



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាគណ្តារ

THE ARBITRATION COUNCIL

Case number and name: 75/08-The United Knitting

Date of Award: 23 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: **The United Knitting MFG Cambodia Co. Ltd,**

Address: Mondul 1, Sangkat 4, Khann Mittapheap, Sihanouk Ville

Telephone: 012 522 266 Fax: N/A

Representative: (Absent)

Worker party:

Name: **Free Trade Union of Workers of Kingdom of Cambodia at The United Factory**

Address: Mondul 1, Sangkat 4, Khann Mittapheap, Sihanouk Ville

Telephone: 012 935 496 Fax: N/A

Representative: (Absent)

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- The workers demand that the Company pay them benefits for termination of employment in accordance with the Labour Law when the factory closes as a result of discontinuation of its operation. However, if the Company is still operating, the workers demand that it should provide sufficient work for them to do and pay their monthly wages

regularly. In addition, the Company should have a reserve fund in the bank and it should not transport equipment out of the factory at the time it is having dispute with the workers so that workers can feel confident and secure. The Company states that it has no intention to close the factory and is now trying hard to find sufficient work for workers to do and to pay regular monthly wages. Regarding the matter of transporting equipment out of the factory or selling them, that is the right of 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 was unsuccessful, and the non-conciliation report No. 584 KB/AK/VK, dated 29 May 2008 was submitted to the Secretariat of the Arbitration Council on 29 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: 13 June 2008 (at 2:00 p.m.)

Procedural issues:

On 24 May 2008, the Department of Labour Disputes received a complaint No. 010/08 SSKPK, dated 16 May 2008 from the Free Trade Union of Worker of Kingdom of Cambodia regarding the demand for improvement of three working conditions. After receiving the complaint, the Department of Labour Disputes assigned an officer to settle this dispute and the last conciliation was held on 27 May 2008 with the result that one issue remained unresolved. This issue was referred to the Secretariat of the Arbitration Council on 29 May 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 13 June 2008 at 2:00 p.m.; however both parties failed to appear at the hearing to which they were invited by the Arbitration Council.

On the hearing day, the Secretariat of the Arbitration Council telephoned to remind the FTUWKC but a representative of the union said that they could not attend the hearing but did not provide any reason. FTUWKC stated that it would like to leave this case for the

Arbitration Council to make a decision according to the law. The employer party, on the other hand, did not attend the hearing and did not provide any reason either. A representative of the Garment Manufacturers Association in Cambodia (GMAC) said that he could attend the hearing at 2:30 p.m. The Arbitration Council waited until 2:30 p.m. Then, that representative of GMAC told the Secretariat of the Arbitration Council that he could come to the hearing at 3:00 p.m. He added that it was up to the Arbitration Council if it could wait for him otherwise the Arbitration Council should proceed with its procedure. Therefore, the Arbitration Council will consider [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. 584 KB/AK/VK, dated 29 May 2008 on the collective labour dispute settlement at The United Knitting Company;
2. Minutes of the collective labour dispute conciliation at The United Knitting Company, dated 27 May 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 375 KB/AK/VK/LKA dated 6 June 2008 to invite the worker party to attend the hearing;
2. Invitation No. 374 KB/AK/VK/LKA dated 6 June 2008 to invite the employer party to attend the hearing;

The Arbitration Council finds that:

- The United Knitting factory is located in Mondul 1, Sangkat 4, Khann Mittapheap, Sihanouk Ville and employs approximately 302 workers.
- The Free Trade Union of Workers of Kingdom of Cambodia who is the claimant in this case decided not to participate in the hearing and did not provide any evidence related to the one non-conciliation issue in this case nor did it provide any reason for this. (See Procedural Issues above.)

REASONS FOR DECISION

In this case, the worker party decided not to participate in the hearing at the Arbitration Council on 13 June 2008 at 2:00 p.m. without providing any reason for the non-participation. Thus, the Arbitration Council will consider the case as follows:

Clause 21 of the Prakas on the Arbitration Council No. 099 SKBY, dated 21 April 2004, states, *“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.”*

Moreover, Rule 4.7 of the Arbitration Proceedings in the Annex to Prakas No. 099 SKBY, dated 21 April 2004, 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.”*

Based on Clause 21 and Rule 4.7 above, in previous case No. 30/05-Maurea and 16/07-Lotus, the Arbitration Council found that three conditions need to be met in order for the Arbitration Council to terminate the arbitration process by means of an arbitral award: *“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, in case 75/08-The United Knitting, the Arbitration Council will consider whether the three conditions have been met.

Condition 1: The party was duly invited

Based on part (D), documents provided by the Secretariat of the Arbitration Council, 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 the term **“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.

In this case, the worker party was not present at the arbitration hearing. Thus, the Arbitration Council finds that the worker party was **not represented** at the hearing as set out in the second condition of Clause 21. Therefore condition 2 is met.

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

In this case, the Arbitration Council finds that the worker party did not provide any reason to the Secretariat of the Arbitration Council regarding its non-participation in the hearing. Thus, the Arbitration Council considers that condition 3 is also met.

In this case, the Arbitration Council finds that the three conditions are met because the worker party was duly invited but did not show up at the hearing or send a representative to participate in the hearing; and it did not provide a proper reason for its failure to appear.

Therefore, the Arbitration Council has decided to close this case based on Clause 21 and Rule 4.7 of the Prakas on the Arbitration Council No. 099 SKBY, dated 21 April 2004.

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

DECISION

- Close Case 75/08 – The United Knitting and decline to consider the demand of the worker party.

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: