

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 58/06-Wilson

Date of Award: 09 August 2006

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: **Ann Vireak**

Chair Arbitrator (chosen by the two Arbitrators): **Tan Try**

DISPUTING PARTIES

Employer party:

Name: **Wilson Garment (Cambodia) Co., Ltd.** (Wilson Company)

Address: Prektea Village, Sangkat Chaom Chao, Khan Dangkor, Phnom Penh.

Telephone: 023 890 250/ 023 890 285 Fax: 023 890 185

Representative:

- 1- Mr. Cheav Tola Lawyer
- 2- Mr. Long Phally Human Resources Manager

Worker party:

Name: **Democratic Thormea Union of Wilson-DTUW**

Address: No. 07, New Market Prekleap, Sangkat Prekleap, Khan Reussey Keo, Phnom Penh.

Telephone: 012 941 662

Representative:

- 1. Mr. Ngoun Bunnarith Vice President of DTUW
- 2. Mr. Dos Sith President of Local DTUW at Wilson Factory
- 3. Mr. Pen Tola Vice president of Local DTUW at Wilson Factory
- 4. Mr. Chim Sophal Secretary General of Local DTUW at Wilson Factory
- 5. Mr. Mao Ramorn Deputy Secretary General of Local DTUW at Wilson Factory
- 6. Mr. Khim Sothy Advisor of Local DTUW at Wilson Factory

ISSUES IN DISPUTE

(BASED ON THE NON-CONCILIATION REPORT)

- 1- The workers demand the company to dismiss Mr. Andy Fong and Ms. Ying because they have bad attitude and use impolite words with them. The company rejects the demand because both of them will improve their attitude.
- 2- The workers demand the company to retain wages and attendance bonus during the strike which lasted for 2 and a half day (11-13 July 2006). The company rejects the demand and preferred to follow article 332 of Labour Law.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Articles 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 the Arbitration Council No. 099 dated 11 May 2006 (Fourth 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.1025 dated 20 July 2006 was submitted to the Secretariat of the Arbitration Council on 20 July 2006.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, Phnom Penh Center, Bldg A, Sangkat Tonle Bassac, Khan Chamkar Morn, Phnom Penh.

Date of hearing: 28 July 2006 (8:00-12:30 P.M)

Procedural issues:

On 11 July 2006, the Department of Labour Disputes received a complaint through the phone from workers of Wilson Factory who demanded the company to improve working according to the Labour Law. After receiving the complaint, the Department assigned an officer to conciliate the dispute at the factory. As a result, 13 issues were conciliated and two were not.

On 20 July 2006 the Secretariat of the Arbitration Council received the case and non-conciliation report No. 1025 dated 20 July 2006 of the Chief of the Department of Labour Disputes. After receiving this case, the Secretariat of the Arbitration Council summoned the employer party and the local union at the factory and workers to attend the hearing and conciliate on the two non-conciliated issues on 28 July 2006 at 08:00 a.m. Both parties were

present at the hearing as summoned by the Arbitration Council. On the hearing day, the Arbitration Council tried to suggest further conciliation but was not successful on any point.

Thus in this Award the Arbitration Council will consider these two non-conciliation points based on evidence and findings of fact as follow:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter No. 2196 issued on 29 July 1999 by the Ministry of Commerce about the commercial registration and recognition of legal personality of Wilson Garment (Cambodia) Co. Ltd.
- Statute and memorandum of Wilson Garment (Cambodia) Co. Ltd Company, registered on 25 May 1999.
- Internal work rules of Wilson Garment (Cambodia) Co. Ltd Company, registration No. 168, dated 07 November 2002.
- Verdict according to request dated 13 July 2006 by the Municipal Court.
- Minute of 6 conciliation issues between the managing board of the company and working committee of Local DTUW at Wilson Factory dated 06 July 2006.
- Notification (no date) about the notification to workers of the company that on 12 July 2006 at 7.00 a.m. the company would open the door for workers normally and, in case those workers do not come to work, the company would consider those workers to have committed serious misconduct.
- Statement No. 2074/06 CILF by Cheav Tola, lawyer, to the Secretariat of the Arbitration Council.
- Letter to give power of attorney to Mr. Cheav Tola, dated 25 July 2006.

Provided by the worker party:

- Letter of recognition of the union leaders and legal registration of the of Local DTUW at Wilson Factory No. 236 dated 29 September 2004 by the Ministry of Labour and Vocational Training.
- Certificate of registration of Local DTUW at Wilson Factory dated 29 September 2004.
- Statute of Local DTUW at Wilson Factory, registered on 29 September 2004.
- Letter by Local DTUW at Wilson Factory, dated 26 July 2006, reporting about the labour dispute at Wilson Factory.

- Thumbprints of 326 workers to confirm that the two minutes pause of work on 13 March 2006 was voluntary, without coercion or command from leaders of the union.

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

- The letter No: 912 dated 31 July 2006 of the Minister of the Ministry of Labour and Vocational Training on the request for the resolution of the dispute at Wilson factory.
- Letter No. 1025 by Mr. Koy Tepdaravuth, head of the Department of Labour Dispute about the resolution of the collective dispute at Wilson factory.
- Minute of collective labour dispute conciliation at Wilson Factory dated 13 July 2006.

Provided by the Secretariat of the Arbitration Council:

- Letter of invitation to the worker party to attend the hearing No: 274 L.K.A. dated 24 July 2006
- Letter of invitation to the employer party to attend the hearing no: 275 L.K.A. dated 20 March 2006.

FACTS

- After having examined documents submitted by the parties to the Arbitration Council
- After having examined the report on the conciliation of the collective labour dispute
- After having listened to statements of workers and employers parties

The Arbitration Council finds that:

- Wilson Company is located in Prey Tea Village, Sangkat Chaom Chao, Khan Dangkor, Phnom Penh. It employs 1,113 workers.

- Mr. Andy Fong is the Senior Manager who was assigned by the main company in Hong Kong to manage and reform the management system of Wilson factory in Cambodia about one month ago to the hearing day. Ms. Ying is the supervisor of Production Section of Wilson Company.

- On 06 June 2006, the management board of the company and the working committee of Local DTUW at Wilson Factory agreed on 6 points of working conditions raised by the union.

- Both employer party and worker party accept that all workers were on strike for two and a half days, i.e., from 11:00 a.m. on 11 July 2006 to 2:30 p.m. on 13 July 2006. During the strike, the workers demanded the company to dismiss Mr. Andy Fong and Ms. Ying because they had a bad attitude, used unethical words and changed the past practices in the company.

- The workers party agreed that they did not give prior notice to the company and MoLVT about the strike because they were very angry and the strike started immediately.

- The company posted a notification (on 11 July 2006) to call on the workers to go back to work as usual from 7:00 to 7:30 a.m. of 12 July 2006. If any worker did not go back to work, the company would consider that they committed serious misconduct. Then the company closed the gate (at 7:30 a.m. of 12 July 2006), because workers did not return to work after the time set in the notification.

- The municipal court issued a verdict dated 13 July 2006, to order the workers to go back to work in Wilson Factory within 48 hours based on the requesting letter from Mr. Cheav Tola, company's lawyer, dated 12 July 2006.

- Workers went back to work as normal on 14 July 2006.

- On 11 July 2006, during the strike, workers requested the company to dismiss Mr. Andy Fong and Ms. Ying. On 13 July 2006 the workers proposed 14 other points which, they claimed, were the fault of Mr. Andy Fong and Ms. Ying and the reasons for their demand to dismiss the two managers (attached to the report on collective labour dispute resolution of Wilson Factory dated 18 July 2006 by the head of Department of Labour Disputes).

- On 13 July 2006 the workers and employers parties reached agreement on 13 points requested by the workers. Yet, they did not reach an agreement with the condition relating to Mr. Andy Fong's and Ms. Ying's dismissal.

- The employer party acknowledged that some of the points raised by the worker party used to be practiced and were allowed to be practiced without being prohibited by the former manager such as the company playing the tape for workers during working hours.

- The director of the company agrees to improve the bad attitude towards workers.

- In the hearing, the company agreed that Mr. Andy Fong and Ms. Ying should improve their attitude with the workers and the main company in Hong Kong would order them to change the attitude if they really had such bad attitudes as the workers' claim.

REASONS FOR DECISION

Issue 1:

The workers demanded the company to dismiss Mr. Andy Fong and Ms. Ying because they had bad attitudes and used impolite words with workers.

Article 65 of Labour Law reads that “A labor contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties”.

Article 22 of Decree 38 on contract and liability outside the contracts reads “The contract is considered as the law between the parties. It can be changed only when there is a consent of both parties. It has the influence to only the parties”.

Based on the above provisions, the Arbitration Council understands that only the contracting parties can dissolve or terminate this labour contract.

In the past cases, the Arbitration Council found that “The workers do not have the right to order or demand the employer to dismiss any worker. They could do this only when they had evidence to prove that that worker is dangerous and cannot be kept in that company; keeping that worker can be harmful to any particular work safety in that company”. (See 73/04 and 87/04)

In addition, in case 73/04, the Arbitration Council found that even if that worker had committed serious misconduct as stated in Article 83 of the Labour Law, the Labour Law does not require that the employer is obligated to dismiss that worker. On the contrary, the Labour Law only gives the employer the right to dismiss that worker. In that same case, the Arbitration Council made a conclusion that there was not sufficient legal basis for the Arbitration Council to order the employer to dismiss any worker even the Arbitration Council finds that the dispute between the worker and the manager whom the other workers demanded the company to dismiss, could cause hazards to the work safety.

In this case, the worker party alleged that Mr. Andy made a new order to the workers without consultation with the union and changed past practices such as playing tapes during working hours, closing the door linking one building to another, ordering the workers to wear uniforms on Saturday and other matters which have been submitted to the Arbitration Council as evidence. For Ms. Ying, she blamed the workers for chatting before the working time. But in the hearing, the company confirmed that Mr. Andy Fong promised that he would improve his attitude. And if he does not improve it, the company would warn him. The same thing goes for Ms. Ying. For the 14 points that the workers raised relating to the attitude of the two people and in the evidence submitted to the Arbitration Council, parties had already made an agreement.

The Arbitration Council finds that the reasons to demand the company to dismiss Mr. Andy Fong and Ms. Ying were solved and that they are no longer the reasons to demand the company to dismiss Mr. Andy Fong and Ms. Ying.

Issue 2:

The workers demanded the company to retain wages and attendance bonus during the 2 and a half day strike (11-13 July 2006).

Article 318 of LL reads that “A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work.”

Based on the facts and testimonies of the parties in the hearing, all workers in Wilson Factory suspended work for 2 and a half days starting from 11:00 a.m. of 11 July to 2:30 P.M of 13 July 2006. The reason for the strike was that the workers demanded the company to dismiss two management persons of the company: Mr. Andy Fong and Ms. Ying, because they had bad attitudes, used impolite words and changed the past practices in this company. On 13 July 2006, the workers raised Mr. Andy’s fault and 14 reasons to demand the company to dismiss the two persons. The Arbitration Council considers that the complete stoppage of work for 2 and a half days was a strike under the content of Article 318.

Article 332 reads that “A strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid...”

Based on the meaning of this Article the Arbitration Council finds that the workers cannot received the wages during this 2 and a half days strike whether the strike was legal or illegal. However, according to Article 334 of the Labour Law, if the strike followed the legal procedures and the workers had evidence to prove that the company had recruited new workers to replace old ones during this strike, the worker could get the wages during this strike. But there was no such the thing that happened.

For the demand to retain the attendance bonus, Article 3 of Notification 017 dated 2001 reads “Any worker who has worked regularly for one whole month shall get the attendance bonus of US\$5 per month”.

In past cases, the Arbitration Council has found that if the workers were on a strike which followed the legal procedures as determined in the Labourt Law, the employer cannot deduct the entire attendance bonus. As such, the employer could deduct only the part of the attendance bonus for the days that the workers did not work (case 04/03). In this case, the Arbitration Council reviews if the strike which lasted for 2 and a half days followed the legal procedures.

Based on the facts, the Arbitration Council found that the workers did not give prior notice to the employer and MoLVT about this strike because they were very angry with the company and then began striking immediately. The immediate strike, starting from 11:00 a.m. of 11 July to

2:30 p.m. of 13 July 2006, were in violation of the provisions about the procedures determined in Chapter 13 of the Labour Law, Articles 323 to 327. Thus this strike did not follow the legal procedure for a strike. Therefore, based on the above legal basis the Arbitration Council finds that the employer party has the right not to provide the entire attendance bonus to the workers.

Based on the facts, law and reasons presented above, the Arbitration Council decides:

Decision

- 1- Reject the workers' demand to require Wilson Factory to dismiss Mr. Andy Fong and Ms. Ying.
- 2- Reject the worker's demand which to require the company to retain wages and attendance bonus during strike which lasted for 2-and-a-half days starting from 11 to 13 July 2006.

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 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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Tan Try**

Signature: