



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្នា

THE ARBITRATION COUNCIL

Case number and name: 63/08 – South Bay and Golden Crown

Date of Award: 09 May 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **South Bay and Golden Crown Company**

Address: Suon Vatnak, Street Chom Chao, Khan Dangkao, Phnom Penh

Telephone: 012 395 673

Fax: N/A

Representatives:

- Mrs. Sun Kuo Hong Chief of Administration
- Mrs. Chea Lido Assistant to Administration

Worker party:

Name: **Cambodian Labour Union Federation (CLUF) and local union of Cambodian Labour Union (CLU)**

Address: Suon Vatnak, Street Chom Chao, Khan Dangkao, Phnom Penh

Telephone: 016 657 556

Fax: N/A

Representatives:

1. Mr. Khin Sokhorn Secretary General of CLUF
2. Mr. Yong Sok President of CLUF at South Bay
3. Mr. Khim Sar Vice-President of CLUF at South Bay
4. Mr. Yang Yan Secretary of CLUF at South Bay

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|---------------------|--|
| 5. Mr. Veun Thea | Adviser of CLUF at South Bay |
| 6. Mr. Keang Savuth | President of CLUF at Golden Crown |
| 7. Mr. Ann Saveun | Vice-President of CLUF at Golden Crown |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that when a worker, who has an employment contract of 6 months or more resigns from work or is terminated by the Company, the Company should pay them a termination payment and that it renew long term fixed duration contracts for casual workers.
- 2- The workers demand that the Company follow the Labour Law regarding pregnant women workers who take maternity leave, and that it reimburse Mrs. Pov Saruan, ID: 2493.
- 3- The workers demand that when a worker resigns from work the Company should not require them to give one month's prior notice and pay 45 days of wages in damages.
- 4- The workers demand that the Company maintain their wages when they take sick leave on provision of a medical certificate from a public hospital.
- 5- The workers demand that the Company follow the Labour Law and Prakas No 267 S.K.B.Y, regarding special leave and it must not deduct their annual leave and allow them to use their annual leave for personal commitments.
- 6- The workers demand that the Company arrange a proper place for worker delegates to meet once a week for 2 hours [], and maintain their wages and benefits.
- 7- The workers demand that the Company pay them US\$20 per month in lieu of formula milk for a period of 18 months, and reimburse [workers] 12,000 riel for their medical check fee.
- 8- The workers demand that the Company deduct 1,000 riel for union contribution fees from the wages of workers who have agreed to the deduction.
- 9- The workers demand that the Company follow the Labour Law and Prakas No 243 S.K.B.Y on work-related accidents, and find a solution for the worker(s) who had an accident on 05 May 2008.
- 10- The workers demand that the Company find a solution for the case of a worker named Chea Phalla who passed away on 11 March 2008 and who the Company has not paid in lieu of annual leave.
- 11- The workers demand that the Company should not deduct workers' wages in advance when they take leave for personal commitments.

- 12- The workers demand that the Company help to improve the physician's behaviour, that signature from administration should not be [required] when there is a lack of medicine, and that the Company makes it easier for workers to go coining.
- 13- The workers demand that the Company give instruction to the Chinese supervisors in the button pressing section and general checking section.
- 14- The workers demand that the Company open the [factory] gate 30 minutes earlier so that they can get some shade.

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); 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 Arbitrators No. 076 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 hearing was unsuccessful, and the non-conciliation report No.500, dated 30 April 2008, was submitted to the Secretariat of the Arbitration Council on 30 April 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of pre-hearing meeting: The Arbitration Council, Phnom Penh Centre, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh.

Date of pre-hearing meeting: 06 May 2008 (2:30pm - 3:30pm)

Procedural issues:

The South Bay and Golden Crown Company is located in Suon Vatatnak, Chom Chao Street, Khan Dangko, Phnom Penh; it employs 1,500 workers.

On 25 April 2008, the Department of Labour Disputes designated one of its officials to conciliate a collective labour dispute of 14 issues; none of which was conciliated. It is noteworthy that the conciliation session run by officer of the Department of Labour Dispute was only able to proceed with one of the 14 issues. The conciliation on the first issue was not able to be resolved because the parties were adversarial and the conciliator could not proceed with the conciliation; the parties agreed that they should not continue the negotiation for Issues 2 to 14. The non-conciliated issues were submitted to the Arbitration Council on 30 April 2008.

On 30 April 2008, the Secretariat of the Arbitration Council received a letter from the employer informing them that workers were on strike and requesting that the Arbitration Council issue an Interim Order to stop the strike. After that on 30 April 2008 the Secretariat of

the Arbitration Council invited both parties to select arbitrators from each list in order to form a panel to resolve this dispute. Both parties came personally to select an arbitrator and the panel was formed on 30 April 2008. On 02 May 2008, the Arbitration Council issued an Interim Order requiring that the workers stop the strike and return to work on 03 May 2008 in order to allow the Arbitration Council to resolve the issues in this collective dispute. However, the worker party did not return to work in accordance with the Interim Order by the Arbitration Council and continued striking.

Having received information that workers were still on strike, the Secretariat of the Arbitration Council summoned the worker party and employer party to a pre-hearing meeting on 06 May 2008. The employer party and worker party appeared at the meeting according to the invitation by the Arbitration Council. During the pre-hearing meeting, the Arbitration Council asked the parties about the strike and whether the employer permitted the workers to return to work at each section. The worker party stated that they had not returned to work and continued to strike. The employer party confirmed that the Company opened the gate to allow all workers to return to work, but workers refused to work.

After listening to the statements of both parties, the Arbitration Council requested all workers to return to work at each section and requested that the employer permit all workers to return to work so that the Arbitration Council could proceed with the arbitration process according to the Labour Law. The Arbitration Council gave both parties until 08 May 2008 to consider this request and to decide whether the parties wanted the Arbitration Council to resolve these non-conciliated issues. If both parties failed to follow this request, the Arbitration Council would discontinue the arbitration process on this issue.

As at 09 May 2008, the Secretariat of the Arbitration Council received information from both parties that the workers refused to return to work and continued striking even though the Company allowed all workers return to work. As a result, the Arbitration Council considers [this case] as follows.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party: N/A

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

1. Report No. 500 dated 30 April 2008 on the collective labour dispute settlement at South Bay and Golden Crown Company;
2. Minutes of the collective labour dispute conciliation at South Bay and Golden Crown Company dated 25 April 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 293 dated 5 May 2008 to the worker party of the South Bay and Golden Crown Company to provide information;
2. Invitation No. 292 dated 5 May 2008 to the Company Director of the South Bay and Golden Crown to provide information;
3. Interim Order of the Arbitration Council dated 2 May 2008

FACTS

There are no facts relating to the issues in the non-conciliation report, sent to the Arbitration Council by the Ministry of Labour and Vocational Training, because the hearing did not proceed.

REASONS FOR DECISION

Article 20 of PK 099 on the Arbitration Council dated 21 April 2004 states that *“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 its previous Interim Orders, the Arbitration Council has interpreted this article to mean that the Arbitration Council will not continue the arbitration process when the worker party is on strike.

The Arbitration Council finds that the previous jurisprudence about a strike conducted by the worker party during the arbitration process is as follows:

In Arbitral Award 04/04-MSI, the Arbitration Council issued a Notification dated 29 January 2004. Point 4 of this Notification stated *“Considering that the party to a labor dispute has no right to strike during the Arbitration Council process, the Council cannot resolve or issue an award on this collective labor dispute what was referred to the Council. The Council can begin to resolve this collective labor dispute again when the union and workers stop striking.”*

In Arbitral Award 77/05-Franco Knitting Garment, the Arbitration Council issued an Interim Order dated 24 Dec 2005, which stated in point 4 *“In the event the Worker Party continues the strike, the Arbitration Council will not proceed to settle the collective labour dispute.”*

In Arbitral Awards 28/06-GDM and 34/06-Gold Frame, the Arbitration Council also issued an award to close the case because workers continued striking during the arbitration process. (See Arbitral Award 97/07-Suit Way)

[] Based on the above interpretation, the Arbitration Council considers that the worker party does not show any real intention to bring their dispute to the Arbitration Council because they continue to strike and do not follow the order of the Arbitration Council.

Therefore, to be consistent with the law as well as previous Arbitral Awards of the Arbitration Council, the Arbitration Council decides to discontinue the arbitration process in this case.

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

DECISION

- Discontinue the arbitral proceeding of 63/08-South Bay and Golden Crown

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: