

KINGDOM OF CAMBODIA

NATION RELIGION KING



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THE ARBITRATION COUNCIL

Case number and name: 54/06 – Bright Sky

Date of Award: 2 August 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party:

KAO THACH

Arbitrator chosen by the worker party:

SUONG SOPHAL

Chair Arbitrator (chosen by the two Arbitrators):

PEN BUNCHHEA

DISPUTING PARTIES

1- Employer Party

Name : **Bright Sky Pte Ltd.**

Address : Street Veng Sreng, Sangkat Chaom Chau, Khan Dangkor, Phnom Penh

Telephone : 023 424 135/012 827 755 Fax: 023 995 396

Employer Representatives:

1. Mr. Tan Poh San General Manager of the factory;
2. Mr. Joseph Ang Administrative and Human Resources Manager;
3. Ms. Adeline Chua Office Manager; and
4. Mr. Sry Kim You Lawyer.

2- Worker party

Name : **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union in Bright Sky Factory**

Address : Tropaing Thling, Sangkat Chaom Chau, Khan Dangkor, Phnom Penh

Telephone : 011 622 963 Fax: N/A

Worker Representatives:

- | | |
|-----------------------|--|
| 1. Mr. May Vathana | Official of KYFTU; |
| 2. Mr. Chhreang Touch | President of KYTU in Bright Sky Factory; |
| 3. Mr. Him Suy | Chief of the Quality Control Unit; |
| 4. Mr. Mean Sakada | Chief of the Finishing Unit; |
| 5. Mr. Eng Sokny | Chief of the Finishing Unit; |
| 6. Ms. Tat Sok Yeng | Chief of the Finishing Unit; |
| 7. Ms. Em Sopheap | Chief of the Sewing Unit; and |
| 8. Mr. Cheng Sina | Chief of the Cutting Unit. |

ISSUE IN DISPUTE

(In the non-conciliation report)

The day-shift workers demand that the company swap their work shift with those employees working the night-shift. The company would agree to the demand if the workers in both shifts agree to have their work swapped.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).

An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report 980/06 was submitted to the Secretariat of the Arbitration Council on 13 July 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL:

Place of Hearing : **The Arbitration Council**, Phnom Penh Centre, Building A,
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh.

Date of the Hearing : 24 July 2006 (from 14:00 p.m. to 15:30 p.m.)

Procedural Issues:

Having received the complaint from the workers on 30 June 2006 which demanded that the company swap their work shift, the Department of Labour Disputes designated its expert official to settle and conciliate the collective labour dispute, but the issue was not conciliated [at that time]. The non-conciliated issue was referred to the Arbitration Council on

13 July 2006. Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing on 24 July 2006 at 2:00 p.m.

Both parties were present at the hearing called by the Arbitration Council. The Arbitration Council made a further attempt to conciliate the unresolved issue, which has been forwarded to the Arbitration Council for settlement, but the issue remained unresolved. Therefore, the Arbitration Council considers only this unresolved issue on the basis of the evidence and the findings of fact as follows:

EVIDENCE

Witness and experts besides the parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 - 1- The company's Internal Work Rules, registration No. 038 issued on 31 June 2006 by Mr. Ing Khemera, Director of the Department of Labour Inspection;
 - 2- Labour contracts of three day-shift and night-shift workers in Bright Sky Factory.
- b. Provided by the worker party:
 - 1- Registration License No. 847 of the Khmer Youth Trade Union in Bright Sky Factory, issued on 18 November 2005;
 - 2- Statute No. 847 of the Khmer Youth Trade Union in Bright Sky Factory, issued on 18 November 2005.
- c. Provided by the Ministry of Labour and Vocational Training:
 - 1- Report 980 on the collective labour dispute at Bright Sky issued on 14 July 2006 by Mr. Koy Tepdaravuth, Director of the Department of Labour Disputes;
 - 2- Minute of the collective labour dispute conciliation, dated 30 June 2006.
- d. Provided by the Secretariat of the Arbitration Council:
 - 1- Invitation No. 268 to the worker party to attend the hearing, dated 14 July 2006;
 - 2- Invitation No. 269 to the employer party to attend the hearing, dated 14 July 2006.

FACTS

Bright Sky PTE Ltd. is located on Street Veng Sreng, Sangkat Chaom Chau, Khan Dangkor, Phnom Penh and employs approximately 3,300 workers.

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

Issue 1: The workers demanded that the company swap their work shift

- The company started its operation in April 2005 and employed only day-shift workers;
- In July 2005, the company employed around 100 workers to work in the night-shift. To date, of the 3,300 workers in the factory, around 1,500 workers are working the night-shift;
- The day-shift workers demanded that the company swap their work shift every six months or once a year since night-shift workers received more benefits than those who work the day-shift. The workers want a balance of wages between the day-shift workers and the night-shift workers. The employer party stressed that from 6:00 p.m. to 10:00 p.m., night-shift workers get as much income as those who work the day-shift. Only those who work from 10:00 p.m. to 5:30 a.m., receive 200 percent of the regular wage;
- Working hours for day-shift workers are 6:00 a.m. to 11:00 a.m. and from 12:00 p.m. to 3:00 p.m. (Clause 3 of the company's Internal Work Rules);
- Only night-shift workers receive US\$0.30 each as a transportation allowance and another US\$0.23 for a meal allowance;
- To date, around 20 day-shift workers have been allowed to work the night-shift based on a procedure which requires day-shift workers to apply for a [night-shift] position when there are vacancies in the night-shift. During the hearing, the employer party claimed that the company still practices this policy. However, the worker party still demanded that the company swap their work shift;
- There are three trade unions in Bright Sky Company: the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), the Cambodian Union Federation (CUF) and the Khmer Youth Federation Trade Union (KYFTU). The Khmer Youth Federation Trade Union (KYFTU) in Bright Sky does not yet have most representative status.

REASONS FOR DECISION

Issue 1:

Article 2 of the Labour Law states that “[legal entities] ... are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously..., etc., under the supervision and direction of the

employer." In accordance with this article, the Arbitration Council finds that the management and direction of the company as well as the division of work shifts for workers, is a legal right and duty of the employer. In regards to this issue, the Arbitration Council finds that the demand from the worker party that the employer party swap their work shift is beyond what the Labour Law provides since there are no provisions in the Labour Law which requires workers to manage and direct the company. Therefore, the Arbitration Council finds that the workers' demand is a demand for interests beyond the Labour Law. It is [therefore] an interests dispute.

In regards to interests disputes, the Arbitration Council always considers whether or not the trade union that forwarded the dispute to the Arbitration Council for settlement has most representative status, because the Arbitration Council considers that most representative status of a union provides the legal capacity to negotiate a collective bargaining agreement within a factory and therefore the legal right to bring a dispute before the Arbitration Council.

In order to receive most representative status, Article 277 of the Labour Law (1997) provides that a union must be registered and meet all requirements stated in this Article (see 57/06 - *Evergreen*; 81/04 - *Evergreen and 98/04 - Great Union*).

In this case, the Arbitration Council finds that the Khmer Youth Trade Union at Bright Sky Factory does not hold most representative status in the factory. Therefore, the union does not have the legal right to make a collective bargaining agreement on behalf of all workers (see Article 96 (2B) and Clause 9 (1) of *Prakas 305*). 07/06 - Dai Young explains, "This right belongs to the registered trade union that has the majority of members and meets all the requirements stipulated in Article 277 of the Labour Law." Therefore, to be consistent with previous rulings, the Arbitration Council considers that the union does not possess the requisite legal right to represent the workers to settle a collective interests disputes for all workers in Bright Sky Factory.

Moreover, Article 43 of *Prakas 099/04* stipulates that "*An arbitral award that settles an interests disputes takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.*"

So far, the Arbitration Council considers that if the Arbitration Council issues an Award on this issue, it will become a collective bargaining agreement that applies to all workers in the company and it will therefore make other workers lose their right to strike when there is an interests dispute in the future; it will [therefore] cause unfairness to other workers (see 04/03 - *Lida Garment*, 06/04 - *Chou Sing Garment*, 24/03 - *Top One Company*, 61/04 - *Best Honour*, 62/04 - *Ecent*, 09/05 - *Kin Tai* and 48/06 - *Build Up*). In addition, to date the Arbitration Council has concluded that a union without most representative status shall not be entitled to bring an interests dispute before the Arbitration Council for settlement (see

31/03 - Hong Hwa, 60/04 - United Arts and 99/04 - AIA Garment). Therefore, the Arbitration Council declines to consider the workers' demand seeking that the company swap the employees' work shift.

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

DECISION

Decline to consider the demand of the workers that the company swap their work shift.

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 objection 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: **KAO THACH**

Signature:

Arbitrator chosen by the worker party:

Name: **SUONG SOPHAL**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature: