has not taken any action to terminate Mr. So Sok Ang since he applied for resignation. The Arbitration Council notices that the minutes of the collective dispute conciliation are dated 20 March 2008 and the report of the collective labour dispute resolution sent to the Arbitration Council is dated 25 March 2005, which is only five days after the agreement was reached and the two parties are in disagreement about the implementation of what they already discussed, solved and agreed. Thus, the Arbitration Council considers that the two parties should discuss [the matter] to find a solution to the disagreement.

The Arbitration Council finds that the content of the minutes of the collective dispute conciliation state, “**for the collective benefit, the new administration officer named So Sok Ang agreed to resign from work**”. Based on the minutes, the Arbitration Council considers that (1) The resignation of Mr. So Sok Ang is his own decision and (2) if the Company considers that it is in the collective benefit of the Company to terminate Mr. So Sok Ang, this is the Company’s [decision] but it is not dependant on the demand of the workers.

In conclusion, the Arbitration Council decides to reject the workers’ demand for the Company to terminate Mr. So Sok Ang.

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

DECISION

- Reject the workers' demand for the Company to terminate Mr. So Sok Ang.

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 Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: