

- Mr. Sao Chandara Member of CFITU's Commission
- Ms. Son Voern Labourer
- Mr. Earng Sopheak Labourer

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

Workers demand the company to change the Head of section named Sveng and Head of Group named Moeung Mala on the ground that they have a bad professional relationship with the workers. But the employer party cannot change head of the fray-stitching section, Sveng, and of the fray-stitching group, Moeung Mala, as requested, because the appointment or transfer workers is the exclusive right of the company to guarantee the production process of the company.

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 099; and the Prakas on the Appointment of Arbitrators No. 076/07 KKBV 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. 506 KB dated 12 June 2007 was sent to the Secretariat of the Arbitration Council on 13 June 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 June 2007 (2:00pm to 5:00pm)

Procedural issues:

On 25 May 2007 the Department of Labour Disputes received a complaint by phone call from workers of M & V 3 Garment Factory regarding changing the head of section named Sveng and head of group named Moeung Mala. Afterward the Department of Labour Disputes assigned an officer to handle this labour dispute over consecutive sessions of conciliation and the last conciliation was held on 28 May 2007 with no conciliation of one issue. The one non-conciliated issue was sent to the Secretariat of the Arbitration Council by the non-conciliation report No. 605 KB dated 12 June 2007.

After receiving the case, the Secretariat of the Arbitration Council invited the employer and worker parties to attend the hearing on 19 June 2007 at 2:00 p.m.

Both parties were present as requested. The employer and workers agree that the head of section, Sveng, has already resigned from work so the Arbitration Council only needs to consider the case of the head of group, Moeung Mala. The Arbitration Council tried to find additional information related to this dispute and attempted to conciliate the non-conciliation point, but no solution was reached.

Therefore, in this Award, the Arbitration Council will arbitrate on the non-conciliated issue based on the witnesses, testimony and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by employer party:

- Authorized letter delegated to Mr. Yin Nak, Head of Administrative Department and Mr. Long Heang, Labour Dispute Officer of GMAC as representatives in this collective dispute case of M & V 3 in case 50/07 of the Arbitration Council dated 19 June 2007.
- Internal Work Rules of M & V 3 dated 19 May 2001
- Certification No. 1311 PN.PKB.KN of Company Registration dated 11 July 1995.

Provided by the worker party:

- Certification of Union Registration of CFITU in M & V 3 SKBY dated 05 July 2001.

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

- Report No. 104 dated 12 June 2007 on collective dispute resolution of M & V 3.
- Minute of the collective labour dispute conciliation dated 28 May 2007.
- Letter No. 080 KBV dated 28 May 2007 appointing Mr. Touch Vuthy, Sub head of the Labour Disputes Department as a conciliator for collective labour dispute of M & V 3.

Provided by the Secretariat of the Arbitration Council:

- Invitation to the hearing for the workers, No. 223 KB dated 13 June 2007.
- Invitation to the hearing for employers, No. 222 KB dated 12 June 2007.

FACTS

- Having examined the Non-Conciliation Report of the Collective Labour Dispute.
- Having listened to statements made by the representatives of the worker party and employer party.
- Having reviewed other additional documents.

The Arbitration Council finds that:

- The union which makes a demand in this case is Cambodian Federation Independent Trade Union (CFITU) with 1,050 members among the 2,872 total workers of M & V 3 International Manufacturing. This union does not have most representative status. According to the non-conciliation report, there are 49 workers who are directly involved in this issue.
- Workers demand the company to transfer the head of the fray-stitching group, Ms. Moeung Mala, to a new place as determined by the company.
- Ms. Moeung Mala has been working for the company for many years already but she has just moved to handle this fray-stitching group for only one year. She directly supervises 25 workers in her group.
- Ms. Moeung Mala's labour contract is an Undetermined Duration Contract.
- Ms. Moeung Mala's responsibilities are to 1) train whichever workers do not know how to sew the PN. For difficult PN's, the head of group will raise those difficulties to the company, 2) divide tasks for workers and control workers at their work place and 3) sew or fix any clothes that were sewed incorrectly.
- In the hearing, the worker party raised the following reasons for their demand to the company to transfer Ms. Moeung Mala: 1) She unfairly divides overtime work for workers; for any group member she does not like she will not provide them overtime work. Also, she used to force worker to work overtime or else they would not receive overtime tasks next time. 2) If there are new PNs, the head of the group is required to train group members; but Ms. Moeung Mala does not train other workers or her teaching is [inadequate]. 3) [She] stares at group members; in the hearing, the worker party did not explain or raise examples for this statement. 4) [She] uses inappropriate language to workers who sew the clothes incorrectly, for example saying, *Why not open your eyes?*, etc. But workers did not indicate a specified date or month of any event, or provide evidence or witnesses to such events. In response, Ms. Moeung Mala said that she had never done such a thing as mentioned.
- For overtime work, Ms. Son Voern, one of the workers in this group, testified that for example, on day 1 the company selects 5 workers for overtime work; day 2 the company selects 2 more workers; and day 3 the company selects another 5 workers but her name was never on that overtime work list. She further stressed that Ms. Moeung Mala secretly selects workers whom she likes so the names of workers for overtime work are repeatedly the same. [Ms. SonVoern] and other workers brought a complaint to Mr. Sao Chandara, a worker representative. Mr. Sao Chandara later went to talk with the head of section, Mr. Sveng, and reached an agreement regarding the division of overtime work (there are no minutes regarding this meeting);

afterward, overtime work was no longer a problem. Ms. Moeung Mala again rejected this allegation. Ms. Moeung Mala retorted that regarding overtime work, for example, sometimes workers work on the second floor but overtime work is needed on the third floor, then for any worker who is not restricted by their job then they volunteered to work so his/her name would be part include in day 1 and day 2.

- For new PNs, the head of the administrative department said that for new, difficult PNs, the head of section would be the one who conducts the training, along with the presence of the head of group. But if the new PN is not too difficult, the head of group is the one who provides direct training.
- Ms. Moeung Mala rejected all statements made by workers and argued that she never did the things she was accused of. The worker party does not provide clear evidence or witnesses to support their allegation [regarding (non) training of new PNs].
- Employer party testified in the hearing that the company had no intention to transfer Ms. Moeung Mala to a new post. The company will respond to the workers if any workers know that Ms. Moeung Mala committed any wrong action. Workers can complain to the head of the administrative department and a resolution would be made. The head of the administrative department added that the administration always cooperates with all workers, so any workers who have problems should feel free to approach them for solution.
- Both the worker and employer parties agreed that Ms. Moeung Mala has never used violence or caused any danger to workers' health and safety which could constitute a risk to the workers.

REASONS FOR DECISION

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

The worker party demands the company transfer the head of the fray-stitching group, Ms. Moeung Mala, to a new post as appointed by the company. Therefore the Arbitration Council will consider whether the workers' basis is appropriate to make this demand?

Article 65 of Labour Law 1997 states that '*A labour contract establishes working relations between the worker and the employer....*'

Article 1 of Decree-Law 38 on Contract and Non-Contractual Responsibilities provides that '*Contract is an agreement of will between two or more people to establish, change or terminate one or more obligation related to them.*'

According to the above meaning, people can be either natural or legal persons. Legal persons can enter into a contract by their representative.

Article 22 of Decree-Law 38 also stipulates that *'Contract is the law of the parties. It can be changes only on approval of the parties. Contract should be implemented in good faith and according to the intention of the parties. It only has effect to the parties.'*

According to the meaning of Article 65 of Labour Law, Articles 1 and 22 of Decree Law 38 on Contract and Non-Contractual Responsibilities, the Arbitration Council finds that only the parties to the contract can cancel, terminate, amend or renew the contract. A third party cannot order or make demands in the name of contractual parties unless there is consents from the parties. By this meaning, the employer, a party to the contract, has the right to employ or terminate a worker, and workers too have a right to decide whether to accept the employment or not and have the right to resign from work. In this case, the worker party is a third party to the contract making a demand or order for the company, a party to the labour contract with Ms. Moeung Mala, to transfer her from the fray-stitching group to another group as directed by the company. Therefore the Arbitration Council finds that this third party to the contract which is CFITU cannot order the company or make a demand on behalf of Ms. Moeung Mala, a party to the contract, to change to work at new place on the basis that this union or this group of worker is not a party to the contract of Ms. Moeung Mala and the company. Besides, the Arbitration Council understands that transferring workers from one place to another is also a right of internal management so the company can proceed smoothly.

In past cases, the Arbitration Council generally finds that the Arbitration Council cannot order an employer to transfer or dismiss a worker or head of section from work based on the demand of a worker party, for this is the internal management of the company so that the company can proceed smoothly, read arbitral award 04/03-Lida Garment (issue 2), 14/03-Chu Sing (issue 1), 17/03 and 18/03-Ho Hing (issue 4), 15/04-Lucky Zone (issue 2), 16/04-Yada Printing (issue 1).

The Arbitration Council, in addition, finds that the Arbitration Council can transfer or dismiss any worker who harms others, uses violence or is a risk of causing danger to the health and safety of other workers, read 14/03-Chu Hsing (issue 1).

In this case the Arbitration Council sees that the workers party does not provide any clear evidence to support the complaint being made regarding Ms. Moeung Mala, and Ms. Moeung Mala also denied all allegations as described above arguing that she has never committed such acts as alleged by the workers. Thus, the Arbitration Council understands that there is no proof to show that Ms. Moeung Mala did those acts. Furthermore, the Arbitration Council also finds that Ms. Moeung Mala has never hit or used violence, posing a danger or risk to the health and safety of other workers. Therefore the Arbitration Council determines that the demand of workers to the company for changing the head of group, Ms.

Moeung Mala, to a new place under the supervision of the company is not at all reasonable, and this demand is against the procedure of the Labour Law (1997).

In this case, the Arbitration Council agrees with explanation made by the Arbitration Council in past cases. So the Arbitration Council decides to reject this demand of transferring Ms. Moeung Mala to a new place.

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

DECISION

- Reject demand of workers for the company to change Ms. Moeung Mala to a new place as appointed by the company.

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 employer party:

Name: **KAO THACH**

Signature:

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature: