



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 56/08- City New Garment

Date of Award: 20 May 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: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **City New Garment Company**

Address: Sankat Srahchok, Khan Doun Penh, Phnom Penh

Telephone: 012 881 988 Fax: N/A

Representative:

- Mr. Uy Nat Administrator of the Company

Worker party:

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

Address: Sankat Srahchok, Khan Doun Penh, Phnom Penh

Telephone: 012 515 406 Fax: N/A

Representative:

1. Mr. Oung Ra Khmer Youth Federation Trade Union Officer
2. Mr. Sea Soly Khmer Youth Federation Trade Union Officer
3. Mr. Vong Borin Worker representative

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

Address: Sankat Srahchok, Khan Doun Penh, Phnom Penh

Telephone: 012 482 284

Fax: N/A

Representative:

- | | |
|----------------------|---------------------------------|
| 1. Mr. Uo Sophat | Office staff of FTUWKC |
| 2. Mr. Choeurn Sarim | President of FTUWKC at City New |
| 3. Ms. Try Phalla | Worker representative |
| 4. Mr. Kin Sodoern | Worker representative |
| 5. Ms. Sok Phalla | Worker |
| 6. Ms. Oeurn Sarat | Worker |
| 7. Ms. Phai Sotheary | Worker |
| 8. Mr. Toek Makara | Worker |
| 9. Mr. Phan Sophat | Worker |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company provide them with benefits according to the Labour Law when the company moves from the old location to new location. The Company does not agree to the workers' demand, stating that it has been providing transportation by automobile for a period of three-month or providing US\$ 5 transportation allowance per month to the workers who used their own vehicle for a period of three-month. The Company adds that in early March 2008, the Company made a notification that in June 2008 the Company would move to a new location located in Preksomrong Village, Takhmao District, Kandal province, 15 kilometers away from Phnom Penh, and it would maintain employment structures, employment seniority and position of the workers.

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 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 22 April 2008 was unsuccessful, and the non-conciliation report No. 466 K.B/AK/V.K was submitted to the Secretariat of the Arbitration Council on 22 April 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: 30 April 2008 at 2:00 p.m. to 4:00 p.m.

Procedural issues:

The non-conciliation report of the Department of Labour Dispute of the Ministry of Labour, sent to the Arbitration Council on 22 April 2008, stated that on 25 March 2008 the Department of Labour Dispute received a claim by phone about a strike of workers demanding that the Company pay their perquisites in accordance with the Labour Law in case that the Company changed its location or closed the business. After receiving this information the Department of Labour Dispute assigned its official to conciliate this case and the final conciliation was conducted on 7 April 2008. However, the conciliation could not settle the dispute. The non-conciliation report was sent to the Secretariat of the Arbitration Council on 22 April 2008.

Upon receiving the case, the Secretariat of the Arbitration Council invited the employer and workers to select the Arbitrators in furtherance of the proceedings. Each party selected an Arbitrator in their list and the Arbitration Panel was formed on 23 April 2008. On 23 April 2008 the Arbitration Council received information about the continuation of the strike from the workers, employer and the Ministry of Labor and Vocational Training. On the same date, the Arbitration Panel in the case issued an interim order to stop the strike and order the workers back to work and the employer to allow those workers to work on 24 April 2008.

On 25 April 2008, the Arbitration Council received the information from the Secretariat of the Arbitration Council that the workers and employer reported that the strike still continued. Therefore, the Arbitration Council through the Secretariat of the Arbitration Council invited both parties to the pre-hearing session in order to ask for information and provide an explanation about the proceedings of the Arbitration Council on 30 April 2008 at 2 p.m. Both parties were present at the pre-hearing session.

On 30 April 2008 the Arbitration Council asked about the situation of the strike at the pre-hearing session. The workers clarified that they tried to follow the interim order of the Arbitration Council dated on 23 April 2008; however, the employer did not allow them to go to work. On the other hand, the employer placed the condition on the workers that the Company would only accept striking workers back to work if the worker signed a contract stipulating that the last strike was an illegal strike and promising that next time if the workers want to go on strike, they must follow the lawful procedures.

After listening to both parties, the Arbitration Council tried to persuade both parties to try to find middle ground in order to settle the issue of allowing the workers to go back to

work, otherwise, the arbitral proceedings could not move forward due to the provisions in the Labour Law requiring all parties to the dispute to remain peaceful throughout the arbitral proceedings, which means that the workers party must stop striking and the employer must not conduct a lock out. In case the parties do not follow the interim order by the Arbitration Council, the Arbitration Council may decide to discontinue the proceedings.

The worker party requested to bring the conditions that the company proposed for discussion with [the union] federation as well as the workers and would provide an update to the Arbitration Council on 2 May 2008.

On 2 May 2008 the Secretariat of the Arbitration Council was informed by the worker party that the strike still continued because the workers refused to accept the conditions imposed by the employer which required each individual worker to sign a contract stating that the previous strike was illegal and promising to comply with the procedures in the law to go on strike next time. Furthermore, the Union also provided the documents to the Secretariat of the Arbitration Council in order to let the Arbitration Council consider this case. The Arbitration Council told the Secretariat of the Arbitration Council to inform the worker party that the Arbitration Council could not accept any evidence because the arbitral proceedings could not proceed. On 2 May 2008 the Secretariat of the Arbitration Council also received the information from the employer that the Company would not let the workers who went on strike to come back to work unless they signed the contract mentioned above. After receiving the information from both parties, the Arbitration Council directed the Secretariat of the Arbitration Council to inform the parties to negotiate with each other and find a way to settle this issue in order to let the workers go back to work and allow the proceedings of the Arbitration Council to move forward. Otherwise, the Arbitration Council would consider discontinuing its proceedings as the law required both parties to remain peaceful during the Arbitration procedure.

On 8 May 2008 the Secretariat of the Arbitration Council received the information from the workers and employer that the situation at the factory changed because the workers and the employer agreed that the workers who did not agree to move to the new location should be paid instead. On the same date the employer stated that the Company made payments to the workers starting 5 May 2008 and planned to finish the payments by 12 May 2008. However, the workers stated that it was true that payments were made to workers who did not agree to move to the new location but it was not clear how many workers received the payment or the number of workers who did not receive their payment. In addition to this the workers stated that they would inform the Secretariat of the Arbitration Council on Monday 12 May 2008 whether [they would agree to an extension of] the arbitral proceedings or withdraw the claims.

On 12 May 2008 the Company stated that it had already made payments to the workers. However, the representatives of Free Trade Union of Workers of Kingdom of Cambodia and representatives of Khmer Youth Federation Trade Union stated that they were not clear about the number of workers who received the payments and who did not receive the payments yet. Therefore, they requested to delay informing the Secretariat of the Arbitration Council until 16 May 2008.

On 16 May 2008 the Free Trade Union of Workers of the Kingdom of Cambodia informed the Secretariat of the Arbitration Council that [they] were requesting the Arbitration Council to close this Case. The Company also requested the Arbitration Council to close this Case too. However, the Khmer Youth Federation Trade Union claimed that there were three or four more workers that had not received payments yet. Therefore, they requested to delay informing the Secretariat of the Arbitration Council until 20 May 2008.

On 20 May 2008 the Khmer Youth Federation Trade Union representative informed the Secretariat of the Arbitration Council that [they also] requested the Arbitration Council to close this Case.

Base on the above incidents the Arbitration Council considers as follow:

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party: N/A

B. Provided by the worker party:

1. Thumbprints of the workers who went to work that the security guards closed the gate preventing them from going to their workplace.
2. The contract of the Company about termination of any worker must be informed to the president of the union 7 days in advance.

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

1. Collective labour dispute settlement at City New report No. 466 KB/AK/VK. dated 22 April 2008
2. Collective labour dispute settlement at City New record dated 7 April 2008

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation letter to the workers to provide information No. 273 KB/AK/VK/LKA. dated 28 April 2008
2. Invitation letter to the employer to provide information No. 272 KB/AK/VK/LKA. dated 28 April 2008
3. Interim order of the Arbitration Council No. 005 KBA. dated 23 April 2008
4. The record of notification to Mr. Uor Sophat Free Trade Union of Workers of the Kingdom of Cambodia Officer dated 16 May 2008

5. The record of notification to Mr. Uy Nat City New Administrator dated 16 May 2008
6. The record of notification to Mr. Hong Soriya Khmer Youth Federation Trade Union Officer dated 16 May 2008
7. The record of notification to Mr. Hong Soriya Khmer Youth Federation Trade Union Officer dated 20 May 2008

FACTS

- City New Company is located at Sangkat Srah Chok, Khan Doun Penh, Phnom Penh. There were 927 workers involved in this claim and there were two unions, Khmer Youth Trade Union at City New Garment Factory and Free Trade Union of Workers of the Kingdom of Cambodia at the Factory.
- 200 workers joined the strike related to payment of severance pay when the Company moved to a new location.
- The Arbitration Council issued an interim order to stop actions that aggravated the situation before the Arbitration Council considered this dispute.
- Base on the issues discussed in the procedural issues the workers decided to choose payments for those workers who did not agree to move to the new location and both parties requested the Arbitration Council to close this Case.

REASONS FOR DECISION

In this Case the Arbitration Council decides to close Case No. 56/08-City New Garment based on the reasons as below:

In accordance with the Arbitration Council's Procedural Rule, [per] Clause 31 of Prakas 099 on the Arbitration Council dated 21 April 2004, Rule 4: the Arbitration Procedural Rule 4.10 "*Settlement through conciliation is always the desirable option and the parties at all times retain the right to settle on their own terms including during the course of the arbitration.*"

In this Case according to the above facts both parties in the dispute have settled their dispute already.

Furthermore based on legal principles, the complainant withdrew the claim, so the subject matter of the dispute no longer exists.

In this Case both parties reached an agreement. Therefore, there is no dispute for the Arbitration Council consider. Hence the Arbitration Council decides to close this Case. (See *Arbitral Award No. 20/07- Star Knitting*)

Therefore, in order to follow the legal principle and previous arbitral awards of the Arbitration Council, the Arbitration Council decides to close the Case No. 56/08-City New Garment.

Based on the above reasons the Arbitration Council makes its decision as follows:

DECISION

- Close the Case 56/08-City New Garment

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: