



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព

THE ARBITRATION COUNCIL

Case number and name: 77/06 - PCCS

Date of Award: 19 SEPTEMBER 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party: **Kao Thach**
Arbitrator chosen by the worker party: **Liv Sovanna**
Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

1- Employer Party

Name : **PCCS Garments Limited**
Address : Russian Federation Blvd, Sangkat Toeuk Thla, Khan Russey Keo,
Phnom Penh
Telephone : 023 982 422/ 882 138 Fax: 023 982 477

Employer Representatives:

1. Mr. Tan Kok Hong Human Resource and Administrative Manager;
2. Mr. Keo Simonira Personnel Manager;
3. Mr. Cheat Khemera GMAC Officer;
4. Ms. Srar Sou Ngim Finishing Unit Supervisor.

2- Worker party

Name : **Khmer Youth Federation Trade Union (KYFTU) and Workers in PCCS Company**
Address : No. 34, Street 265, Sangkat Toeuk Laak 3, Khan Tuol Kork, Phnom Penh
Telephone : 011 975 670, 012 882 870 Fax: N/A

Worker Representatives:

1. Mr. Yun Rithy President of KYFTU;

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KHMER ORIGINAL.**

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|-------------------------|-------------------------|
| 2. Mr. Pheng Sopheakdey | Official of KYFTU; |
| 3. Mr. Thoem Chantha | Official of KYFTU; |
| 4. Mr. Sam Salim | Official of KYFTU; |
| 5. Ms. Um Savon | Worker in PCCS Limited; |
| 6. Ms. Srey Mom | Worker in PCCS Limited; |
| 7. Mr. Chin Bunthea | Worker in PCCS Limited; |
| 8. Ms. Mao Thy | Worker in PCCS Limited; |
| 9. Ms. Huot Maly | Worker in PCCS Limited. |

ISSUES IN DISPUTE

(In the non-conciliation report)

- 1- The workers demanded the company to reimburse US\$7.00 to each worker for the medical check-up fee and employment book.
- 2- The workers demanded the company to establish a day-care center with babysitters within the factory and if the company cannot afford such establishment, the company shall provide them a can of one-and-half-kilos of milk powder and an allowance of US\$20 if the factory does not hire babysitters.
- 3- The workers demanded the company to pay them full wages when there is no work and review their wages in the previous period.
- 4- The workers demanded the company to compensate them for annual leave for those who work for the full twelve months for the company (they requested the company to pay them as soon as the twelve-month period is complete).
- 5- The workers demanded the company to provide them US\$10 incentive payments per month for overtime work.
- 6- The workers demanded the company to provide 50 per cent of payment plus other benefits to the female workers who take maternity leave for 90 days.
- 7- The workers demanded the company to provide them transportation to their residence for the sake of safety when the company requires them to work overtime.
- 8- The workers demanded the company to provide the female workers with babies one hour per day for breastfeeding or provide them US\$15 per month instead.
- 9- The workers demanded the company to fully employ any worker who has completed the two-month probationary period.
- 10- The workers demanded the company to arrange an apprenticeship workshop in accordance with the Labour Law.

- 11- The workers demanded the company to increase wages equally for those who work in the Warehouse and in the Mechanic Unit.
- 12- The workers demanded the company to increase the attendance bonus to US\$7 per month for those who come to work regularly.
- 13- The workers demanded the company to collect union contribution fees from those who are willing to contribute and are the members of Khmer Youth Federation Trade Union through the company's accounting system.
- 14- The workers demanded the company to keep the Chinese supervisor in his or her former position.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).

An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 1241, dated 31 August 2006, was submitted to the Secretariat of the Arbitration Council on 1 September 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:

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

Date of the Hearing : - 8 September 2006 (from 8:00 a.m. to 10:00 a.m.)
- 9 September 2006 (from 8:30 a.m. to 10:00 a.m.)

Procedural Issues:

On 7 July 2006 Khmer Youth Federation Trade Union lodged complaints demanding the company to improve the working conditions in relation to the 14 issues to the Department of Labour Disputes. However, the conciliating official of the Department of Labour Disputes was not able to conciliate the dispute because the employer party did not show up in the conciliation meeting. The 14 non-conciliated issues were submitted to the Arbitration Council on 1 September 2006.

Having received the case, the Arbitration Council summoned the employer party and Khmer Youth Federation Trade Union as well as the workers to attend a hearing to conciliate the 14 non-conciliated issues on 8 and 9 September 2006 at 8:00 a.m. and 8:30 a.m. Both parties were present at the hearing summoned by the Arbitration Council. However, the employer party did not have a policy to negotiate with the workers at that time because they were not representing the 5,000 workers in the factory. Therefore, the Arbitration Council considers the 14 non-conciliated issues based on the evidence and the findings of fact as follows:

EVIDENCE

Witness and experts besides parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

a. Provided by the employer party:

- 1- Letter of authorizing legal rights of the Company Director, dated 7 September 2006 to Mr. Tan Kok Hong.
- 2- Brief report of the labour dispute conciliation, dated 7 September 2006.
- 3- Business Registration License No. Inv. 654/99E, dated 5 December 2002.
- 4- Statute of PCCS Company.
- 5- Internal Work Rules of PCCS Company No. 118, dated 17 December 1999.
- 6- List of worker representatives who are the witnesses of the process of issuing labour record books and of the medical check-ups.
- 7- Invitation No. 1073, dated 31 July 2006 to Chin Bunthea, Oum Savon, Srey Mom, Mao Thy and Nop Narin to attend the labour dispute conciliation.
- 8- Letter of NOP Narin rejecting to have his name listed in Khmer Youth Federation Trade Union, dated 1 August 2006.
- 9- Letter of Apology of Oum Savon to Nop Narin.
- 10- Letter of rejection and withdrawal from the claim of Khmer Youth Federation Trade Union of 23 workers.

b. Provided by the worker party:

- 1- Letter No. 418, dated 11 July 2006 of Khmer Youth Federation Trade Union to The Director of the Department of Labour Disputes requesting settlement of the labour dispute in PCCS Company.
- 2- Letter No. 407, dated 08 July 2006 of Khmer Youth Federation Trade Union to the Director of PCCS requesting a meeting to discuss and settle the labour dispute.

- 3- Letter authorizing Khmer Youth Federation Trade Union, dated 9 September 2006 of five workers including Mr. Chin Bunthea, Ms. Oum Savon, Ms. Srey Mom, Ms. Mao Thy and Ms. Huot Maly.
- c.** Provided by the Ministry of Labour and Vocational Training:
- 1- Letter No. 1199, dated 13 September 2006 for the collective labour dispute conciliation in PCCS Company of the Minister of Labour and Vocational Training.
 - 2- Report No. 1241, dated 31 August 2006 on the collective labour dispute conciliation in PCCS Company issued by Mr. Koy Tepdaravuth, Director of the Department of Labour Disputes.
 - 3- Minute on the collective labour dispute conciliation, dated 23 August 2006.
- d.** Provided by the Secretariat of the Arbitration Council
- 1- Invitation No. 367, dated 5 September 2006 to the worker party to attend the hearing.
 - 2- Invitation No. 366, dated 5 September 2006 to the employer party to attend the hearing.

FACTS

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- PCCS Garment, located on Russian Federation Blvd, Sangkat Toeuk Thla, Khan Russey Keo, Phnom Penh and employs approximately 5,000 workers. There are four unions in the company, but they are not parties to this case.
- Five workers--one from the Warehouse Unit, three from the Sewing Unit and the other from the Cutting Unit, have requested Khmer Youth Federation Trade Union to represent them at the hearing summoned by the Arbitration Council regarding the above-mentioned 14 issues. The five workers have not been requested by any other workers in the entire factory to represent them.
- The said workers demanded all the said issues in dispute for all workers in the factory. The Arbitration Council finds that besides the five workers who constitute a party in this dispute, there are no other workers authorizing Khmer Youth Federation Trade Union to settle these disputes on their behalf.

- Within the 14 issues, there are some issues pertaining rights and interests of the five workers, some issues related only to one or two workers out of the five workers, while some other issues concern future rights and benefits, and some other issues have already been implemented by the company.

Issue 1:

- The company deducted 30,000 riels from the salary of the five workers and other workers for the medical check-up fee and for the issuance of their employment books.

Issue 2:

- The company agreed to establish a day-care center with babysitters for operation in October 2006.

Issue 3:

- When there is no work, the company provide the workers 50 percent of their wage.
- In 2005 and 2006, no no-work instances occurred.
- In 2004, female workers Mao Thy and Srey Mom claimed that they did not have work to do for four days and requested the company to compensate them for such days, but both of them and three other workers confirmed that they did not remember the exact dates when they did not have work.

Issue 4:

- Regarding the annual leave, the company did comply with the Labour Law, and the five workers also agreed with the affirmation of the employer party.

Issue 5:

- The workers requested the company to provide an incentive of US\$10 per month when the workers agree to work overtime as requested by the company.
- There was no such practice previously, but when there was overtime work, the company provided more than what the law provides – the overtime work has been paid according to the formula of times 2 plus 1.

Issue 6:

- Regarding maternity leave, the company provides 50 percent of the regular wage plus seniority bonus and 90 days of leave.
- Among the five workers, none was on the maternity leave.

Issue 7:

- Among the five workers, none works overtime at night.

Issue 8:

- The company has already provided one hour each day for breastfeeding.

Issue 9:

- Among the five workers, none is a probationary worker.

Issue 10:

- Among the five workers, none is an apprentice and there is no such worker in the entire factory.

Issue 11:

- Among the five workers, none is working in the Mechanic Unit, [] Mr. Chin Bunthea works in the Warehouse, which consists of eight workers within the unit. Mr. Chin Bunthea did not have any evidence to prove that the eight workers receive different wages.

Issue 12:

- The company did comply with the Labour Law, providing the attendance bonus of \$5.00 per month.

Issue 13:

- Khmer Youth Federation Trade Union in PCCS Company has yet to be established.

Issue 14:

- The company has yet changed or moved the Chinese Supervisor, and the Chinese Supervisor is still working in the same place/position.

REASONS FOR DECISION

Before considering the 14 issues in dispute, the Arbitration Council will consider whether or not the Arbitrator Panel has the jurisdiction over the disputes.

In principle, the Labour Inspector and the Minister of Labour and Vocational Training are obliged to decide whether a dispute is an individual dispute or a collective labour dispute before submitting it to the Arbitration Council. Therefore, the Arbitration Council usually

abides by the decision of the Labour Inspector and the Minister of Labour and Vocational Training unless there are specific reasons for objection (See Award 10/03 - Jacquintex, 07/05 - Coca Cola, 41/04 - Micasa, and 02/04 - Cambodiana Hotel).

In this case, the Arbitration Council considers that the dispute of the five workers is not a collective labour dispute.

Article 302 of the Labour Law stipulates that, *"A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness."*

Based on Article 302 of the Labour Law, to assert that a dispute is a collective one it is necessary to meet three requirements of the collective labour dispute as stated in Article 302 of the Labour Law.

The three requirements include:

- A- The dispute is between a number of workers and one or more employers;
- B- The issues in dispute relate to working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations, or issues regarding relations between employers and workers ;
- C- This dispute could jeopardize the effective operation of the enterprise or social peace.

In this case, requirement A is met because this complaint was lodged by a group of five workers. Requirement B is also met, for this dispute is related to the working conditions and relations between the workers and the employers.

However, requirement C is not met, for the worker party of five people cannot jeopardize the effective operation of the enterprise or social peace.

- (1) The five workers are working in different units and within the aforesaid demands, some are concerning with rights and interests of one or two workers. Five workers is a very small portion compared to the total number of workers of around 5,000 in the factory. Furthermore, the demands of the five workers were not supported by other workers in the factory;
- (2) In addition, the five workers did not provide any evidence to prove that this dispute could jeopardize the effective operation of the enterprise or social peace (See Award 20/05 - Fortune and 57/06 - Evergreen).

According to the above explanation, the Arbitration Council considers that this dispute is not a collective labour dispute. In compliance with Chapter 12, Section 2 of the Labour Law, the Arbitration Council has the jurisdiction to make decision only over collective labour disputes. Therefore, the Arbitration Council decides not to consider the 14 demanding issues of the five workers.

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

DECISION

Reject to consider all demands of the five workers.

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 objection with the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: