



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 63/06-F.Y.

Date of Award: 16 August 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

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

Arbitrator chosen by the worker party: **Ven Pov**

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

DISPUTING PARTIES

Employer party:

Name: F.Y. Cambodia Fashions Limited

Address: #1 A, Norodom Blvd, Sangkat Tonle Basac, Khann Chamkarmorn, Phnom Penh

Telephone: 012 724 523

Representative:

- | | |
|----------------------|-------------------------|
| - Mr. Steven Koo | Chief of Administration |
| - Mr. Prak Poranet | Administrator |
| - Ms. Theng Putheavy | Chief of Human Resource |
| - Ms. Siu Wailing | Chief of Production |

Worker party:

Name: Local CFITU at F.Y. Cambodia Fashionss Factory

Address: #250 A, Norodom Blvd, Sangkat Tonle Basac, Khann Chamkarmorn, Phnom Penh

Telephone: 012 884 057

Representative:

- | | |
|-----------------------|---|
| 1. Ms. Tep Kimvannary | Vice-head of CFITU |
| 2. Ms. Hol Mom | Head Secretariat of CFITU |
| 3. Mr. San Chamroeun | Head of Local CFITU at F.Y. Factory |
| 4. Ms. Eng Socheata | Vice- head of Local CFITU at F.Y. Factory |

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|----------------------|--|
| 5. Mr. Pho Phorst | Secretary of the Local CFITU at F.Y. Factory |
| 6. Ms. Kong Chandaly | Activist of Local CFITU at F.Y. Factory |
| 7. Mr. Nos Bophal | Lawyer |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Workers demand the Company to reinstate Mr. Yoeun Yat. The Company does not agree.
2. Workers demand the Company to provide wage and bonus for strike period. The Company does not agree because the worker conducted strike without notification to the Company.
3. Workers demand that the Company allows lunch break until 01:00 p.m. The Company keeps the practice as before.
4. Workers demand the Company not to use the period of no work as annual leave for workers. The Company party said that this matter can be solved when they make the collective bargaining agreement.
5. Workers demand the Company not to change position and working place of the head of group without reason. The Company argues that it has rights to change the head of group because it is stated in the Company's internal work rules.

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 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 hearing was unsuccessful, and the non-conciliation report No. 1058 was submitted to the Secretariat of the Arbitration Council on 27 July 2006.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council; Phnom Penh Center; Bldg. A; Sothearos Street; Tonle Bassac; Chamkarmorn, Phnom Penh.

Date of hearing: 31 July 2006 (8:00 a.m. – 12:00 p.m.)

Procedural issues:

Upon receiving worker's claim to demand the Company to implement the Labour Law properly, on 25 July 2006 the Labour Disputes Department assigned an officer to resolve and **THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.**

conciliate this collective labour dispute. 11 issues out of 16 issues were conciliated. The 5 non-conciliated issues were submitted to the Arbitration Council on 27 July 2006. After receiving the case, the Arbitration Council summoned all parties involved to a hearing on 31 July 2006 at 08:00 a.m.

Both parties were present on the hearing date and claimed that workers who were on strike returned to work on their usual shift, as normal. The Arbitration Council continued conciliation. As a result, 3 issues, i.e., Issue 1, Issue 2 and Issue 4, were conciliated. Therefore, there are two remaining issues, Issue 3 and Issue 5, which the Arbitration Council will consider based on the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Minute of the collective dispute conciliation dated 25 July 2006
- Minute of the collective dispute conciliation dated 28 October 2006
- Letter from the Chief of Labour Disputes Department to the Director of F.Y. Company, dated 15 June 2006, to order the F.Y. Garment Factory to reinstate Mr. Yoeun Yat within 15 days from the day the letter is received.
- Notification letter, dated 06 May 2006, regarding the termination of MR. Yoeun Yat
- Report from the witness dated 06 May 2006
- Reprimanding letter to Mr. Yoeun Yat dated 06 May 2006
- Reprimanding letter to Mr. Yoeun Yat dated 29 August 2005
- Reprimanding letter to Mr. Yoeun Yat dated on 11 February 2005
- Internal Work Rules of the factory, registration No. 033, dated 21 April 2003

Provided by the worker party:

- Certificate of registration, dated 07 October 2003
- Statute of the Local CFITU at F.Y. Factory, dated 17 May 2003
- Certificate of the most representative status of the Local CFITU at F.Y. Factory, dated 04 March 2004.
- Letter by the committee of the Local CFITU at F.Y. Factory, dated 26 July 2006, to the Department of Labour Disputes about recruiting workers from outside to work during the strike.
- Letter by the committee of the Local CFITU at F.Y. Factory, dated 27 July 2006, to the head of police at Khann Chamkarmorn to request for authorities force to protect workers during the strike.

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- Letter from the Chief of Labour Disputes Department to the Director of F.Y. Company, dated 15 June 2006, to order the F.Y. Garment Factory to reinstate Mr. Yoeun Yat within 15 days from the day the letter received.
- Complain letter from workers at F.Y. Factory to the head of police at Khann Chamkarmorn, dated 25 July 2006.
- Minute of the collective dispute conciliation dated 25 July 2006
- Letter by the Local CFITU at F.Y. Factory, dated 9 August 2006, to the Arbitration Council to complain about the Director of F.Y. Factory who, by terminating 15 workers from ironing section, did not follow the resolution procedures of the Arbitration Council.

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

- Letter requesting conciliation of the collective dispute of F.Y. Company (No. 938, dated 03 August 2006).
- Report of the conciliation of the collective dispute of F.Y. Company (No. 1058, dated 27 July 2006).
- Minute of conciliation of the collective labour dispute of F.Y. Company, dated 25 July 2006.

Provided by the Secretariat of the Arbitration Council:

- Order No. 015, dated 28 July 2006

FACTS

F.Y. Cambodia Fashions Limited is located at No.1A, Norodom Blvd, Group 62, Village 10, Sangkat Tonle Basac, Khann Chamkarmorn, Phnom Penh. It employs approximately 600 workers.

- After having examined the report of the collective labour dispute.
- After having listened to statements of the worker party and the employer party.
- After having reviewed additional documents.

The Arbitration Council finds that:

Issue No. 3

- F.Y. Company employs approximately 600 workers. Since its establishment, the Company implements working hours in accordance with point 3 of the Internal Work Rules registered on 21 April 2003. The normal working hours are as follows:
 - o Morning: From 7:30 to 11:30 a.m.
 - o Afternoon: From 1:00 to 5:00 p.m.
- On 24 January 2006, after a meeting with all heads of group of Building 1, the Company informed all workers at Building 1 about new working hours which would be implemented from 01 February 2006 onward:
 - o Morning: From 7:30 to 11:30 a.m.

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- Afternoon: From 12:30 to 04:30 p.m.
- The change of working hour reduced the lunch break by half an hour.
- The Company changed the working hours six months ago but did not follow the procedures to request to change to new working hours.
- The Company claims that it changed the working hours 1) to cooperate with broidery and printing companies, [such cooperation] demands that the hours correspond among the companies otherwise the other companies will start working while [FY] has not yet; 2) because it would be easier to communicate with other companies located abroad; and 3) many companies in Cambodia have only a one-hour lunch break.
- The worker party requested the company not to change to the new working hours because some workers' houses are far away, so if the lunch break is too short, it is difficult to go home. Those workers have to send their children to school, prepare lunch for the family, and they have to queue and swipe their cards when they return to work. Sometimes the card-swiping machine gets stuck so it delays them.
- Both parties accept that there is a problem with order at lunch break because workers always push each other to go out and the employer has tried to put a bar for workers to queue so that it is quicker to swipe the cards. However, the bar is short because the location is not very favorable. The worker party accepts that the location is not very favorable.

Issue No. 5

- This issue No. 5 involves only one worker, Mr. Sok Sam Orn, whom the employees requests to the Company to not change his workplace and position as the head of group without reason.
- Mr. Sok Sam Orn commenced work on 07 October 1998 as a worker in the ironing section in Building 1. Since his work commencement, the company has never changed his work.
- Mr. Sok Sam Orn's wage has been raised many times by the Company because his work is good. His wage is currently US\$ 110 per month. Mr. Sok Sam Orn claims that he is the head of group because: 1) whenever there are conflicts or disputes in the Company, the Company always invites him to join the meetings; 2) the Company asks him to observe other workers' work when he does not have much work; 3) he receives US\$ 110 per month (among workers in his section, only one other worker received US\$ 110); and 4) workers at his section consider him as their head of group.
- In the hearing, Mr. Sok Sam Orn accepted that he has not had any official letter of appointment as a head of group. He claims that he does not demand the position as the head of group, but he demands the Company not to move him to Building 2.

- The Company verbally invited him to meet and informed him that the Company moved him from Building 1 to Building 2 which are about 100 meters away from each other. The change is only a half-hour time difference, i.e., at Building 1 the time of work starts at 07:30 a.m. and at Building 2, at 07:00 a.m. Besides the above mentioned difference in time, there is no other effect to Mr. Sok Sam Orn, which means there is/was no change to wage, position, working skills, or the labour contract.

REASONS FOR DECISION

Issue No. 3:

Article 2 of the Labour Law states: "... are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously. Enterprise ... etc., 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 nature of their activities and organization of work."

The Arbitration Council's jurisprudence also determines that the work schedule is at the discretion of the employer (see Award No. 10-05-South Bay). The Arbitration Council found that the work schedule also included scheduling lunch breaks.

Therefore, the Arbitration Council considers the scheduling of working hour for workers is the exclusive right of the employer unless the organization or management is done in a manner which abuses the rights of the organizer.

The Labour Law does not specify the duration for lunch breaks. However, it is stated in the Internal Work Rules of the company dated 01 April 2003 that the duration is one and a half hours.

Article 30 of the Labour Law states: "All modifications to the internal regulations must comply with the provisions governing the enterprise or establishment."

In addition, Article 24 of the Labour Law states: "The internal regulations must be established by the manager of enterprise after consultation with workers' representatives, within three months following the opening of the enterprise, or within three months after the promulgation of this law if the enterprise already exists. Before coming into effect, the internal regulations shall be visaed by the Labour Inspector. This visa shall be issued within a period of sixty days."

Article 29 of the Labour Law states: "The internal regulations must be diffused and affixed to a suitable place that is easily accessible, on the premises where work is carried out and on the door of the premises where workers are hired."

The Arbitration Council considers that in order to create or amend an internal work rule, the three conditions must be applied (consultation with workers' representatives, visaed by the Labour Inspector, be diffused and affixed to a suitable place that is easily accessible on the premises where work is carried out and on the door of the premises where workers are hired.)

In this case in dispute, F.Y. Company gave oral instructions to the heads of groups of workers before publicizing the new working schedule. But the heads of groups were not the

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representative of workers. According to the implication of Article 24 of the Labour Law, representative of workers is a person selected by an election according to Article 283 and the subsequences Articles of the Labour Law. In addition, suggestion of the representative of workers must be in written form. Additionally, the employer has not obtained a visa from the Labour Inspector for the amended point(s).

Although the Arbitration Council finds that the decision to have a one hour lunch break is reasonable **because:** 1) the duration is not too long nor too short, 2) this duration is practiced today and the employer has fulfilled its obligation well as an organizer (by finding various ways to make the process of card-swiping go smoothly and quickly), the Arbitration Council finds that the employer is required to follow the legal procedures to change the Internal Work Rules.

The employer does not need consent from workers or the representative of workers. The Labour Law only demands that there is consultation, and that suggestions from the workers must be put in writing. Going through the labour inspector is a step which allows for a legal check. And the diffusing and affixing [of the IWR] is to allow workers to be informed [of such rules]. The Arbitration Council finds that this legal procedure is created in order to balance the unilateral right of the employer to make the internal work rules.

Changing of the internal work rules regarding the time for lunch break can be applied in F.Y. Company if the Company follows the legal procedures provided in the Labour Law and Notification No. 14 on the establishment of internal work rules of an enterprise or establishment dated 16 August 2002.

Issue No. 5

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

Common law is the law which controls all contracts. Currently, the common law which is in effect is Decree No. 38, issued on 28 October 1998.

Article 22 of this Decree states: “A contract can be adjusted if there is agreement of the parties.”

However, according to Article 2 of the Labour Law, the employer has the right to manage and direct his/her enterprise. In addition, in the Arbitral Award 20-06-New Star, Article 2 of the Labour Law gives the right to the employer to direct and supervise human resource in the Company as long as the management and direction are in conformity with the law.

In the previous cases, (case 17-03 and 18-03 – Ho Hing) the Arbitration Council considers that it is the right of the employer in directing and supervising the Company to transfer workers from one place to another under certain conditions such as: 1) no reduction of wage, 2) no transfer of worker to a faraway place, 3) no change of working time from day shift to night shift or vice versa, 4) no large change in skills.

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The Arbitration Council also considers that the changing of the work place for a reasonable distance is within the right of the employer to supervise and direct and it is not a changing of the contract which demands an agreement from the worker.

In this case, the change of work place only 100 meters distance away and with only a 30 minute time difference, does not affect the wages, position or working hours of the worker. The Arbitration Council found that such a small change does not affect individual rights which are the right of the workers receivable from the labour contract.

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

DECISION

Issue No. 3: Employer has to implement the work schedule as stated in the Internal Work Rules issued on 01 April 2003 until there is a new amendment to the Internal Work Rules made according to lawful procedures.

Issue No. 5: Reject the demand of the workers requesting the company to not change the position and workplace of the head of group without reason.

Type of Award: Non-Binding

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: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

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