

KINGDOM OF CAMBODIA

NATION RELIGION KING



ក្រុមប្រឹក្សាពន្ធដារកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 81/06 – Hong Y

Date of Award: 11 October 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party:

LY TAYSENG

Arbitrator chosen by the worker party:

ANN VIREAK

Chair Arbitrator (chosen by the two Arbitrators):

KONG PHALLACK

DISPUTING PARTIES

1- Employer Party

Name : **Hong Y Company**

Address : Kbal Damrey Village, Sangkat Kakap, Khan Dangkor, Phnom Penh

Telephone : 012 850 348 Fax: N/A

Employer Representative:

1. Mr. Roeun Saraim Company representative.

2- Worker party

Name : **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union in Hong Y Company**

Address : No. 34, Street 264, Sangkat Toeuk Laak III, Khan Tuol Kork, Phnom Penh

Telephone : 012 471 421 Fax: N/A

Worker Representatives:

1. Mr. Eng Vanna KYFTU Officer;

2. Mr. Sok Chamroeun President of KYTU in Hong Y Factory;

3. Mr. Long Kimly Vice-President of KYTU in Hong Y Factory.

ISSUE IN DISPUTE

(In the non-conciliation report)

The workers demanded that the company reinstate Mr. Sok Chamroeun, the Union President, and Mr. Long Kimly, the Union Vice-President. The employer party asserted that they could not reinstate the two union leaders because they did not abide by the company's Internal Work Rules.

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. 1350 dated 19 September 2006 was submitted to the Secretariat of the Arbitration Council on 19 September 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE 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 : 3 October 2006 (from 8:00 a.m. to 9:30 a.m.)

Procedural Issues:

Having received the complaint from the workers of Hong Y Company on 6 September 2006 which demanded that the company improve 16 working conditions, the Department of Labour Disputes designated its expert official to settle and conciliate the collective labour dispute. This resulted in 15 out of 16 issues being successfully conciliated. The non-conciliated issue was submitted to the Arbitration Council on 19 September 2006.

Having received the case, the Arbitration Council summoned the employer party and KYFTU as well as the workers concerned to attend a hearing to conciliate the non-conciliated issue on 3 October 2006 at 8:00 a.m. Both parties were present at the hearing at the Arbitration Council. At the hearing, the Arbitration Council made a further attempt for the conciliation, but the issue remained unresolved. Therefore, the Arbitration Council will consider the non-conciliated issue based on the evidence and the findings of fact as follows:

EVIDENCE

Witness and experts besides the parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 - 1- Letter of the Director of Hong Y Company authorizing Mr. Roeun Saraim [to act on behalf of the enterprise at the Arbitration Council];
 - 2- Pay slips of Mr. Sok Chamroeun and Mr. Long Kimly.
- b. Provided by the worker party:
 - 1- List of workers who attended the election of Khmer Youth Trade Union in Hong Y Company;
 - 2- Curriculum Vitae of Mr. Sok Chamroeun and Mr. Long Kimly.
- c. Provided by the Ministry of Labour and Vocational Training:
 - 1- Report No. 1350 dated 19 September 2006 on the collective labour dispute conciliation in Hong Y Company of Mr. Koy Tepdaravuth, the Director of the Department of Labour Disputes;
 - 2- Minute of the collective labour dispute conciliation dated 6 September 2006.
- d. Provided by the Secretariat of the Arbitration Council:
 - 1- Invitation No. 392 dated 26 September 2006 to the worker party to attend the hearing;
 - 2- Invitation No. 391 dated 26 September 2006 to the employer party to attend the hearing.

FACTS

- Having examined various documents submitted to the Arbitration Council;
- 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:

- This factory was previously not named Hong Y, but its name was changed to Hong Y and moved from the previous location on National Road No. 4, Sangkat Chaom Chau, to Sangkat Kakap, Khan Dangkor, Phnom Penh, five or six months ago;
- Hong Y Company employs 400 workers, who are mostly from the previous location;
- The company is still applying the Internal Work Rules of the previous company. The company is filing an application for amendment as advised by the Labour Inspector;

- Mr. Sok Chamroeun started working for the company on 2 April 2006. His contract was an undetermined duration contract. He received an average wage of between US\$40 and US\$60 per month. He was dismissed by the company on 3 July 2006. The employer asserted that the company chose to dismiss Mr. Sok Chamroeun because he did not respect the company's Internal Work Rules specifically, by using improper words, talking back and behaving rudely to the Chinese Manager named Mei. At the hearing, Mr. Sok Chamroeun asserted that he did argue with the Manager on 3 July 2006 because the Manager allowed him to take two-days of sick leave but would not provide wages or bonus. He disagreed and refused to take the leave and wanted to work instead. However, the Manager did not agree and decided to dismiss him at once. At the hearing, the company affirmed that the company agreed to provide Mr. Sok Chamroeun severance pay in accordance with the Law including a cash benefit in-lieu of the seven-day notice period, a cash benefit in substitution for the 15 days of annual leave and his last wages. However, Mr. Sok Chamroeun demanded reinstatement;
- Mr. Long Kimly started working for the company on 14 December 2005. His contract was an undetermined duration contract. He received an average wage of between US\$70 and US\$90 per month. He was dismissed by the company on 3 July 2006 without any valid reason. At the hearing, the company representative asserted that the company dismissed Mr. Long Kimly because he was a friend of Mr. Sok Chamroeun and the Chinese Manager did not like Mr. Chamroeun; therefore, he was also dismissed. At the hearing, the company confirmed that the company agreed to pay damages in compliance with the law such as a cash benefit in substitution for the 15 days of prior notice, 15 days of compensation, 15 days of severance pay, payment for 15 days of annual leave, and last wages. However, Mr. Long Kimly demanded reinstatement;
- At the hearing, the employer asserted that the company had never had a union and did not know about the establishment of any union. However, the worker party affirmed that the workers took the initiative to create a union and the election took place on 30 June 2006 with the participation of approximately 40 workers. In the election, Mr. Sok Chamroeun was elected by 32 votes to be the Union President, while Mr. Long Kimly was elected by six votes to be the Union Vice-President. And another candidate (name could not be recalled clearly) was elected by three votes to be the Union Secretary. The worker party confirmed that the election was held in the factory, but they did not inform the company or the Department of Labour Inspection and to date the union has yet to apply for a Registration Certificate;
- The Arbitration Council has received the list of voters but not the minute on the election of the union leaders, which evidences the workers' claim at the hearing.

REASONS FOR DECISION

Before considering the issue in dispute, the Arbitration Council will consider whether or not the Arbitrator Council has jurisdiction over this dispute.

In principle, the Labour Inspector and the Minister of Labour and Vocational Training are obliged to decide whether a dispute is an individual or collective labour dispute before the dispute is referred to the Arbitration Council. Therefore, the Arbitration Council will generally abide by the decision of the Labour Inspector and the Minister of Labour if there is no specific reasons for objecting (see Arbitral Award 10/03 - Jacqsintex, 07/05 – Coca - Cola, 41/04 - Micasa, and 02/04 - Cambodiana Hotel).

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 recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardise the effective operation of the enterprise or social peacefulness."

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

The three requirements include:

- A- There is a dispute between a number of workers and one or more employers;
- B- The issues in dispute are related to working conditions, the exercise of the recognized rights of professional organisations, the recognition of professional organisations, or issues regarding the relationship between employers and workers;
- C- The dispute could jeopardize the effective operation of the enterprise or social peacefulness;

In this case, the requirement **A** was met because this complaint was lodged by a group of two workers. Requirement **B** was also met because this dispute is related to working conditions and the relationship between workers and the employer. **However, to determine whether or not requirement C is met, the Arbitration Council will consider the following:**

In regard to requirement C, in Arbitral Award 77/06 - P.C.C.S, the Arbitration Council confirmed that *"However, requirement C is not met, for the worker party of five people cannot jeopardize the effective operation of the enterprise or social peacefulness based on the following reasons:*

- (1) *The five workers are working in different units and within the aforesaid demands, some are concerned with the 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 peacefulness (see Arbitral Awards 20/05 - Fortune and 57/06 - Evergreen.)”*

Similarly, in this case, the Arbitration Council considers that requirement C is not met because the two workers cannot jeopardize the effective operation of the enterprise or social peace. The worker party of two persons is a small number compared to the total number of 400 workers in the company. In addition, these workers are not skilled workers that the company cannot operate without. Furthermore, at the hearing, the worker party did not present any evidence to confirm that this dispute could cause the enterprise not to operate effectively or jeopardize the social peace (see Arbitral Award 20/05 - Fortune and 57/06 - Evergreen.)

At the hearing, the worker party asserted that they were elected by approximately 40 workers to be union leaders. However, based on the above facts, the Arbitration Council has found that the worker party failed to present specific evidence related to their assertion that the election took place and that there was a minute on the election proving the supporting votes in order to elect the union leaders. The work party has only a list of voters. Hence, the Arbitration Council finds that the evidence provided by the worker party does not adequately support their assertion. As a result, the Arbitration Council cannot take this argument to mean that there was support from other workers in regard to this demand. The list of names can only prove the participation in the election of the union leaders.

According to the above explanation, the Arbitration Council considers that this dispute is not a collective labour dispute but rather, that the dispute is an individual labour dispute, which shall be settled according to the procedures stipulated in Article 301 of the Labour Law.

According to Chapter 12, Section 2 of the Labour Law, the Arbitration Council has jurisdiction only to consider collective labour disputes. Therefore, the Arbitration Council has no jurisdiction over this dispute. As a result, the Arbitration Council decides not to consider the demand of the two workers.

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

DECISION

Decline to consider the demand of the workers that the company reinstate Mr. Sok Chamroeun, the Union President and Mr. Long Kimly, the Union Vice-President.

TYPE OF AWARD: BINDING AWARD

This Award will become binding after the two parties are notified of the Award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **LY TAYSENG**

Signature:

Arbitrator chosen by the worker party:

Name: **ANN VIREAK**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: