



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 62/06 – Quicksew

Date of Award: 18 August 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Sin Kim Sean**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

1- Employer Party

Name : **Quicksew (Cambodia) Ltd.**

Address : Vatanac Industrial Park, Domnak Thom village, Sangkat Stung Meanchey,
Khan Meanchey, Phnom Penh

Telephone : 023 995 596/995 597 Fax: 023 995 595

Employer Representatives:

1. Mr. Seav Kim Chhay Administrative Manager;
2. Mr. Bil Thida Administrative Assistant.

2- Worker party

Name : **Khmer Youth Trade Union (KYTU) in Quicksew Factory**

Address : No. 34, Street 265, Sangkat Toeuk Laak III, Khan Tuol Kork, Phnom Penh

Telephone : 012 435 466 Fax: N/A

Worker Representatives:

1. Mr. Long Sophat Coordination Official of **KYFTU**;
2. Mr. Sea Son Coordination Official of **KYFTU**;
3. Mr. Nhang Sambo President of **KYTU** in **Quicksew**;
4. Mr. But Mara Vice-President of **KYTU** in **Quicksew**;

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5. Mr. Chan Dara

Secretary General of **KYTU** in **Quicksew**.

ISSUES IN DISPUTE

(In the non-conciliation report)

- 1- The workers demanded that the company reinstate Mr. Chan Dara based on the fact that Mr. Chan Dara is a Union Leader and he did not commit any misconduct. The employer party could not accept Mr. Chan Dara, because Mr. Chan Dara is a mechanic and is still in the probationary period.
- 2- The workers demanded that the company deduct the union contribution fee of 1,000 riels as the contribution from the wages of members of Khmer Youth Trade Union (KYTU) in Quicksew Factory. The employer party rejected the workers' demand.
- 3- The workers demanded that the company maintain the US\$5 attendance bonus for those who take sick leave. The employer party rejected the workers' demand.
- 4- The workers demanded that the company pay them 100 percent of the wage even when the company does not have work for them to do. The employer party agreed to pay 50 percent of the wage in case that the company does not have work for its workers for a period of one to three days; and the company would suspend the workers when it has no work for them for more than three days, in accordance to the Labour Law.
- 5- The workers demanded that the company establish another security checkpoint within the factory because workers waste a lot of time when leaving the factory. The employer party rejected the workers' demand arguing that there is no space for such establishment within the factory.
- 6- The workers demanded that the company provide food allowance of 5,000 riels to those who work overtime until morning. The employer party agreed to pay the amount stated in Notification No. 017 dated 18 July 2000.

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 No. 1056 dated 27 July 2006 was submitted to the Secretariat of the Arbitration Council on 27 July 2006.

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HEARING AND SUMMARY OF PROCEDURE BEFORE 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 : - 8 August 2006 (from 8:00 a.m. to 12:30 p.m.)
- 18 August 2006 (from 10:30 a.m. to 12:00 p.m.)

Procedural Issues:

Having received the complaint from the workers on 4 July 2006 which demanded the company comply with the working conditions in accordance to the Labour Law, the Department of Labour Disputes designated its expert official to settle and conciliate the dispute; 12 out of a total of 18 issues were successfully conciliated in the last conciliation session held on 19 July 2006. The six non-conciliated issues were submitted to the Arbitration Council on 27 July 2006.

Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing on 8 August 2006 at 8:30 a.m.

Both parties were present at the hearing summoned by the Arbitration Council. The Arbitration Council made a further attempt at conciliation, and three (Issue 3, Issue 4 and Issue 6) out of the six non-conciliated issues were conciliated. Therefore, the Arbitration Council considers only the three remaining non-conciliated issues--Issues 1, 2 and 5 based on 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- Quicksew Company's GMAC Member Certificate;
- 2- Certificate of Value Added Tax (VAT) Registration No. 603 dated 22 June 2005 from the Ministry of Finance and Economic;
- 3- Letter No. 391 dated 29 June 2006 from Khmer Youth Trade Union (KYTU) to the Director of Quicksew Factory on the request to conciliate the labour dispute of workers in Quicksew Factory;
- 4- Letter No. 392 dated 29 June 2006 from Khmer Youth Trade Union (KYTU) to the Director of the Department of Labour Disputes on the request to conciliate the labour dispute in Quicksew Factory;

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- 5- Minute on the collective labour dispute conciliation dated 19 July 2006;
 - 6- Minute on the agreement made between the company's representative and workers' representative dated 14 January 2006 on the probation period;
 - 7- Mr. Chan Dara's probationary labour contract;
 - 8- Business License MTU. 006407.2005 dated 22 June 2005;
 - 9- Quicksew Factory's Internal Wok Rules registration No. 146 dated 21 December 2005;
 - 10- Notification of Operation No. 620 dated 19 December 2005;
 - 11- Statute of Quicksew Factory;
 - 12- Letter of the Director of the company authorizing Mr. Seav Kimchay to represent the company in the labour dispute conciliation held at the Arbitration Council dated 8 August 2006;
 - 13- Contract between VIP Security Company and Quicksew Company on patrolling the factory compound;
 - 14- Am Sam Ath's probationary labour contract.
- b.** Provided by the worker party:
- 1- Letter No. 376 dated 24 June 2006 to the Director of Quicksew Factory on the notification of the election of the steering committee of Khmer Youth Trade Union (KYTU) in Quicksew Factory;
 - 2- Statute of Khmer Youth Trade Union (KYTU) at Quicksew Factory dated 24 June 2006;
 - 3- Receipt of case acceptance from the Department of Labour Disputes on the registration of Khmer Youth Trade Union in Quicksew Factory dated 2 August 2006.
- c.** Provided by the Ministry of Labour and Vocational Training:
- 1- Report No. 939 dated 3 August 2006 on the collective labour dispute conciliation in Quicksew Company of the Minister of Labour and Vocational Training;
 - 2- Report No. 1056 dated 27 July 2006 on the collective labour dispute conciliation of the Director of the Department of Labour Disputes;
 - 3- Minute of the collective labour dispute conciliation dated 19 July 2006.
- d.** Provided by the Secretariat of the Arbitration Council:
- 1- Invitation No. 292 dated 1 August 2006 to the worker party to attend the hearing;
 - 2- Invitation No. 331 dated 1 August 293 to the employer party to attend the hearing.

FACTS

Quicksew Company, located at in Domnak Thom Village, Sangkat Stung Meanchey, Khan Meanchey of Phnom Penh, and employs approximately 780 workers.

- Having examined various documents submitted to the Arbitration Council;
- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimony from both the employer party and the worker party;

The Arbitration Council finds that:

Issue 1:

- Quicksew Company started its operation in August 2005, and currently employs 780 workers.
- On 14 January 2006, the company's representative and worker delegates signed an agreement on three issues: 1- unauthorized leave, 2- pay day and 3- probationary workers.
- The company recruited Mr. Chan Dara to work for the company as a sewing machine repairman under a three-month probationary labour contract (from 1 April to 30 June 2006).
- On 23 June 2006, the leader of the Technical Team issued a letter requesting the company to dismiss Mr. Chan Dara not for misconduct committed but for poor technical skills (according to the Chinese letter), and the letter was submitted to the Administrative Manager and to the team leader.
- On 29 June 2006, the Administrative Manager submitted the letter to the Director of the factory.
- On 30 June 2006, the letter was submitted to the Logistic Unit in order to retrieve all tools from Mr. Chan Dara.
- On 24 June 2006, Khmer Youth Trade Union (KYTU) elected its steering committee in Quicksew Company as a result Mr. Chan Dara was elected as the union's Secretary.
- KYFTU did not inform the company about the election arguing that every time the union notified the company of an election, the company always banned the union from organizing the election.
- Only until 26 June 2006, Khmer Youth Trade Union sent a notification on the result of the election to the company through a security guard (the notification was accepted by the security guard with his name and signature), but the company denied having received the notification. The company party asserted that the security company has only the rights inform the company, but not the rights to accept any letter. The company party went to the security company to check the name of the security guard, but there was no such name. The employer party added that the security company

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reshuffled the security guards very often. The worker party confirmed that they went to ask the security guard and was told that the letter was left in the drawer and the guard himself did not know who had brought the letter to the company. The worker party accepted that the security company reshuffled new guards very often.

- The worker party and the employer party agreed that at 8:00 a.m. on 26 June 2006, the company invited Mr. Chan Dara to inform him about the dismissal. Therefore, even though the union asserted that it had notified the company of the result of the election on the same day, the Arbitration Council considers that the company had already dismissed Mr. Chan Dara before the notification of the result of the election was sent to the company.

Issue 2:

- The worker party demanded that the company deduct the 1,000 riels union dues as the contribution from the wages of those who are the members of Khmer Youth Trade Union. The employer party rejected the workers' demand.
- On 24 June 2006, an election was held in Dei Thmey Village, Sangkat Stung Meanchey, Khan Meanchey of Phnom Penh to elect the steering committee of Khmer Youth Trade Union in Quicksew Company.
- The statute of Khmer Youth Trade Union in Quicksew Company is dated 24 June 2006.
- Khmer Youth Trade Union in Quicksew applied for a registration certificate at the Ministry of Labour and Vocational Training on 2 August 2006 which is not yet more than two months ago. Up to the hearing date, the union has yet to receive the certificate from the Ministry.

Issue 5:

- The worker party demanded that the company establish another security checkpoint because the workers waste a lot of time when leaving the factory. If the company is unable to establish another security checkpoint, the company should let the workers leave 10 minutes early.
- The employer party rejected the demand asserting that there is no available space within the company for another security checkpoint. In this case, the employer party also accepted that it was difficult for the workers.
- The worker party claimed that from their personal observation, the workers needed from 15 to 20 minutes to leave the factory compound. The employer party argued that they took only 10 minutes.
- Before leaving the factory, the workers were required to queue in three lines.

- Clause 4 of the company's Internal Work Rules provides for the working hours and breaks as follows:
 - o 07:00 to 12:00
 - o 13:00 to 14:00
- The company rings the bell for the workers to leave at 12:00 p.m.
- After lunch, the company rings the bell 15 minutes early to alert the workers. Any worker who comes 10 minutes late (13:10), the company does not regard the worker as being late.

REASONS FOR DECISION

Issue 1:

At the hearing, the worker party claimed that the company's dismissal of Mr. Chan Dara was an act of discrimination against the union leader, while the company argued that the dismissal of Mr. Chan Dara was due to [his] poor technical skills in repairing the sewing machines. Thus, the Arbitration Council will consider each claim as follows:

- 1- Was the dismissal of Mr. Chan Dara an act of discrimination against the union leader?
- 2- Was the dismissal of Mr. Chan Dara made in accordance to the Labour Law?

1- Was the dismissal of Mr. Chan Dara an act of discrimination against the union leaders?

Article 12 of the Labour Law states, "*Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of:*

- ...;
- *membership of workers' union or the exercise of union activities;*
- ...;
- *Distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.*"

Article 279 of the Labour Law states, "*Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.*"

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According to previous Awards, the Arbitration Council determined that any worker who claimed that he or she was discriminated against because he or she joined a union, was the party to present evidence to support such claim (*See Arbitral Award 50/05-Fortune*). The Arbitral Award also decided that if there is no evidence proving that the employer party was informed about the worker's participation in a union, the worker's discrimination claim would be not considered by the Arbitration Council (*See Arbitral Award 50/05-Fortune*).

In this case, the worker party did not present any specific evidence proving that Mr. Chan Dara was dismissed due to discrimination against a union leader. Thus, the Arbitration Council finds that the employer party did not dismiss Mr. Chan Dara based upon reasons of union discrimination.

2- Was the dismissal of Mr. Chan Dara made in accordance to the Labour Law?

a. Type of Mr. Chan Dara's work

Article 68 (1) of the Labour Law states, "... *However, the probationary period cannot last longer than three months for regular employees, two months for specialised workers and one month for non-specialised workers.*"

In Arbitral Award 69/04-Common Way, the Arbitration Council determined that sewing workers were specialised workers. Similarly, in Award 53/06-Hong Mei, the Arbitration Council considered that workers in the cutting unit were specialised workers. In this dispute, the Arbitration Council considers that Mr. Chan Dara's work in Quicksew Company is a specialised work because being a sewing machine repairman requires a specialisation in repairing sewing machines; but the company signed a probationary labour contract of three months (1 April 2006 to 30 June 2006) with him. Thus, the Arbitration Council considers that signing a three-month probationary labour contract with Mr. Chan Dara does not comply with the Labour Law.

b. Type of Mr. Chan Dara's labour contract

The employer party asserted that both the employer and Mr. Chan Dara signed a labour contract which was made in accordance with the agreement on the probationary period dated 14 January 2006, stating, "*Probationary period shall be three months counting from the date the worker starts working. If during the probationary period, the worker does not perform the work in accordance to the working conditions set by the employer, the company is entitled to terminate the probationary contract without any explanation or presenting any evidence.*" The agreement between the worker party and the employer party was general and can be applied to all normal workers. However, for Mr. Chan Dara, who is a specialised mechanic and the company provided him a probationary labour contract of three months, the Arbitration Council considers that the contract is within a hierarchy which has less authority than the Labour Law because the Labour Law specifically states the duration of various types of work with different probationary period. Thus, the Arbitration Council

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considers that Mr. Chan Dara's labour contract is regarded as a specialised work with the probationary period of two months only.

In this case, only two months of Mr. Chan Dara's labour contract are [included as] the probationary period and the remaining month (of June) was no longer [counted as] the probationary period.

Article 67 (2) of the Labour Law states, "*The labour contract signed with consent for a specific duration cannot be for a period longer than two years...*" Moreover, 67(7) states, "*A contract of a fixed duration must be in writing...*"

The Arbitration Council considers that Mr. Chan Dara's labour contract was a fixed duration contract of three months which is a period less than two years and it was made in writing. Thus, the Arbitration Council considers that Mr. Chan Dara's labour contract is a fixed duration contract.

c. The procedure of Mr. Chan Dara's dismissal

Article 73 (1) of the Labour Law states, "*A labour contract of specific duration normally terminates at the specified ending date...*"

Article 73 (6) of the Labour Law provides, "*At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.*"

In this dispute, the company terminated Mr. Chan Dara's labour contract, which was a fixed duration contract made between the two parties; therefore, the Arbitration Council considers that Mr. Chan Dara is entitled to compensation as stated in Article 73.

In conclusion, the Arbitration Council decides to reject the workers' demand that the company reinstate Mr. Chan Dara and orders the company to provide compensation for the dismissal of Mr. Chan Dara according to the formula as follows:

Full wages within the 3 months of the contract x 5

100

Issue 2:

1- In accordance to the Labour Law and relevant Prakas, is an employer party obliged to deduct the union contribution fee of 1,000 riels as the contribution from the wage of the union members?

Article 129 (2) of the Labour Law states, *“However, the worker can authorise deductions of his wage for dues to the trade union to which he belongs. This authorisation must be in writing and can be revoked at any time.”*

In addition to Clause 5 of Prakas 305/01 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states, *“Any worker who belongs to a union may request in writing at least 15 days in advance that her/his union dues be withheld from her/his salary, in accordance with Article 129 of the Labor Code.”*

Based on the Law and the Prakas, an employer is required by the Law to deduct the union due, if the workers who are union members make such request (See Award 03/03 – Tong Ga, 05/03 – Top One, 62/04 – Ecent, 94/04 – Eternity Apparel, 99/04 – AIA, 16/05 – New Point World Trade Cambodia).

[] Article 281 of the Labour Law states, *“All employers are forbidden to deduct union dues from the wage of their workers and to pay the dues for them.”* In the previous Awards, the Arbitration Council determined that the content of Article 281 is interpreted as protecting workers’ rights and prohibiting employers from interfering in the union’s affairs in order to influence the union, consistent with Article 280 which states, *“Acts of interference are forbidden. In the senses of the present article, acts of interference are primarily measures tending to provoke the creation of worker organisations dominated by an employer or an employers’ organisation, or the support of worker organisations by financial or other means, on purpose to place these organisations under the control of an employer or an employers’ organisation.”*

Therefore, based on the above-mentioned law, an employer party shall deduct union dues from those who are union members and are willing to have their wages deducted for union dues.

2- In accordance to the Labour Law, does Khmer Youth Trade Union have the right to have the company deduct union contribution fees of 1,000 riels from its members?

Article 268 of the Labour Law stipulates, *“In order for their professional organisation to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labour for registration. All requests for registration shall be appended with the statement of constitution of the organisation.*

If the Ministry in Charge of Labour does not reply within two months after receipt of the registration form, the professional organisation is considered to be all ready registered...”

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The Arbitration Council finds that Khmer Youth Trade Union held an election for its steering committee in Quicksew Company in Dei Thmey Village, Sangkat Stung Meanchey, Khan Meanchey of Phnom Penh on 24 June 2006. As a result, Mr. Nhaing Sambo was elected as the President, Mr. Buth Mara as the Vice-President and Mr. Chan Dara as the Secretary. Having accepted the result, Khmer Youth Trade Union in Quicksew Company applied for a registration certificate at the Ministry of Labour and Vocational Training on 2 August 2006.

The Arbitration Council considers that from the union's application on 2 August 2006 to the hearing day on 18 August 2006, it has been only 18 days, and the union has yet to receive the registration certificate from the Ministry. Thus, the Arbitration Council decides during this transitional period that Khmer Youth Trade Union in Quicksew Company is not yet entitled to demand that the company deduct the union dues of 1,000 riels as the contribution from its members.

Issue 5:

Article 2 of the Labour Law states, "*...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. Every enterprise ... under the supervision and direction of the employer...*"

Article 138 of the Labour Law states, "*The work schedule is set by each enterprise for different jobs based on the nature of their activities and organisation of work...*"

The Arbitration Council's jurisprudence also states that setting up the work schedule is the employer's privilege (*See Award 11/05 – South Bay*).

Therefore, the Arbitration Council considers that the work schedule for the workers as well as the establishment of a security checkpoint for the workers is the employer's privilege as long as the supervision and direction is not beyond the Supervisor's or Director's rights. In this dispute, the Arbitration Council considers that the demand of the workers that the company establish an additional security checkpoint is beyond what the Law provides, because no article in the Labour Law states that workers are entitled to direct or supervise a company. Thus, the Arbitration Council considers that the workers' demand is a demand related to interests which is beyond what the Labour Law provides and it is an interests dispute.

Regarding the interests dispute, the Arbitration Council always considers whether or not the union that forwarded the dispute to the Arbitration Council for settlement has the most representative status, because the Arbitration Council considers that the most representative status of a union provides legal capacity to negotiate the collective bargaining agreement

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within a factory and legal rights to bring a dispute before the Arbitration Council (See Award 57/06 – Evergreen, 81/04 – Evergreen and 98/04 – Great Union).

In order to receive the 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.

In this case, the Arbitration Council finds that the Khmer Youth Trade Union at Quicksew Factory does not hold the most representative status in the factory. Award 07/06 - Dai Young explained, "*This right belongs to the registered trade union that has the majority members and meets all the requirements as stipulated in Article 277 of the Labour Law.*" Therefore, to be consistent with the previous rulings, the Arbitration Council considers that Khmer Youth Trade Union does not possess adequate legal rights to represent the workers to settle any collective interests dispute for all workers in Quicksew Factory.

Moreover, Article 43 of *Prakas* 099/04 stipulates that, "*An arbitral award which settles an interest dispute 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.*"

Previously, the Arbitration Council considered that if the Arbitration Council issued an Award on such disputes, the Award would become a collective bargaining agreement that applies to all workers in the company and it would result in other workers losing their right to strike when there are interests disputes in the future; this would result in unfairness to other workers (See Award 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*). Therefore, the Arbitration Council declines to consider the workers' demand that the company establish another security checkpoint.

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

ORDERS AND DECISIONS

- Issue 1:** Reject the demand of the workers that the company reinstate Mr. Chan Dara, but order the employer party to compensate for terminating Mr. Chan Dara's labour contract after this award comes into effect.
- Issue 2:** Reject the demand of the workers that the company deduct the union contribution fee of 1,000 riels from the members of Khmer Youth Trade Union.
- Issue 5:** Reject the demand of the workers that the company establish another security checkpoint.

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 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: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: