



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 67/08-Yung Min

Date of Award: 06 June 2008

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: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **Yung Min Cambodia Apparel Company**

Address: Chamka Dong St., Morl Village, Sangkat Dangkor, Khann Dangkor, Phnom Penh

Telephone: 012 942 120

Fax: N/A

Representative:

- | | |
|----------------------|------------------------|
| 1. Mr. Phuong Revit | Administration Officer |
| 2. Mr. Do Chang Pyun | Director |

Worker party:

Name: **Worker Union Federation (WUF) and local Worker Union (WU)**

Address: Chamka Dong St., Morl Village, Sangkat Dangkor, Khann Dangkor, Phnom Penh

Telephone: 012 649 577

Fax: N/A

Representative:

- | | |
|------------------------|---|
| 1. Mr. Ly Veng | President of WUF |
| 2. Mr. Chea Ratha | Officer of WUF |
| 3. Mr. Nhep Hort | President of local WU at Yung Min Company |
| 4. Mrs. Sok Sreylot | Vice-president of WU at Yung Min Company |
| 5. Mrs. Suong Sophanna | Secretary of WU at Yung Min Company |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Members of the Worker Union demand that the Company should not deduct their seniority bonus when workers are absent from work. The Company party states that when workers take leave without permission, the Company will not provide the seniority bonus.
- 2- Members of the Worker Union demand that the Company pay their termination payment within 48 hours after their resignation or termination of employment. The Company party states that it can not pay the payment within 48 hours.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B 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 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. 509 KB/AK/VK, dated 6 May 2008 was submitted to the Secretariat of the Arbitration Council on 8 May 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 26 May 2008 (From 1:30 p.m. to 3:00 p.m.)

Procedural issues:

On 20 March 2008 the Department of Labour Disputes received a complaint No. 35/08, dated 18 March 2008 from WUF regarding the demand for the Company to improve certain working conditions. Upon receipt of the complaint, the Department of Labour Disputes assigned its official to handle the dispute and the last conciliation was held on 24 April 2008 with a result that four of six issues were conciliated. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 8 May 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to the hearing and conciliation on the two non-conciliated issues on 26 May 2008 at 1:30 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, both parties requested that the Arbitration Council conduct a hearing on the two non-conciliated issues. Therefore, in this case the Arbitration Council considers the two non-conciliated issues based on the evidence and clarification 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: N/A

Provided by the worker party:

1. List of names of workers who worked for Yung Min Factory and resigned from work but the Company has not paid their wage.

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

1. Report No. 509 KB/AK/VK, dated 6 May 2008 on the collective labour dispute settlement at Yung Min Cambodia Apparel Company;
2. Minutes of the collective labour dispute conciliation at Yung Min Cambodia Apparel Company, dated 24 April 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 329 KB/AK/VK/LKA dated 20 May 2008 to invite the Company party to attend the hearing;
2. Invitation No. 330 KB/AK/VK/LKA dated 20 May 2008 to invite the worker party to attend the hearing;

FACTS

- Having examined documents submitted by the parties to the Arbitration Council;
- Having reviewed the report of collective labour dispute conciliation;
- Having listened to statements by the worker party and the employer party.

The Arbitration Council finds that:

- Yung Min factory employs a total number of approximately 890 workers.
- The claimant in this case is the WUF and local WU at Yung Min Factory. According to the worker party and the employer party, there is only one union in the factory - the

local WU at Yung Min Factory; the union has approximately 600 workers but it does not have the most representative status.

Issue 1: Members of WU demand that the Company should not deduct their seniority bonus in proportion to the number of days they take leave

- The worker party claims that in its current practice the Company deducts their seniority bonus in proportion to the number of days they are absent from work both for leave with or without permission. For example, if a worker who receives US\$ 5 seniority bonus per month was absent for two days in that month, then the Company deducts the seniority bonus by taking the US\$ 5 to divide it by 26 then multiplies it by 2 and deducts that amount. The Company does not object to the workers' statement.
- Members of WU demand that the Company should not deduct their seniority bonus when they are absent because this is an allowance provided to workers who work for the Company provided in Notification 017.
- The Company began deducting the seniority bonus from the end of 2007 because the Company faced a financial crisis. Moreover, Notification 017 does not prohibit the employer to deduct the seniority bonus. The Company states that it did not make deductions on seniority bonus from the time it started operation in 1999 until the end of 2007.
- There is no agreement regarding seniority bonus.

Issue 2: Members of WU demand that the Company pay their termination payment within 48 hours after the payday of normal workers

- The workers clarify their demand that they demand the Company pay workers who have resigned and that the Company should pay the termination payment to resigned workers within 48 hours after the payday of normal workers.
- The worker party states that the Company pay workers' wage on the 10th of every month. Members of WF demand that the Company pay wage and termination payment to resigned workers within 48 hours after the pay day of normal workers because the Company has not paid these payment to workers who have resigned from work since October 2007.
- The Company party states that it did not pay workers who have resigned since October 2007 because the number of workers was many and the resignations were without prior notification which led the Company to be in shortage of workers to do the work. The Company does not agree to the workers' demand and it cannot make a promise to what date it will pay. However, the Company is trying to talk to the big boss and will pay those payments to all resigned workers.

- The worker party claims that there were around 10-20 workers resigned from work whom the Company has not paid them. The Arbitration Council ordered the worker party to provide the list of names of workers who resigned from work to the Arbitration Council by 30 May 2008.
- The Company party claims that the number of workers is more than this but it cannot remember the exact number. The Arbitration Council ordered the Company to provide the list of names of workers who resigned from work to the Arbitration Council by 30 May 2008. However, the Company does not provide the name list.
- On 30 May 2008 at 4:30 p.m. the worker party provided a list of names of 69 workers who worked in Yung Min factory who resigned from work whom the Company had not paid their wage including: Nhel Dy, ID 5100; Srey Nat ID 5900; Thet, ID 6210; Chhorn Daly, ID 4070; Say Chin, ID 5219; Ouk Ven, ID 6086; Kong Kosal, ID 5623; Puy Pisey, ID 5703; Hor Sokhun, ID 5757; Eth Sovann, ID 5685; Sang Him, ID 4281; Sou Theavy, ID 1789; Yang Sim, ID 5367; Soeung Net, ID 6189; Khuon Chhorvorn, ID 4262; Ith Ra, ID 5328; Chhay Sreymao, ID 4536; Sou Sinath, ID 6071; Ieng Talot, ID 6143; ID 6111; ID 6315; ID 5412; ID 6208; ID 4409; ID 4419; ID 6242; ID 6186; ID 6124; ID 5776; ID 5277; ID 8558; ID 2905; ID 5569; ID 5019; ID 5919; ID 5308 ; ID 5891; ID 2255; ID 6174; ID 4362; ID 4172; ID 5426; ID 2810; ID 6154; ID 5960; ID 5908; ID 6053; ID 5986; ID 5271; ID 5739; ID 5861; ID 5692; ID 5716; ID 6238; ID 4187; ID 5702; ID 4130; ID 5859; ID 4110; ID 4133; ID 4154; ID 4157; ID 6166; ID 4226; ID 165; ID 6160; ID 5983; ID 5401; and ID 5991. The Company party does not object to this name list.
- There is no any agreement regarding this issue.

REASONS FOR DECISION

Issue 1: Members of WU demand that the Company should not deduct their seniority bonus in proportion to the number of days they take leave

Point 5 of Notification 017 SKBY, dated 18 July 2000, by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states, "5. *Workers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows:*

- 5.1 *those who have been working more than one year shall receive a seniority bonus of US\$ 2 per month;*
- 5.2 *those who have been working more than two years shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year;*
- 5.3 *those who have been working more than three years shall receive a seniority bonus of US\$ 4 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year and US\$ 1 for the third year;*

5.4 *those who have been working more than 4 years shall receive a seniority bonus of US\$ 5 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year, US\$1 for the third year and US\$ 1 for the fourth year...*”

Moreover, point 3 of Notification 745 KKBV, dated 23 October 2006 states, *“Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 an 6 shall be retained.”*

In this case, the Arbitration Council considers that the employer already provides a seniority bonus in accordance with point 5 of Notification 017 SKBY, dated 18 July 2000 as mentioned above. However, in this case, members of WU demand that the Company should not deduct their seniority bonus when they are absent because this is an allowance provided to workers who have been working for the Company as provided in Notification 017. The Company party, on the other hand, states that it started to deduct workers' seniority bonus in proportion to the number of days they were absent, either with or without permission, since the end of 2007 as the Company faced the financial crisis, and Notification 017 does not prohibit the employer to deduct the seniority bonus. The Arbitration Council will consider this issue as follows:

In previous cases, the Arbitration Council interpreted that the seniority bonus is a part of the wage. (See Arbitral Awards 41/05-Violet, issue 10, 66/07-Gold Lida, issue 2; and 96/06-Wilson, issue 1).

In this case, the Arbitration Council agrees with the above interpretation that the seniority bonus is a party of the wage.

Article 71, paragraph 6, of the Labour Law provides, *“The labour contract shall be suspended under the following reasons:*

Absence of the worker authorized by the employer, based on laws, collective agreements, or individual agreements.”

Article 72, paragraph 1, of the Labour Law provides, *“The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that requires the employer to pay the worker.”*

Thus, based on paragraph 6 of Article 71 and paragraph 1 of Article 72 of the Labour Law as mentioned above, the Arbitration Council considers that when workers are absent with permission from the employer, it leads to a suspension of the employment contract and workers are not required to work for the employer. In such case, the employer is not required to pay wages to workers unless there are provisions to the contrary that requires the employer to pay the workers. This means that the employer is not required to pay the workers on the day they are absent with permission from the employer. However, on the

days the workers are not absent (for example, days when workers come to work) the employer is required to pay the workers' wage.

Based on the above interpretation, the seniority bonus is a part of wage so on the day workers are absent with or without permission from the employer, the employer is not required to pay their seniority bonus because the workers did not work for the employer. This means that the employer can deduct their seniority bonus in proportion to the number of days they were absent with or without permission from the employer. On the days the workers come to work, the employer should pay their seniority bonus. This means that the employer should pay in proportion to the number of days they worked.

Therefore, the Arbitration Council considers that in case workers are absent, with or without permission from the employer, their seniority bonus as stated in point 5 of Notification 017 SKBY, dated 18 July 2000 above should be deducted in proportion to the number of days they were absent. The amount deducted should be calculated based on the amount of the seniority bonus received per month, divided by 26, then multiplied by the number of days they were absent. For example, if a worker is permitted to take two days leave and the workers has been working for more than four years, her/his seniority bonus should be calculated according to the following formula:

(US\$ 5 divided by 26 days) multiplied by 2 = US\$ 0.385, which is the amount to be deducted.

In conclusion, the Arbitration Council considers the fact that the employer deducts the seniority bonus of workers in proportion to the number of days they are absent is not a violation to point 5 of Notification 017 SKBY, dated 18 July 2000 above.

Therefore, the Arbitration Council decides to reject the demand.

Issue 2: Members of WF demand that the Company pay wages to workers who have resigned and whom the Company has not paid and that the Company pay their termination payments within 48 hours after the pay day of normal workers

Article 116, paragraph 5, of the Labour Law states, "*In the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work.*"

Based on the content of the paragraph 5 of Article 116, the Arbitration Council considers that when a contract is terminated or ended, employer should pay wages and indemnities the workers are entitled to within a period of not more than 48 hours.

In previous cases, the Arbitration Council decided that the employer should pay the termination payment in accordance with the Labour Law within 48 hours after the termination of the worker. (See *Arbitral Award 54/07-Yung Wah I, issue 1*).

In this case, the members of WU demand that the Company pay wages to workers whose names are mentioned in the finding of facts above who had resigned from work since October 2007, and to whom the Company has not paid their wages. The Company does not submit any evidence refuting what the workers mentioned. In relation to this claim, the Arbitration Council considers that according to Article 116 of the Labour Law as well as previous Arbitral Awards, the Arbitration Council decides to order the Company to pay wages to workers who had resigned from work, whose names are in the list above, and to whom the Company has not paid wages since October 2007.

In this case, the workers also demand that the Company implement the payment of indemnities to workers who have resigned from work within 48 hours after the pay day of normal workers. However, the Company does not agree to the workers' demand. In the hearing the workers do not state what indemnities they are entitled to are when they resign from work. However, according to the Law, when workers resign from work, they should be entitled to the last wage and payment in lieu of annual leave (see Article 167, paragraph 2, of the Labour Law). In this case, the workers' demand is not for the Company pay their wages and indemnities within 48 hours after their contract is terminated or ended, rather the workers only demand that the Company pay their indemnities within 48 hours after the pay day of normal workers. This means that the workers forgo their right to demand for payment of indemnity within 48 hours after a contract is terminated or ended and agree to wait until 48 hours after the pay day of normal workers.

Therefore, the Arbitration Council orders the Company to implement the payment of indemnities to workers who have resigned within not more than 48 hours after the pay day of normal workers.

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

DECISION

Issue 1: Reject the demand that the Company should not deduct seniority bonus in pro rata to the number of days the workers were absent.

Issue 2: Order the employer to pay wage to workers who have resigned from since October 2007 whose names are in the list above and order the employer to pay indemnity payment to workers who have resigned within 48 hours after the pay day of normal workers.

Type of Award: binding award

This Award is immediately binding and effective upon the parties after the issuance of the award because both parties agreed to choose this type of award on 26 May 2008.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: