



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 73/07 – Sun Shine

Date of Award: 22 August 2007

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: **Sun Shine Company**
Address: Phsar Kombol Village, Kombol Commune, Angk Snuol District, Kandal
Telephone: 012 202 348 Fax: N/A
Representatives:
1. Mr. An Som Ol The Company's Administrative Manager;
2. Mr. Saom Thai General Manager.

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union (KYTU) at Sun Shine Company**
Address: No. 34, Street 265, Sangkat Toeuk Laak III, Khan Toul Kork, Phnom Penh
Telephone: 012 907 902 Fax: N/A
Representatives:
1. Mr. Eng Vanna Officer of KYFTU;
2. Mr. Uor Peoun Officer of KYFTU;
3. Mr. Peck Kunthea Officer of KYFTU;
4. Ms. Chan Sopheap President of KYTU;

5. Mr. Thuy Sothi Worker Representative;
6. Mr. Leng Vutha Vice-President of KYTU and Worker Representative;
7. Mr. Kham Sokha Committee Member of KYTU and Worker Representative;
8. Mr. Pourng Vanak Worker Representative.

ISSUE IN DISPUTE

(In the Non-Conciliation Report)

The workers demanded that they work seven hours on Saturday, but receive payment for eight hours as usual. The employer disagreed.

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 which took place on 6 August 2007 was unsuccessful, and the non-conciliation report No. 133/07 was submitted to the Secretariat of the Arbitration Council on 9 August 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 15 August 2007 (from 2:00pm to 3:00pm)

Procedural issues:

Having received the complaint from the workers on 20 July 2007, the Department of Labour and Vocational Training of Kandal Province successfully conciliated eight out of a total of nine issues of the collective labour dispute. The non-conciliated issue was submitted to the Arbitration Council Secretariat on 9 August 2007 through the non-conciliation report No. 133/07 dated 6 August 2007.

Having received the case on 10 July 2006, the Arbitration Council Secretariat summoned the disputing parties to attend a hearing to settle the non-conciliated issue on 15 August 2007 at 2:00 p.m.

Both parties were present at the hearing summoned by the Arbitration Council. After the Arbitration Panel introduced themselves to both parties and explained the right of the parties to object to a member of the Arbitration Panel if both parties considered there was a

conflict of interest. After both parties' introduced themselves, the Khmer Youth Trade Union mentioned that they did not object to any member of the Arbitration Panel on the grounds of conflict of interest but they claimed that the Arbitration Council had never protected the interests of workers and the Khmer Youth Trade Union in previous cases; thus, the Arbitration Council could make its own decision in this case but the Khmer Youth Trade Union sought to boycott the hearing. No reasonable cause was given regarding the boycott. The Arbitration Council made it very clear to the worker party that the Arbitration Council makes its decisions based on legal principles and facts provided by the parties in the hearing; the Arbitration Council emphasized that it was not biased and did not decide only for the worker or only for the employer. The Arbitration Council asked the union again [whether they were willing to participate in the process] and they still claimed that the Arbitration Council could make whatever decisions it wanted to. After that the worker party walked out of the hearing room. Thereafter, the Arbitration Council resumed the hearing without the worker party.

In the hearing, the Arbitration Council asked the employer party how they wanted to proceed with the hearing regarding this dispute. The employer party mentioned that the workers' demand that they work seven hours on Saturday but receive payment for eight hours of work will affect the factory's operation, its clients and other factory policy. The employer party requested the Arbitration Council to make the decision.

Therefore, 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:

1. The Company's Internal Work Rules No. 060 dated 8 December 2003;
2. Business Registration License dated 10 July 2003;
3. Agreement of accepting workers dated 1 September 2003;
4. Request letter of workers at Sun Shine Company to discuss and conciliate the labour dispute dated 19 July 2007;
5. Letter of authorizing legal rights of the Company Director in settling labour dispute dated 14 August 2007 to Mr. An Sam Ol and Mr. Saom Thai;

Provided by the worker party: N/A

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

1. Report No. 133/07 dated 6 August 2007 on the collective labour dispute conciliation at Sun Shine Company;
2. Sun Shine Company's minutes of the collective labour dispute conciliation dated 20 July 2007;

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 333 dated 13 August 2007 to the worker party to attend the hearing;
2. Invitation No. 332 dated 13 August 2007 to the employer party to attend the hearing.

FACTS

N/A

REASONS FOR DECISION

In this case, the worker party decided not to participate in the hearing in the Arbitration Council. Thus, the Arbitration Council will consider the case as follows:

Rule 4.7 of the Arbitration Proceedings in the Annex to Prakas No. 099 states, "If a party fails to appear in person or to be represented at the arbitration proceedings, the Arbitration Panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award."

In Award 115/06 – Archid, the Arbitration Council ruled that, "the departure of the union from the hearing room before the commencement of the Arbitration Council hearing process can be considered as a failure to appear in person or to be represented at an Arbitration proceeding."

In this case, the Arbitration Council concurs with the Arbitration Council's ruling in Arbitral Award 115/06 – Archid.

Besides Rule 4.7 and Arbitral Award 115/06 – Archid, Clause 21 of Prakas No. 099 dated 21 April 2004 [states that] "In the case that one of the parties, although duly invited, fails to appear before the Arbitration Panel without showing good cause, the Arbitration Panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award."

In Arbitral Awards 16/07 – Lotus and 27/07 – M&V II the Arbitration Council interpreted the above Clause 21, to mean that three conditions needed to be met in order for the Arbitration Council to close the case, "*Condition 1; The party is duly invited; Condition 2: The party is not represented at the hearing and Condition 3: The party fails to appear without showing good cause.*"

Therefore, the Arbitration Council will consider whether or not the three conditions in this case are met.

Condition 1: The party was duly invited

Based on the documents provided by the Arbitration Council Secretariat, the Arbitration Council finds that the party was duly invited by the Secretariat of the Arbitration Council to attend the hearing of the Arbitration Council. Thus, condition 1 is met.

Condition 2: The party was not represented at the hearing

The Arbitration Council considers that “is represented at the hearing” in Clause 21 of Prakas No. 099 dated 21 April 2004 means that the party (1) is present at the hearing and (2) attends the arbitration hearing until the end.

The proceeding of the arbitration hearing consists of four phases as follows:

- A. Introduction and explanation about an interests dispute phase;
- B. Explanation about the procedures and outline of dispute phase;
- C. Conciliation phase if the both parties agree;
- D. The hearing reaches the final phase.

In this case, the worker party participated only in phase A, but not phases B, C and D. This shows that the worker party did not attend the arbitration hearing until the end. Therefore, the Arbitration Council finds that the worker party was not represented at the hearing as set out in the second condition of Clause 21 and therefore condition 2 is not met.

Condition 3: The party fails to appear without showing good cause

In this case, the worker party boycotted the dispute settlement proceeding of the Arbitration Council without providing any cause for the boycott. Thus, condition 3 is also met, meaning, the party did not show good cause for not attending the hearing.

In conclusion, all the three conditions stated in the above-mentioned Clause 21 are met.

Based on the Rule, Prakas and the above ruling, the Arbitration Council finds that although the worker party boycotted the hearing, the Arbitration Council has the authority to issue an award.

Moreover, the Arbitration Council has provided sufficient opportunity to the Khmer Youth Trade Union at Sun Shine Factory to protect the workers’ demand through legal procedures, but the Khmer Youth Trade Union, the claimant in this case, decided not to attend the hearing and lost the opportunity to provide evidence to support the claim. In general, the claimant has an obligation to provide reasons and evidence to the Arbitration Council to defend his or her claim. The Arbitration Council considers that the worker party has forfeited its complaint. The decision suggests that the union party was not willing to bring its labour dispute before the Arbitration Council in good faith.

Therefore, the Arbitration Council has decided to close case 73/07 – Sun Shine by declining to consider any of the disputing issues.

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

DECISION

- Close Case 73/07 – Sun Shine.

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: