



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 58/07- 8 Star Sportswear**

**Date of Award: 19 July 2007**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by 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: **8 Star Sportswear Ltd.**

Address: Phum Russey, Sangkat Steougn Mean Chey, Khan Mean Chey, Phnom Penh.

Telephone: 023 424 206/012 696 152

Fax: 023 424 205

Representative:

- Mr. Oeung Suy Tech                      Head of Administrative Department

##### **Worker party:**

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

Address: Building No. 34, Street 265, Phum 13, Sangkat Toeuk Laak III, Khan Toul Kork,

Phnom Penh.

Telephone: 012 940 548

Fax: N/A

Representative:

- Ms. Sear Sorn                                  Officer of KYFTU
- Mr. Sear Sokly                                 Officer of KYFTU
- Mr. Choun Sovantha                         Officer of KYFTU
- Mr. Penh Sophal                              Officer of KYFTU
- Ms. Butt Phalla                                President of KYFTU in 8 Star Sportswear
- Ms. Lor Sotheareth                          Vice-president of KYFTU in 8 Star Sportswear

- Ms. Seng Putheavy Secretary of KYFTU in 8 Star Sportswear

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. Workers demand the company to give full 100% wages when the company has no work for them to perform. The company cannot provide as requested.
2. Workers demand the company to provide an interpreter at every group, because currently whenever there is problem there are not enough interpreters as needed by the workers. The company cannot grant this demand because the company does not have a budget for many interpreters but the company can manage to have an interpreter on time based on actual needs.

### **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. 576 KB dated 26 June 2007 was sent to the Secretariat of the Arbitration Council on 28 June 2007.*

### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:** 05 July 2007 (8:00am to 11:30am)

**Procedural issues:**

On 08 May 2007 the Department of Labour Disputes received a complaint from workers of 8 Star Sportswear demanding the employer to improve working conditions. Upon receipt of this complaint, 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 13 June 2007 with seven (7) issues out of nine (9) issues conciliated. The remaining two (2) non-conciliated issues were sent to the Secretariat of the Arbitration Council on 28 June 2007.

After receiving the case, the Secretariat of the Arbitration Council invited the employer and worker parties to attend the hearing on 05 July 2007 at 8:00 am. Both parties were present as requested.

At the hearing day, the Arbitration Council attempted to further conciliate the 2 non-conciliation issues as stated in the non-conciliation report of the Labour Disputes Department. As a result, the second issue was successfully conciliated.

Therefore, in this Award, the Arbitration Council will arbitrate only on the first 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:

- Internal Work Rules of company with registration No. 047 KKBV dated 03 May 2007.
- Letter Asking for Discussion with KYFTU with 8 Star Sportswear dated 02 May 2007.
- Minute on collective labour dispute resolution dated 13 June 2007.
- Authorized letter of 8 Star Sportswear delegated to Mr. Oeung Suy Tech dated 28 May 2007.

Provided by the worker party:

- Receipt on KYFTU in 8 Star Sportswear registration dated 28 May 2007.
- Statute of KYFTU.
- Minute on conciliation of collective labour dispute dated 13 June 2007.

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

- Report No. 576 KB of Head of Labour Dispute Department dated 26 June 2007.
- Minute of the collective labour dispute conciliation dated 13 June 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation to the hearing for the workers, No. 246 KB dated 29 June 2007.
- Invitation to the hearing for employers, No. 245 KB dated 29 June 2007.

## **FACTS**

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

**The Arbitration Council finds that:**

- The 8 Star Sportswear is located in Phum Russey, Sangkat Steougn Mean Chey, Khan Mean Chey, Phnom Penh with approximately 900 workers. Based on the conciliation report dated 13 March 2007 there are 250 complainants. But by the workers name list with thumbprints make demand in this case 58/04-8 Star Sportswear there are 277 workers making the demand in this case.
- KYFTU does not have a certificate of union registration. The union only received a receipt for registration dated 28 May 2007 from Ministry of Labour.

**Issue 1: Workers demand company to provide 100% wages to workers in case the company does not have work for them to perform.**

- The worker party and employer indicate that from December 2006 till May 2007, there were only 4 periods of no work, which were only 1, 2 or 3 days each time.
- The employer has never submitted such work suspensions to be under the control of the Labour Inspector, however during that period 50% of wages are provided to the workers.
- Worker party does not make their demand for the past periods.
- Workers demand the company to give 100% wages in case of having no work in the future as it is a serious misconduct of the employer in not giving job for workers in accordance with Article 83 of Labour Law.
- The employer party does not agree with this on the ground that they already provide 50% wages to workers, plus, during that period workers do not perform any work. The employer stated that it is not the employer who does not provide work rather the main issue is that the company has no work for workers because goods are delivered late, in addition, there are not purchase orders from the buyers.
- The employer and workers party stated that the Internal Work Rules and labour contracts do not stipulate about work suspensions and there is no agreement made on this point either.

**REASONS FOR DECISION**

**Issue 1: Workers demand company to provide 100% wage in case that company has no work for them.**

Article 71, point 11 of Labour Law provides that *“The labour contract shall be suspended under the following reasons:*

11) *When the enterprise faces a serious economics or material difficulty or any particular unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months. This suspension shall be under the control of the labour inspector. ’*

Based on the above Article, the Arbitration Council finds that Labour Law has a clear stipulation about the direct cause for work suspensions of an enterprise or company which is based on a serious economic or material difficulty or any particularly unusual difficulty of the company.

According to the given facts, the work suspensions of 8 Star Sportswear are related economic difficulty of the company such as lacking of purchase orders from buyers and late delivery of transportation companies. The Arbitration Council understands that the difficulty, whether material or economic, is a permissible reason for company to suspend work if the company satisfies two conditions:

- a) This work suspension is placed under the control of the labour inspector; and
- b) the suspension period does not exceed two months.

According to the above facts, the Arbitration Council finds that the work suspensions of the company were not placed under the control of labour inspector so condition a) is not fulfilled. However, condition b) is satisfied as the past work suspension only lasted 2 or 3 days.

To conclude, the Arbitration Council considers that work suspension is not in line with the procedures for work suspensions as required by the Labour Law.

In the past cases concerning a work suspension that is not placed under control of the labour inspector the Arbitration Council ordered the employer to provide 100% wages to the workers, read 62/07-Y Sin (issue 4) and 92/04-C H P (issue 1).

In this case, the Arbitration Council also agrees with the decisions made in the previous cases that where the employer does not abide by the procedures for work suspension, the employer then has to provide full wage to the workers.

But here, the workers do not demand for the past backpay but only demand for a future practice; that is, demanding for full wages for periods of no work [in the future]. The Arbitration Council finds that this demand for work suspensions in the future [is about the lack of] control of labour inspectors. The Arbitration Council understands that demand of workers is a rights dispute under the Labour Law. In short, this dispute is a rights dispute set in the future.

Regarding right dispute for the future, the Arbitration Council decides not to consider the demand based on the reasons below:

In relation to demands for the future, case 10/03-Jacqsintex the Arbitration Council interpreted that *'The Arbitration Council is established to resolve labour disputes but not for resolving future problem.'*

This case, the Arbitration Council also agrees with the above explanation as no one can predict what will happen in the future whether such problem will occur or not, where it may take place and who will be affected by such problem. Similarly, in this case, the Arbitration Council cannot predict in advance whether in the future there will or will not be a work suspension at 8 Star Sportswear. And if there is such suspension, whether the employer will put it under control of labour inspector, how many workers will be suspended and how many workers will continue working in the future, read arbitral award 68/04-City New (issue 4), 36/06-Mondo Tech (issue 5).

To conclude, the Arbitration Council decides not to consider worker's demand on this point.

Nonetheless, by the above analysis the Arbitration Council finds that in the past the employer does not correctly follow procedures for work suspension as set out in the Labour Law. Clause 34 of Prakas 099 SKBY dated 21 April 2004 on Arbitration Council provides that *'Within the limitations of the Labor Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including: d) orders to cease immediately any other illegal or prohibited conduct...'*

Therefore by this Clause 34, the Arbitration Council decides to order company to immediately stop work suspensions which are not consistent with the procedures guaranteed by the Labour Law.

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

#### **DECISION**

- Decline to consider the demand of workers for the company to provide 100% wages to them when company has no work for them to do.
- Company has to promptly stop suspending work that is not in line with the procedures set out in the Labour Law.

#### **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: **ING SOTHY**

Signature: .....

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: .....