

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 59/06-Sang Woo**

**Date of Award: 8 August 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

**DISPUTING PARTIES**

**Employer party:**

Name: **Sang Woo (Cambodia) Co. Ltd**

Address: National Road 4, Thlork Village, Troprang Korng Commune, Samrong Torng District,  
Kampong Speu Province

Telephone: 012 849 266

Representative:

1. Mr. Yuon                      Director of the Company
2. Mr. Meng Sokha      Head of Administration of the Company

**Worker party:**

Name: **Khmer Youth Federation Trade Union and workers at Sang Woo Factory**

Address: #34, Street 265, Sangkat Toeuk Laak III, Khann Tuol Kork, Phnom Penh

Telephone: 011 622 963

Representative:

1. Mr. Mai Vattana              Officer of KYFTU
2. Mr. Kheng Phearun          Officer of KYFTU
3. Mr. Koy Khen                Officer of KYFTU
4. Mr. Oun Dara                Officer of KYFTU
5. Mr. Ek Saphea                Worker
6. Mr. Ing Thoeun               Worker

7. Ms. Mai Phalla	Worker
8. Ms. Moch Sivorn	Worker
9. Ms. Pang Chenda	Worker
10. Ms. Nou Srey Oun	Worker
11. Ms. Kom Sreypeo	Worker
12. Ms. Chheng Sokly	Worker
13. Ms. Kheng Touch	Worker
14. Ms. Chhorn Kannha	Worker

### **ISSUES IN DISPUTE**

(In the Non-conciliation report)

Workers demand the company to reinstate 18 workers which the company dismissed.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997) (Articles 309 to 317); the Prakas on the Arbitration Council 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators 099/06 (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 not successful, and the non-conciliation report No. 323 dated 24 July 2006 was submitted to the Secretariat of the Arbitration Council on 26 July 2006.*

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

**Place of hearing:** Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkar Morn, Phnom Penh.

**Date of hearing:** 4 August 2006 (10:00 a.m. to 10:30 a.m.)

**Procedural issues:**

Sang Woo Company is located along National Road No. 4, Thlork Village, Trotpang Korng Commune, Samrong Torng District, Kampong Speu Province. The company employs approximately 875 workers.

On 26 July 2006, the Secretariat of the Arbitration Council received case 59/06-Sang Woo and was informed that the worker party was on strike. On 28 July 2006, the Arbitration Council issued an order, ordering the workers to stop the strike and ordering the employer not to lock out and to accept all workers when they returned to work normally. On 1 August 2006, the

Arbitration Council issued a second order and added that, if the workers continued to strike or the employer continued to lockout, the Arbitration Council would not proceed with collective labour dispute settlement.

## **EVIDENCE**

**Witnesses and experts:** N/A

### **Documents, Exhibits and other evidence considered by the Arbitration Council**

#### **Provided by the employer party:**

1. Statute of Sang Woo Company, registered at the Ministry of Commerce, No. 1698 PN. NTK. BP., dated 29 November 2005.
2. Report outlining the termination of the probationary contracts of 19 workers.
3. A list of names of 213 workers whom the company had reinstated.
4. A list of names of 19 workers whom the company terminated.
5. Certificate of registration in the General System of Preferences No. 1361 PN. BAP, registration No. Inv. E. 508/GSP/MFN/2006.
6. Letter dated 31 July 2006 about the failure to attend the hearing at the Arbitration Council.
7. Probationary contracts of six workers.

#### **Provided by the worker party:**

1. Letter from 15 workers dated 1 August 2006, mentioning that they followed the order of the Arbitration Council but the company did not allow them to return to work.

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

1. Letter No: 908 K.K.B.V dated 31 July 2006 requesting the resolution of the dispute at Sang Woo (Cambodia) Co. Ltd of the Minister of Labour and Vocational Training.
2. Report on the resolution of the collective dispute at Sang Woo Company, 323 K.B.V/KSp of the Director of the Department of Labour and Vocational Training in Kampong Speu province dated 24 July 2006.
3. Report on the resolution of the collective dispute dated 21 July 2006.

#### **Provided by the Secretariat of the Arbitration Council:**

1. Letter of invitation to the worker party to attend the hearing, 284 L.K.A. dated 28 July 2006.
2. Letter of invitation to the employer party to attend the hearing, 285 L.K.A. dated 28 July 2006.
3. Letter of invitation to the employer party to attend the hearing, 288 L.K.A. dated 31 July 2006.

4. Letter of invitation to the worker party to attend the hearing, 289 L.K.A. dated 31 July 2006.
5. Arbitral order, 016 L.K.A. dated 28 July 2006
6. Arbitral order, 017 L.K.A. dated 1 August 2006

#### **REASONS FOR DECISION**

On 4 August 2006, the Arbitration Council conducted a hearing as mentioned in the second arbitral order. On the hearing date, the employer party and the worker party mentioned that there were about 40 workers who did not return to work or were not allowed to return to work. During our inquiry process, both parties accused each other about the issues relating to these 40 workers. The worker party claimed that they did not continue the strike and that the employer did not allow them to come to work. On the other hand, the employer party argued that the company would accept all workers back to work by a selection process and that the company did not need workers who created problems for the company. For the 18 workers who were terminated, the company would not take them back.

Based on the above mentioned facts, the Arbitration Council finds that the parties continue to strike [on the part of the workers] and to lockout [on the part of the employer] because approximately 40 workers have still not returned to work voluntarily or are not allowed to return to work [by the employer].

The second arbitral order of the Arbitration Council dated 1 August 2006, clause 4, states, *“in cases where the workers continue to strike or the employer continues to lockout, the Arbitration Council will not process the collective labour dispute settlement.”* In the case, both parties continue to either strike or lockout.

Article 20 of Prakas 099/04 on the Arbitration Council stipulates, *“During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labour Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.”*

In addition, in previous arbitral orders, the Arbitration Council has interpreted this Article to mean that the Arbitration Council will not continue the arbitration process when the parties in dispute continue to strike or lockout.

For example, in [Arbitral] Award 04/04-MSI, the Arbitration Council issued an order dated 29 January 2004 in which, in paragraph 4 of the order, it is stated,

*“As the parties in dispute do not have the right to conduct a strike during the arbitration process, the Arbitration Council cannot settle or issue an award in relating to the collective labour dispute referred to the Arbitration Council. The Arbitration Council can solve this collective labour dispute only when the union and all the employees stop the strike.”*

Likewise, in [Arbitral] Award 18/04-Hotels (Cambodiana, Raffles Le Royal, Raffles Grand D'Angkor, Sun Way, Inter Continental and Sofitel Angkor), the Arbitration Council issued a second order dated 22 April 2004, in which in point 9 and point 11 of the order it is stated:

*“Point 9: From 23 April onward, all workers must stop any demonstration or any disturbance in the area of the hotels that are party to this dispute.*

*Point 11: the Arbitration Council reserves the right to end the arbitration process in cases where one party violates any point of this order.”*

In Arbitral Award 77/05-Franco Knitting Garment, the Arbitration Council issued a second order dated 24 December 2005, in which it is mentioned in point 4 that *“in cases where the worker party continues to strike, the Arbitration Council will not process the collective labour dispute resolution.”*

In Arbitral Awards 28/06-GDM, 34/06-Gold Fame, and 50/06-Genuine, the Arbitration Council issued an order to close the cases because the workers continued strike action during the Arbitration Council's legal process.

In addition, in this case, 59/06[-Sang Woo], the Arbitration Council summoned both parties to attend a first hearing on 1 August 2006 but the employer party did not attend. The employer claimed to be busy giving out wages to workers. The worker party did not come either based on the reason of being late. Because of such reasons, the Arbitration Council decided to issue a second order as mentioned above and postpone the hearing date until 4 August 2006.

In this case, the Arbitration Council finds that both parties are not willing to resolve their dispute at the Arbitration Council because the parties did not follow either order of the Arbitration Council. Therefore, in accordance with the Labour Law, Prakas 099/04 on the Arbitration Council and previous awards of the Arbitration Council, the Arbitration Council decides not to continue the arbitration process in respect of this case while the workers continue to strike and the employer continues to lockout.

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

**DECISION**

- *Discontinue* the arbitration process in respect of case 59/06-Sang Woo.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....