



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអង្គជំនុំជម្រះ

THE ARBITRATION COUNCIL

Case number and name: 82/07 – Archid

Date of Award: 26 September 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTING PARTIES

Employer party:

Name: **Archid Garment Factory Cambodia Limited**

Address: Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh

Telephone: 012 852 646

Fax: N/A

Representatives:

- | | |
|-------------------|---------------|
| 1. Hang Siev Tong | Director |
| 2. Oeun Sam Ol | Administrator |
| 3. Hor Hong | Assistant |
| 4. Hang Ing Si | Administrator |

Worker party:

Name: **Khmer Youth Trade Union (KYTU) at Archid Company**

Address: Boeung Krapeu, Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh

Telephone: 012 628 490

Fax: N/A

Representatives:

- | | |
|---------------|------------------------|
| 1. Sea Son | KYFTU Coordinator |
| 2. Ol Sam Art | Vice-President of KYTU |
| 3. Huon Sokha | President of KYTU |

- | | |
|--------------|-------------------|
| 4. Lam Vuthy | Secretary |
| 5. Ly Kim An | KYFTU Coordinator |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demanded that the company convert labour contracts exceeding two years to undetermined duration contracts. The company disagreed and would apply Article 67 and Article 73 of the Labour Law.
2. The workers demanded that the company sign fixed duration contracts of one year because the previous contracts were too short and affected workers' job [security] and their family's living standard. However, the company disagreed arguing that it recruited workers based on the production line.
3. The workers demanded that the company maintain their bonuses when workers punched their cards ten minutes late. The company did not agree and claimed that it followed Notification No. 017 dated 18 July 2000.
4. The workers demanded that the company pay out their unused annual leave and that the payment be made annually in April before the Khmer New Year. The company did not agree because the annual leave is based on the seniority status of each worker.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article No. 309 to 317) 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. 076/07 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 Labor Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 855 was submitted to the Secretariat of the Arbitration Council on 20 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:** First hearing: 28 August 2007 (from 2:15pm to 3:30pm)
Second hearing: 11 September 2007 (from 2:30pm to 4:30pm)

Procedural issues:

On 20 June 2007, the Department of Labour Disputes received a complaint from the workers demanding that the company improve some working conditions. Having received the complaint, the Department of Labor Disputes designated its expert official to conciliate the disputes; four out of eight issues were successfully conciliated in the last conciliation session held on 26 July 2007. The four non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 20 August 2007.

Having received the case, the Secretariat of the Arbitration Council summoned both parties to conciliate the four non-conciliated issues in the first hearing on 28 August 2007 at 2:15pm, and the second hearing on 11 September 2007 at 2:30pm. Both parties were present at the hearing summoned by the Arbitration Council.

At the first hearing, the Arbitration Council specified that only the four non-conciliated issues submitted by the Ministry of Labor and Vocational Training would be resolved unless the new issues arose from the direct impact of this collective dispute. However, the KYTU objected to the Arbitration Council's hearing process and requested that the Arbitration Council add two other issues to the non conciliation report, which the Ministry of Labour had already conciliated. The two issues are:

1. The Khmer Youth Trade Union demanded that the worker delegates should be elected from all staff and not just represent the management level because the three worker representatives who were elected as [worker delegates] were group leaders and they were also members of the management.
2. The deduction of union contribution fees when a worker transfers his or her membership from one union to another especially to KYTU.

The Arbitration Council delayed the hearing to 11 September 2007 waiting for responses from the Labour Inspector of the Ministry regarding the two issues raised by the worker party.

On 11 September 2007, the Arbitration Council started the second hearing. The Ministry did not respond to the two issues raised. The Arbitration Council then assumed and declared that only the four non-conciliated issues were under its own jurisdiction. Therefore, the hearing will make a determination in relation to the four issues only.

KYTU then objected to the procedure and refused to provide facts and evidence regarding their demand. The Arbitration Council asked how the union party wanted the Arbitration Council to [proceed] and the union representatives said, "*The Arbitration Council does whatever it wants to, but the union representatives will not discuss or provide any facts and evidence regarding the four issues.*" Thus, the hearing session was terminated immediately.

Therefore, the Arbitration Council considered the non-conciliated issues based on the evidence and the 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. Letter No. A0026-7-07 dated 11 August 2007 authorizing Mr. Oeun Sam Ol, Company's Communication Officer, to settle the dispute;
2. Application for the visa for the Company's Internal Work Rules dated 11 October 2000;
3. Internal Work Rules of Archid Garment Factory Cambodia Limited No. 096 dated 25 October 2000;
4. Business License registration of Archid Garment Factory Cambodia Limited No. 153 dated 18 January 2000;
5. Memorandum and statute of Archid Garment Factory Cambodia Limited dated 9 December 1999;
6. Third Term Worker Delegates Election No. 561 dated 22 April 2005;
7. Notification on the fourth term Worker Delegates Election held on 26 May 2007 and name list of the candidates dated 22 May 2007;
8. Labour contract and Letter of Apology of Ol Sam Art dated 24 May 2007.

Provided by the worker party:

1. Statute No. 1110 of KYTU at Archid Company dated 21 February 2007;
2. Registration Certificate of KYTU at Archid Company dated 21 February 2007;
3. Letter No. 034/07 of KYTU at Archid Company dated 21 February 2007;
4. Letter No. 920 dated 5 December 2006 from KYTU to the company's Director, requesting the deduction of 1,000 riels from the members of KYTU;
5. Letter No. 99 dated 26 January 2007 from KYTU to the company's Director, requesting the deduction of 1000 riels from the members of KYTU;
6. Summarized thesis of the dispute of KYTU dated 24 August 2007.

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

1. Report No. 855 dated 20 August 2007 of the Ministry on the collective labor dispute conciliation at Archid Garment Factory Cambodia Company Limited;
2. Report No. 1154 dated 28 August 2007 on the collective labor dispute conciliation of Archid Garment Factory Cambodia Company Limited;
3. Minutes of the collective labor dispute conciliation dated 26 July 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 361, dated 22 August 2007, to the worker party to attend the hearing;
2. Invitation No. 362, dated August 2007, to the employer party to attend the hearing;

3. Letter dated 28 August 2007 requesting a delay by both parties in case 82/07.

FACTS

N/A

The Arbitration Council finds that:

N/A

REASONS FOR DECISION

Clause 33 of Prakas No. 099/04 states that, *“The power of an arbitration panel to consider a dispute shall be limited to addressing those issues which are contained in the non-conciliation report including issues which are the direct consequences of the dispute but which arise from events subsequent to the date of the report.”*

In this case, the KYTU party demanded that the Arbitration Council resolve two other issues, which were not listed in the non-conciliation report and did not arise from the direct impact of the dispute nor did they arise from events which occurred after the report minutes.

Therefore, as mentioned in the hearing, the Arbitration Council will not conciliate the two issues. (See Award 62/04 – Ecent, Issues 17, 18 and 19)

The worker party decided not to participate in the hearing; thus, the hearing was terminated.

Clause 21 of Prakas 099/04 provides, *“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.”*

Rule 4 (7) of the Annex of Prakas No. 099/04 provides, *“If a party fails to appear in person or to be represented at 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 either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”*

According to the Labour Law (see Article 312) and Prakas No. 099/05 (see Clause 24, 25, 26 and 27), the Arbitration Council has broad power to conduct hearing sessions and to obtain information from disputing parties.

Hence, the Arbitration Council considers that a hearing is an opportunity for the Arbitration Council to find out information or evidence relevant to the dispute; in the same

way, it is also an opportunity for disputing parties to provide evidence or reasons to support their demands. The presence of the party is not enough; it is important that the party cooperate to provide their statements as a basis for the Arbitration Council to decide.

In this case, the Arbitration Council provides the KYTU with the opportunity to attend and participate in the legal proceedings regarding the workers' demands. However the KYTU chose not to participate or provide facts and evidence to support their claims except to demand that the Arbitration Council resolve two issues in addition to the four non-conciliated issues submitted by the Ministry.

The Arbitration Council finds that by not participating in a hearing or by failing to provide facts and evidence in a hearing, it means the party chooses to discontinue their claim and [the effect is the same as if the party] does not show up in the hearing. (See Arbitral Award 27/07 – M&V)

Based on the aforementioned rules, the Arbitration Council finds that *the Arbitration Council can terminate the proceedings by issuing an award.*

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

DECISION AND ORDER

Close the case No. 82/07 – Archid and decline to consider the four issues demanded by the worker party.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: