



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្នា

THE ARBITRATION COUNCIL

Case number and name: 70/08-Kin Tai Garment

Date of Award: 10 June 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: **Liv Sovanna**

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

DISPUTING PARTIES

Employer party:

Name: **Kin Tai Garment Co., Ltd.**

Address: Tuol Rorka Village, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 011 800 835/023 425 168 Fax: N/A

Representative:

Mr. Pov Soeun Chief of Administration

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and local Khmer Youth Trade Union (KYTU) at Kin Tai Company**

Address: Tuol Rorka Village, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 012 990 227 / 011 926 756 Fax: N/A

Representative:

- | | |
|-----------------------|--------------------------------------|
| 1. Mr. Long Sophat | Coordination officer of KYFTU |
| 2. Mr. Ly Kim Ann | Coordination officer of KYFTU |
| 3. Mr. Tit Vannak | Coordination officer of KYFTU |
| 4. Mr. Touch Sengleap | Coordination officer of KYFTU |
| 5. Mrs. Ouch Veasna | Secretary of KYTU at Kin Tai Factory |

6. Ms. Oun Sophea	Committee member of KYTU at Kin Tai Factory
7. Ms. Peng Sarat	Committee member of KYTU at Kin Tai Factory
8. Ms. Soy Sorphea	Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company pay wages for holidays in October, November and December to workers whom the company has not yet paid. The Company claims that it has already paid wages for those months to workers.
- 2- The workers demand that the Company pay their seniority bonus, as it had not been paid by the company for the period October to date. The Company claims that it did not pay the October seniority bonus to those workers who joined the strike, but it was paid to all workers who came to work normally.
- 3- The workers demand that the Company pay overtime to workers Chhim Sythe, Uoch Yem and Seng Phally, in the finishing section, who worked overtime from 4:00 p.m. to 9:00 p.m. on the 3rd and 4th of December 2007. The Company states that it will pay the three workers if they can produce an amount equal to the minimum amount produced by other workers.
- 4- The workers demand that the Company pay US\$5 in lieu of formula milk and outside daycare to a female worker named Ouch Veasna. The Company states that it can not pay this because she did not come to work for the Company.

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. 535 KB/AK/VK, dated 08 May 2008 was submitted to the Secretariat of the Arbitration Council on 16 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: 27 May 2008 (From 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 6 March 2008 the Department of Labour Disputes received a complaint from workers in the Kin Tai Factory demanding that the Company improve some working conditions. The Department of Labour Disputes assigned an official to handle the dispute and the last conciliation was held on 07 April 2008 on four demands, but none of these demands was resolved. The four non-conciliation issues were referred to the Arbitration Council on 16 May 2008 through non-conciliation report No. 535 KB/AK/VK, dated 8 May 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to a hearing and conciliation on the four non-conciliation issues on 27 May 2008 at 2:00 p.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to seek more information relevant to this dispute and attempted to further the conciliation on the four non-conciliation issues with the result that issues 1 to 4 were conciliated. Therefore, in this case the Arbitration Council considers only issue 2 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:**

1. Letter authorising Mr. Pov Soeun, Chief of Administration of Kin Tai Company, to settle and decide in case 70/08, dated 26 May 2008;
2. Payroll for October.

Provided by the worker party:

1. Complaint letter by workers to the president of KYFTU requesting intervention and a solution, dated 3 June 2008;
2. Letter from KYFTU to the Chief of the Department of Labour Disputes requesting resolution of the dispute at King Tai Company No. 83 SSYK, dated 04 June 2008;
3. List of names of workers who have not been paid their US\$5 seniority bonus in October 2007 (in total there are 264 workers and thumbprints of each worker).

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

1. Report No. 535 KB/AK/VK, dated 8 May 2008 on the collective labour dispute settlement at Kin Tai Garment Company;

2. Minutes of the collective labour dispute conciliation at Kin Tai Garment Company, dated 7 April 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 332 KB/AK/VK/LKA dated 20 May 2008 to invite the worker party to attend the hearing;
2. Invitation No. 331 KB/AK/VK/LKA dated 20 May 2008 to invite the Company party to attend the hearing;

FACTS

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

The Arbitration Council finds that:

- Workers went on strike from October to November and [the strike] continued to December 2007 for the reason that the Company lost the workers' resume. The strike was illegal.
- The worker party stated in the hearing that they demand [payment of their] seniority bonus in an amount of US\$ 5 for those workers (who have been working for more than 5 years for the Company) and who joined the strike and who have not been paid [their bonus] for the month of October. (According to the name list provided by the worker party to the Arbitration Council, there are 264 workers and thumbprints of each worker on the document).
- In the hearing, the workers add that the seniority bonus is not dependant on the [number of] days or months workers worked or did not work for the Company as they receive the bonus because of the number of years of employment with the Company. They will receive US\$2 after one year of employment and an additional US\$1 in each of the 2nd, 3rd, and 4th years.
- The Company states in the hearing that the Company paid the US\$5 attendance bonus to those workers who came to work and did not join the strike even though the workers did not work for a full month. However, for those [workers] who joined the strike, the Company cannot pay them the seniority bonus because the strike was illegal and the workers did not work for the Company.

REASONS FOR DECISION

The workers demand that the Company pay a US\$5 seniority bonus (for October 2007) to those workers who have been working for the Company for more than five years and whom the Company has not paid because the workers went on strike (workers went on strike from October to November and [the strike] continued to December 2007 but they demand the bonus only for October 2007). Thus, the Arbitration Council will consider [this issue] as follows:

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 and 6 shall be retained.”*

Point 5 of Notification 017 SKBY, dated 18 July 2000 states, *“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...”*

In this case, the Company has already correctly implemented the above Notifications and the workers do not object to this. However, the workers demand that the Company provide the US\$5 monthly bonus to workers who went on strike (illegal strike) during October 2007 and who the Company had not paid. Thus, the Arbitration Council will consider whether the Labour Law provides that workers should receive their US\$5 seniority bonus for October 2007 when they were on strike.

Article 332 of the Labour Law states, *“A strike suspends the labour contract. During the strike, the allowance for work is not provided and the salary is not paid.”* According to this Article, the Arbitration Council interprets salary to mean wage according to dictionary [definition].

Moreover, Article 72(1) of the Labour Law states, *“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 require the employer to pay the worker...”*

According to the content of Articles 332 and 72(1) above, the Arbitration Council considers that on the day of a strike, either legal or illegal, an employer is not required to provide wages to the workers because the workers did not perform work for the employer.

In previous cases, the Arbitration Council held that workers who conducted an illegal strike are not entitled to receive their wages or attendance bonus (see Arbitral Awards 04/03-Lida, Issue 1; 22/04-Raffle Le Royal, Issue 2; 03/05-Flying Dragon, Issue 3; and 67/07-Yung Min, Issue 1).

In previous cases, the Arbitration Council held that a seniority bonus is a part of a [worker's] wage because Article 103 clearly specifies that wage includes bonuses and indemnities (see Arbitral Awards 41/05-Violet, Issue 10; 66/06-Gold Lida, Issue 2 and 96/06-Wilson, Issue 1). In this case, the Arbitration Council agrees with the above interpretation that a seniority bonus is a part of a [worker's] wage.

Therefore, the Arbitration Council considers that during a strike the employment contract is suspended and the employer does not have an obligation to pay workers, including their seniority bonus.

In this case, the workers went on strike (illegal strike) from October to November and [the strike] continued to December 2007 and they demand that the Company provide their US\$5 seniority bonus for October 2007. The Arbitration Council considers that in October 2007 the workers were on strike for the whole month and did not work for the employer. Thus, the Arbitration Council considers that the fact that the employer deducted the seniority bonus of workers who went on strike does not violate Point 5 of Notification 017 SKBY, dated 18 July 2000.

Therefore, the Arbitration Council decides to reject the workers' demand for the Company to provide the US\$5 seniority bonus for October to workers who were on strike [in this month].

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

DECISION

- Reject the demand for the Company to provide a US\$5 seniority bonus for the month of October 2007 to the workers who were on strike [in this month].

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 time 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: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: