



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនករកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 80/08 – Sun Shine

Date of Award: 11 July 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

DISPUTING PARTIES

Employer party:

Name: **Sun Shine Co., Ltd**

Address: Phsa Kambol Village, Kambol Commune, Angsnoul District, Kandal Province

Telephone: 012 753 900

Fax: N/A

Representative:

- | | |
|------------------|------------------------|
| 1. Mr. Som Thai | General Manager |
| 2. Mr. An Sam Ol | Head of Administration |

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and local union of Khmer Youth Trade Union (KYTU) at Sun Shine Factory**

Address: Phsa Kambol Village, Kambol Commune, Angsnoul District, Kandal Province

Telephone: 012 907 902

Fax: N/A

Representative:

- | | |
|---------------------|---|
| 1. Mr. Ou Phoeun | Officer of KYFTU |
| 2. Ms. Chan Sopheap | President of KYTU at Sun Shine Company |
| 3. Mr. Leng Vutha | Vice-president of KYTU at Sun Shine Company |
| 4. Mr. Korm Sokha | Secretary of KYTU at Sun Shine Company |

5. Mr. Korm Chatha	Union Committee
6. Mr. Thuy Sothi	Union Committee
7. Mr. So Chanthy	Union Committee
8. Mr. Phuong Vannak	Union Committee
9. Mr. Noun Noeurp	Union Committee
10. Mr. Phan Phearom	Union Committee

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- When the company does not have work for the workers to do, it will pay full wages to those workers who arrive at the company and are then told to go back home; the company will pay half wages to those [workers] whom the company has notified first. The workers do not agree.

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. 310/08 KB/KN, dated 16 June 2008, was submitted to the Secretariat of the Arbitration Council on 20 June 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 June 2008 (from 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 12 June 2008, the Department of Labour Disputes at Kandal Province assigned an expert officer to conciliate a collective labour dispute on 15 issues and 14 issues were conciliated. The one non-conciliation issue was referred to the Secretariat of Arbitration Council on 20 June 2008.

After the case was received, the Secretariat of Arbitration Council summoned the employer and worker parties to the hearing and conciliation on the one non-conciliation issues on 27 June 2008 at 2:00 p.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to find out more information related to the dispute and attempted to further the conciliation on the one non-conciliation issue but was not able to resolve the issue. Therefore, the Arbitration Council will consider and settle this dispute 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. Notification to order workers in production group in some sections to take day-off for a period of time:
 - Sewing worker in old building: Groups 3, 5, 8 and 9 from 21 to 25 March 2008.
 - Sewing worker in new building: Groups 4, 5, 6, 7 and 9 from 22 to 27 March 2008.
2. The certificate of registration in General System of Preference No. 2311 PN.BAP, dated 08 October 2003.
3. Internal Work Rules of Sun Shine Company No. 060 SKBY, dated 08 December 2003.
4. 17 copies of payroll in March 2008.

Provided by the worker party:

1. Letter No. 1128 KB/AK/KV by the Chief of the Department of Labour Dispute to the President of the local union of KYTU at Sun Shine Company regarding recognition of the new union leadership in its second mandate, dated on 18 October 2007.
2. Certificate of union registration of the local union of KYTU at Sun Shine Company.

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

1. Report No. 310/08 KB/KN, dated 16 June 2008 on the collective labour dispute settlement at Sun Shine Company.
2. Minutes of the collective labour dispute resolution at Sun Shine Company, dated 12 June 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 405 KB/AK/VK/LKA dated 24 June 2008 to invite the employer party to attend the hearing.
2. Invitation No. 406 KB/AK/VK/LKA dated 24 June 2008 to invite the worker party to attend the hearing.

FACTS

- Having reviewed 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:

- Sun Shine Company employs approximately 1,210 workers.
- There are 3 unions in the company: (1) Khmer Youth Trade Union, (2) Union of Independent and Democratic and (3) Union of Solidarity. None of these unions has most representative status.
- The local union of KYTU at Sun Shine Company is the complainant in this case. The union has approximately 350 members.

Issue in Dispute: The workers demand that the company pay them half wages in order to make up full wages during the period there was no work

- The company has never experienced a situation where there is no work for workers except for a short period of 5 to 7 days in March 2008 when there were no orders from buyers. The workers do not object to this claim.
- In the hearing, the employer stated that, regarding the short period in which there was no work, the company called Ms. Chan Sopheap, President of the local union of KYTU at the factory and the heads of groups for discussion about this matter; then the company made an announcement, dated 20 March 2008, and posted it on the information board and announced it on the megaphone. The announcement was to order some production groups to take compulsory leave in the following sections:
 - Sewing workers in the old building: Groups 3, 5, 8 and 9 from 21 to 25 March 2008.
 - Sewing workers in the new building: Groups 4, 5, 6, 7 and 9 from 22 to 27 March 2008.
- *In some other groups such as cutting group, packaging group, quality control group, half the number of workers still work according to arrangement by the head of groups and the company provided half wages during the day off.* The workers party do not object to what the employer stated.
- The employer mentioned in the hearing that some of the workers were informed about the temporary lack of work. Those who were not informed that there was no work came to the factory and the company paid them full wages (300 workers). Other workers who received information about the short period of no work did not come to the company (which means they did not sign in at the company) and the company provided half wages (360 workers). The company already paid out all these amounts to the workers. The workers do not object what the company stated.

- In the hearing the employer added that the company had a meeting with the President of the local union of KYTU, worker delegates, and head of groups and all of them agreed to accept half wages for the short period in which there was no work in March 2008. For that reason, the company implemented the provision of half wages from that time on and it did not have any problems until June 2008 when the workers demanded that the company provide an additional 50 percent of wages to make up full wages and the company did not know the reason for this.
- The company did not apply to the Labour Inspector of the Ministry of Labour and Vocational Training to request the suspension of employment of the workers during the period the company did not have work for them to do for a short period of time in March 2008.
- In the hearing the workers party claim that they demand the company to provide an additional 50 percent [of wages] to make up full wages because the company did not apply for permission from the Labour Inspector of the Ministry of Labour and Vocational Training to suspend their employment contract when it did not have work for them to do.

REASONS FOR DECISION

Issue in Dispute: The workers demand that the company pay them half wages in order to make up full wages during the period there was no work

The company was facing difficulty because there were no buyers and so it was unable to provide work for workers in the sewing groups in March 2008. However, the company did not submit a letter to the Labour Inspector of the Ministry of Labour and Vocational Training to request the suspension of employment during the period the company did not have work for the workers to do for a short period of time in March 2008. The company provided half wages to the workers and it did not have any problems. Yet, in June 2008 the workers demanded that the company pay an additional 50 percent of wages in order to make up full wages. Thus the Arbitration Council will consider whether the workers are entitled to demand the company back pay an additional 50 percent of their wages in order to make up full wages during the period the company did not have work for them to do according to the Labour Law and whether the employer is obliged to pay an additional 50 percent of wages.

The suspension of the employment contract should be in accordance with the legal procedures provided in Article 71(11) for the following reasons:

“11- When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which lead to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector”.

Article 72 of the Labour law *“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.”*

Generally, the Labour Inspector must be notified of and permit the suspension of [workers'] employment contracts. According to this Article, the Labour Inspector is the one who determines whether to permit or not permit a company to suspend workers' employment contracts after inspecting the case.

In this case, based on the findings of fact, the Arbitration Council finds that although the company paid the workers half wages and the workers agreed to accept this amount, the company still needed to suspend the [workers'] employment contracts in accordance with Article 71 (11) of the Labour Law, which means it needed to notify the Department of Labour Inspector of the Ministry of Labour and Vocational Training so that the [Labour Inspector] could inspect the company when [the company] did not have work for the workers to do in March 2008. The Labour Inspector would then decide whether the company could suspend the employment contracts of the workers.

In previous cases, the Arbitration Council determined that if the suspension of [workers'] employment contracts was in accordance with Article 71 (11) of the Labour Law, workers are not entitled to wages during the period of suspension of employment (see Arbitral Award 46/05 - Ocean, Issue 1). The Arbitration Council also determined that in case the company does not have work for the workers to do and did not suspend their employment contracts according to Article 71 (11) of the Labour Law, the company has an obligation to pay full wages to workers (see Arbitral Awards 01/04-New Point 2, Issue 1; 60/04-United Arts, Issue 1; 21/03-Loyal Cambodia, Issue 8; 46/04-M&A Cambodia, Issue 1; 60/06-New Max Garment, Issue 2; 74/07-Global Apparel, Issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Panels in previous cases; [and finds that] during the period the company did not have work for the workers to do in March 2008 the company paid the workers only half wages without suspending the workers' employment contracts in accordance with Article 71(11) of the Labour Law. Therefore, the Arbitration Council considers that the company has an obligation to back pay half wages to the workers for the period the company did not have work for them to do.

Therefore, the Arbitration Council decides to order the company to back pay half wages to the workers for the period it did not have work for them to do in March 2008.

Base on the above facts, legal principle, and evidence the Arbitration Council makes it decision as follow:

DECISION AND ORDER

- Order the company has to back pay half wages to the workers for the period it did not have work for them to do in March 2008 within 15 days from the date this Arbitral Award enters into effect.

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 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: **Seng Vuoch Hun**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: