



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

**ក្រុមប្រឹក្សាអាជ្ញាគណ្តារ**

**THE ARBITRATION COUNCIL**

**Case number and name: 64/08-G Foremost**

**Date of Award: 26 May 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Ann Vireak**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **G Foremost Co., Ltd.**

Address: Ta Kae village, Kambol commune, Angsnoul district, Kandal, Cambodia

Telephone: 012 778 777

Fax: N/A

Representatives:

1. Mr. Yu Wen Chiang Deputy General
2. Mr. Heng Sotha Administrator
3. Miss Ly Na Interpreter

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

Name: **Democratic Trade Federation Union (DTFU) and Local Union of Democratic Trade Union (DTU) at G Foremost Co., Ltd.**

Address: Ta Kae village, Kambol commune, Angsnoul district, Kandal, Cambodia

Telephone: 012 941 662/011 755 390/012702 349

Fax: N/A

Representatives:

1. Mr. Nuon Chantha President of DTFU
2. Mr. Moeun Uy Secretary of DTFU
3. Mr. Im Dina President of local DTU at G Foremost Co., Ltd.

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|-------------------------|--|
| 4. Miss Mao Chana       | Secretary of local DTFU at G Foremost Co., Ltd |
| 5. Mr. Peng Chay Savuth | Finance of local DTFU at G Foremost Co., Ltd.  |
| 6. Mr. Uong Rath        | Finance of local DTFU at G Foremost Co., Ltd.  |
| 7. Mr. Chorn Chamreoun  | Finance of local DTFU at G Foremost Co., Ltd.  |
| 8. Miss. Yung Sorporn   | Workers representative                         |

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the overtime work should not be more than two hours. The Company party does not agree, stating that the overtime work should follow voluntary principles.
- 2- The workers demand that the Company dismiss the administration officer named Tol. The Company party does not agree to the demand.
- 3- The workers demand that the Company stop setting a target for piecework. The Company party does not agree to the demand.
- 4- The workers demand that the Company maintain the skill bonus. The Company party does not agree to the demand.

### **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.245/08 KB/KN, dated 29 April 2008, was submitted to the Secretariat of the Arbitration Council on 30 April 2008.

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

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

**Date of hearing:** 08 May 2008 (from 8:30 a.m. to 12:30 p.m.)

#### **Procedural issues:**

On 29 April 2008, the Department of Labour and Training in Kandal province conciliated 14 collective labour disputes, 10 issues were conciliated and four issues remained. The four non-conciliated issues were submitted to the Arbitration Council on 30 April 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the employee party at the company to a hearing to conciliate the four non-conciliated issues on 08 May 2008 at 8:30am. Both parties appeared before the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the four non-conciliated issues in the non-conciliation report, as a result Issue 1 and Issue 3 were conciliated. Therefore, in this case the Arbitration Council considers only Issue 2 and Issue 4 based on the evidence and statements of the parties in the hearing as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

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

1. 6 photo of workers' activities
2. Patent No. 105/2007 dated 11 May 2007
3. Certificate on VAT No.261 dated 22 May 2007
4. Company Internal Work Rule registered No. 24 January 2008
5. Minutes of the collective labour dispute conciliation dated 18 March and 29 April 2008

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

1. Registration Certificate No. 1418 dated 3 April 2008
2. Report of the collective dispute by DTFU No. 052/05/08 dated 6 May 2008
3. Status of Union Registration dated 1418 dated 3 April 2008
4. Workers' complaint about Mr. Tol on force of OT work
5. Payslip of workers Sun Phalling, My Rom, Nhep Vantha and Chorn Chamreoun

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

1. Report dated 30 April 2008 on the collective labour dispute settlement at G Foremost Company;
2. Minutes of the collective labour dispute conciliation at G Foremost Company dated 29 April 2007.

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

1. Invitation No. 295 dated 5 May 2008 to the worker party to attend the hearing;
2. Invitation No. 294 dated 5 May 2008 to the employer party to attend the hearing;
3. Interim Order of the Arbitration Council No. 007 dated 2 May 2008

## **FACTS**

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- Having reviewed evidence submitted to the Arbitration Council;
- Having examined the report on the collective labour dispute conciliation
- Having listened to the testimonies from both the employer party and the worker party

### **The Arbitration Council finds that:**

- G Foremost Factory employs approximately 813 workers.
- The claimant in this case is DTU. Based on the report of the collective labour dispute conciliation, there are 40 workers involved in this demand.
- According to the testimony of the union and the employer in the factory, there is no union with most representative status.

### **Issue 2: Workers demanded that the company dismiss administrator named Heng Sotha alias Tol**

- The workers demanded that the company dismiss Mr. Tol, administration officer, because he accepted workers' money when recruiting them. The workers stated that they made payments to Sean and Arth, who used to work at the company. Mr. Peng Chay Savuth, present at the hearing, stated that he paid money in total amount of US\$ 30 to Sean and Arth in order to be employed and [Sean and Arth] said that US\$ 10 has to be given to Tol, but they did not provide any evidence to prove that they gave money to Tol directly.
- Mr. Tol, who is an administration officer at the company and was present at the hearing, stated that he has never received money from workers during recruitment; he requested workers to provide evidence if he did receive money from workers. He added in the hearing that he has enough money and his elder sibling, the Vice Director of the company, has half of the shares in the company, so he could not perpetrate such an act.
- The employer party mentioned that Sean and Arth were dismissed because they were involved in accepting money during recruitment.
- Mr. Tol stated that the company has changed its workers recruitment to be under the charge of an administrative process. The company stopped recruiting workers through relatives as in the past.
- The workers provided relevant documents relating to certain workers' complaints in which Mr. Tol is accused of receiving money. However, the complainants did not attend the hearing.

#### **Issue 4: Workers demanded that the company maintain the skill bonus**

- The workers demanded that the company maintain the skill bonus because the company used to provide it but later the company reduced it gradually. The workers stated that the company provided a skill bonus from US\$ 1 to US\$ 20 to workers who have skills in using machines, are hard working, cooperative on overtime and infrequently absent.
- The company mentioned that it did not provide a skill bonus but a type of bonus is given to workers who have skills in using machines, are hard working, cooperative on overtime and infrequently absent. However, when starting to provide, because the company could not find any Khmer words to use that is why it used “**Skill Bonus.**” The company provided the skill bonus from US\$ 1 to US\$ 20, and sometimes it paid more than US\$ 20 if workers demonstrated good performance. The company does not deduct this bonus, rather the amount of the bonus was given based on the above requirements. Certain workers received less of the bonus because they did not fulfill all the requirements.
- The company stated that it did not issue any written document about the bonus requirements, but the company explained [such requirements] to workers when they first started at the company. The workers appeared at the hearing reiterated that the company said it was skill bonus but not bonus.
- The Arbitration Council asked workers to explain the payments they received which they considered to be the skill bonus. The workers present at the hearing explained as follows:
  - **Yung Sorphon** received a US\$ 3 bonus in the first month; US\$ 0, second month; US\$ 5, third month; US\$ 2, fourth month; US\$ 12, fifth month; US\$ 10, sixth month; and \$US 0, seven month.
  - **Peng Chay Savuth** received US\$ 0 bonus in the first month; US\$ 5, second month; and US\$ 8, third month.
  - **Im Dyna** received US\$ 0 in the first month; US\$ 0, second month; US\$ 0, third month; US\$ 6, fourth month; and US\$ 0, fifth month.
  - **Mao Channa** received US\$ 5 in the first month; US\$ 5, second month; US\$ 8, third month; US\$ 15, fourth month; and US\$ 4, fifth month.
- The company confirmed that this bonus was a bonus to encourage workers have ability to use machines, work hard, cooperate on overtime and are infrequently absent. The company would change the label which was currently used.
- The workers could not explain clearly why they considered that this bonus was a skill bonus and were not able to testify how many workers have had their bonus deducted.

- The Arbitration Council requested workers to provide payslips to the Arbitration Council by 12 May 2008.
- There were no agreements or a collective bargaining agreement between workers party and employer party.
- The company's Internal Work Rules did not mention [such bonus].

## **REASONS FOR DECISION**

### **Issue 2: Workers demanded that the company dismiss administrator Mr. Heng Sotha alias Tol**

In this case, workers demanded that the company dismiss the administrator Mr. Heng Sotha alias Tol for allegedly receiving money from workers during recruitment.

Article 65 of the Labour Law of 1997 on employment contracts states that *"A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties."* As the contract is subject to ordinary law, so Decree 38 on Contract covers this contract. Article 22 of Decree 38 on Contract and Liabilities Outside the Contract dated 28 October 1988 stipulates that, *"A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties... A contract binds only the parties to the contract."*

Based on the spirit of the Article 65 of the Labour Law of 1997 and Article 22 of Decree 38 on Contract and Liabilities Outside the Contract dated 28 October 1988, the Arbitration Council considers that only a contracting part can terminate or amend the contract. The third party cannot order or demand on behalf of contracting party unless there is consent from contracting party. It means that the employer who is a contracting party has right to hire or dismiss any workers and worker who is a contracting party also has right to decide whether he or she works for the employer or resigns from work.

In Arbitral Award 73/04-Genuine, Issue 3, the Arbitration Council stated that *"In general, the Arbitration Council finds that the employees do not have rights to demand the employer to dismiss any employees unless the employees can prove that the employee is a dangerous person who cannot be allowed in the company or factory, and that keeping the person can cause harm to the workplace. (See 04/03 - Lida, 14/03 - Chou Sing, 17/03 Ho Hing, 6/04- Chou Sing, 15/04 - Lucky Zone, 16/04 - Yada, 32/04 - Ecent, 34/04 - Full Value, and 52/04 - Sin Kam."*

But, in this case, the employee party did not show any clear evidence to prove that Mr Tol is a dangerous person, who might cause harm to the workplace, and only accused him of receiving money during recruitment.

Therefore, the Arbitration Council considers that the workers' demand does not have a legal ground. As a result, and to be consistent with previous arbitral awards, the Arbitration Council rejects this demand.

**Issue 4: Workers demanded that the company maintain the skill bonus**

In this case, the Arbitration Council finds that there are no regulations in the Labour Law stipulating about a skill bonus and there is no agreement or collective bargaining agreement in the Company about this issue.

In addition, workers cannot distinguish clearly whether the payment they received was a skill bonus or a bonus. Based on the employer's statement, this amount provided was a bonus and based on the example provided by workers above, the Arbitration Council considers that the amount provided is a bonus. The company does not deduct the bonus from workers, the company still provides it, but it is given to workers who have skills to use machines, work hard, cooperate on OT and are infrequently absent. For workers who do not receive this bonus or whose bonus is deducted, it is because they do not follow the company requirements.

In conclusion, the Arbitration Council decides to reject this demand.

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

**DECISION AND ORDER**

**Issue 2:** Reject the demand of workers that the company dismiss administrator Mr. Heng Sotha alias Tol.

**Issue 4:** Reject the demand of workers that the company maintain the skill bonus.

**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 to the Minister of Labour through the Secretariat of the Arbitration Council within this period.

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

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....