

KINGDOM OF CAMBODIA

NATION RELIGION KING



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THE ARBITRATION COUNCIL

Case number and name: 84/06 – Pak Shun Knitting

Date of Award: 1 November 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:

VONG VANNA

Chair Arbitrator (chosen by the two Arbitrators):

KONG PHALLACK

DISPUTING PARTIES

1- Employer Party

Name : **Pak Shun Knitting Factory Limited**

Address : No. 786, National Road No. 2, Prek Talong village, Sangkat
Chak Angrae Kraom, Khan Meanchey, Phnom Penh

Telephone : 023 425 688, 012 919 189, 012 988 616 Fax: 023 425 000

Employer Representatives:

- | | |
|----------------------|-------------------------|
| 1. Mr. Try Surivieah | Company Representative; |
| 2. Mr. Chen Yen | Company Representative; |
| 3. Mr. In Meng | GMAC Representative. |

2- Worker party

Name : **Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC)**

Address : N/A

Telephone : 011 682 802 Fax: N/A

Worker Representatives:

- | | |
|--------------------|------------------------------|
| 1. Mr. Sorn Dyna | President of FTUWKC; |
| 2. Mr. Sok Theary | Secretary General of FTUWKC; |
| 3. Mr. Hul Sengkun | Worker delegate. |

Name : **Cambodian Labour Union Federation (CLUF)**

Address : N/A

Telephone : 092 864 738 Fax: N/A

Worker Representatives:

- | | |
|---------------------|----------------------------|
| 1. Mr. Khin Sokhorn | Official of CLUF; |
| 2. Mr. Aun Veasna | Vice President of CLUF; |
| 3. Mr. Chhay Ngov | Secretary General of CLUF. |

ISSUES IN DISPUTE

(In the non-conciliation report)

The workers demanded that the company increase the piece rate from US\$4.20 to US\$4.80 per dozen in the Weaving and Hand Stitching Sections:

- PN 335 from US\$0.48 to US\$0.55 per dozen;
- PN 336 from US\$0.43 to US\$0.50 per dozen;
- PN 341 from US\$0.45 to US\$0.50 per dozen.

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 2A of the Labour Law. The conciliation hearing was unsuccessful, and the non-conciliation report 1416/06 was submitted to the Secretariat of the Arbitration Council on 4 October 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:

- First pre-hearing meeting, 10 October 2006 (from 8:30 a.m. to 10:00 a.m.);
- Second pre-hearing meeting, 13 October 2006 (from 2:30 p.m. to 4:00 p.m.);
- Hearing, 23 October 2006 (from 8:30 a.m. to 11:00 a.m.)

Procedural Issues:

On 3 October 2006, the Department of Labour Disputes received telephone complaints from striking workers demanding that the company increase the piece rate for the Weaving and Hand Stitching Sections. Having received the complaints, the Department of Labour Disputes designated an expert official to conciliate the issue with the result being that the one issue could not be successfully conciliated. The non-conciliated issue was sent to the Arbitration Council on 4 October 2006.

Having received the case, on 5 October 2006 the Arbitration Council issued the first order asking all workers to return to work in order to continue the dispute resolution procedure at the Arbitration Council. The workers continued to strike.

On 10 October 2006 the Arbitration Council invited both parties to a meeting to discuss and attempt to settle the issue. Both parties were present at the meeting upon the Arbitration Council's invitation. After the discussion, the employer party agreed to discuss the Arbitration Council's suggestions with the company's General Manager and continue to negotiate with the workers in the factory. However, the negotiation was not successful and the workers remained on strike.

On 12 October 2006 the Arbitration Council issued a second interim order requiring all workers to return to work and to attend a hearing on 13 October 2006. Both parties were present in accordance with the Arbitration Council's invitation. However, the Arbitration Council did not proceed to hearing because the employer party claimed that the workers were still on strike. After discussion, both parties agreed with the Arbitration Council's suggestion which required both parties to continue the discussion on 17 October 2006 and set a new hearing date for 23 October 2006.

The negotiation between the two parties on 17 October 2006 was again unsuccessful. The hearing planned for 23 October 2006 proceeded and both parties were present upon the Arbitration Council's invitation. At the hearing, both the worker party and the employer party acknowledged that the workers had stopped striking and returned to work as usual but some workers had taken leave until 1 November 2006.

At the hearing, the Arbitration Council made a further attempt to conciliate the issue but the issue remained unresolved. Therefore, the Arbitration Council considers the unresolved issue on the basis of 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- Internal Work Rules of Pak Shun Knitting Factory Ltd;
 - 2- Statute of Pak Shun Knitting Factory Ltd;
 - 3- Business Registration License of Pak Shun Knitting Factory Ltd;
 - 4- Request Letter for an order to be issued to postpone the strike, dated 4 October 2006.
- b. Provided by the worker party:
 - 1- Letter on the selection of Arbitrators, dated 4 October 2006.
- c. Provided by the Ministry of Labour and Vocational Training:
 - 1- Report No. 1416 on the collective labour dispute conciliation at Pak Shun Factory, dated 3 October 2006 ;
 - 2- Minute on the collective labour dispute conciliation at Pak Shun Factory, dated 3 October 2006.
- d. Provided by the Secretariat of the Arbitration Council:
 - 1- Invitation No. 438 to the four unions to attend the hearing on 23 October 2006, dated 18 October 2006;
 - 2- Invitation No. 439 to the employer party to attend the hearing on 23 October 2006, dated 18 October 2006;
 - 3- Invitation No. 411 to the four unions to provide detailed information on the labour dispute on 10 October 2006, dated 9 October 2006;
 - 4- Invitation No. 412 to the employer party to provide detailed information on the labour dispute on 10 October 2006, dated 9 October 2006;
 - 5- Letter No. 401 on the selection of Arbitrators, dated 4 October 2006.

FACTS

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimony of both the employer and the worker parties;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- Pak Shun Company, located at No. 786, National Road No. 2, Sangkat Chak Angrae Kraom, Khan Meanchey, Phnom Penh employs approximately 1,990 workers;

- There are four unions in the factory, but the Free Trade Union of Workers of Kingdom of Cambodia withdrew from the claim during the hearing. Therefore, only three unions are involved in the dispute - the Cambodia Labour Union Federation (**CLUF**), the Cambodia Federation of Independent Trade Unions (**CFITU**) and the Coalition of Cambodian Apparel W.D.U (**C.CAWDU**). None of the four unions has most representative status according to Prakas 305/01;
- The Cambodia Labour Union Federation (**CLUF**) has around 760 members in the factory. No workers from the Weaving Section (PN 332) of the said union are involved in the dispute demanding for an increase in the piece rate while 80 members from the Hand Stitching Section (PN335, PN336, PN341) have been involved in the above-mentioned dispute;
- The Cambodia Federation of Independent Trade Union (**CFITU**) has around 400 members in the factory. Around 400 workers in the Weaving Section (PN 332) who are members of the said union are involved in the dispute while none of the members from the Hand Stitching Section (PN335, PN336, PN341) are involved in the dispute;
- The Coalition of Cambodian Apparel W.D.U (**C.CAWDU**) has around 400 members. Around 100 members from Weaving Section (PN 332) of the said union are involved in the dispute while 190 of the members from the Hand Stitching Section (PN335, PN336, PN341) are involved in the dispute;
- In the time before the hearing day, PN332 in the Weaving Section and PN335, PN336 and PN241 in the Hand Stitching Section were all finished and the workers were paid; only the remaining 56 percent of PN332 remains, which will be paid along with the October wage.
 - 1- First, the employer asked the workers to work for one week;
 - 2- Next, the team leader or the worker delegates asked the workers how much of the average piece rate they wanted;
 - 3- Then, the team leader discussed the average piece rate with the Section Supervisor to finalize the rate. If it had been agreed, the workers would have accepted it. If not, the workers would continue to negotiate though the PN was finished and the company has just given the rate.
- The calculation of PN332 in the Weaving Section and the calculation of PN335, PN336, and PN341 in the Hand Stitching Section are the same. However, because the negotiation on 29-30 October was not successful, the workers decided to go on strike even though the officials from the Ministry of Labour and the Arbitration Council tried to conciliate;

- Since the negotiation was not successful and in order to maintain public order and the Company's safety, the employers allowed the workers to go home on 6, 7, 11, 12 and 13 October 2006 and paid them 50 percent of the regular wage. Apart from the above dates, the company did not pay [the workers];
- Striking workers returned to work as usual on 16 October 2006. 130 Weaving Section workers took leave until 1 November 2006 and the company allowed them to take leave based on their written requests;
- At the hearing, the workers claimed that the reason they demanded the increase in piece rate was that the rate was too low. They claimed the rate was not equivalent to their work and that their daily expenses keep increasing since the price of goods becomes higher and due to the higher price of gasoline, rent and transportation fees also increase. On the other hand, the company claimed that they could not increase the piece rate for the following reasons: first, the company receives a low price for the order because of competition from other factories; second, the company spends a lot on materials; third, the company has already increased the piece rate and finally, the company has not made a profit since 2000.
- After the negotiation, the company increased the piece rate as follows:

	Previous Piece Rate in US\$	Piece Rate provided by the employers in US\$	Piece Rate demanded by the workers in US\$
PN 332	4.20	4.50	4.80
PN 335	0.48	0.50	0.55
PN 336	0.43	0.46	0.50
PN 341	0.45	0.47	0.50

- The worker parties and the employer party have agreed that none of the workers shall receive less than US\$45[/month]. The workers in the Weaving Section usually receive US\$60 per month for the normal eight-hour work day and the workers in the Hand Stitching Section usually receive US\$70 per month for the eight-hour work day.

REASONS FOR DECISION

The Arbitration Council considers that the workers' demand for the increase in piece rate in Weaving Section and Hand Stitching Section is as follows:

Clause 2 of Notification 017/00 states, "... *Regular worker is entitled to the minimum wage of US\$45 per month. Workers who receive a wage based on quantity (Piece Rate) are entitled to an actual result based on the work done. If the output of the work [means the worker] receives more than US\$45 per month, he or she shall receive that amount. However if [the worker] receives less than US\$45, the employer shall fill up US\$45 per month.*"

Based on the above facts related to the increase in piece rate of PN332 in the Weaving Section and PN335, PN336 and PN341 in the Hand Stitching Section, the Arbitration Council finds that none of the workers receive less than US\$45 per month for their normal eight - hour work day. Therefore, the Arbitration Council considers that the demand for the increase in piece rate is an interests demand which is beyond the scope of the Labour Law. Therefore, the Arbitration Council considers it as an interests dispute.

Regarding interests disputes, the Arbitration Council concurs with the previous interpretations of Arbitrators in previous cases who have determined, *“In general, for an interests dispute, the Arbitration Council always considers the most representative status of the disputing unions; the most representative status of a union provides the legal ability to negotiate a collective bargaining agreement within a factory and the legal right to bring a dispute before the Arbitration Council. In order to receive most representative status, Article 277 of the Labour Law provides that a union must be registered and meet all requirements stated in that Article“* (see *Arbitral Awards 45/05 - B & N, 49/05 - Ocean, 53/06 - Finegis, 07/06 - Dai Young, 44/04 - Gold Fame and 48/06 - Build Up*).

In Arbitral Award 07/06 - Dai Young, the Arbitration Council affirmed that, *“The right belongs to a registered union that has the most members and meets all the requirements stated in Article 277 of the Labour Law.”* In this case, according the Arbitration Council's findings none of the unions had most representative status. Therefore, these unions had no legal right to settle an interests dispute on behalf of all workers within the company or to sign a collective bargaining agreement on behalf of all workers in the factory (see *Article 96 (2B) and Clause 9 (1) of Prakas 305*).

Based on the previous decisions regarding interests disputes, the Arbitration Council concludes that a union which does not have most representative does not have the legal right to bring an interests dispute before the Arbitration Council as [the Arbitration Council] has always declined consider the demands of workers, if the union does not have most representative status (see *Arbitral Awards 31/03 - Hong Wah, 60/04 - United Art, 99/04 - AIA, 45/05 - BN, 49/05 - Ocean, 53/05 - Finegis, 07/06 - Dai Young, 44/06 - Gold Fame and 48/06 - Build Up*).

Furthermore, Article 43 of Prakas 099/04 on the Arbitration Council states, *“An Arbitral Award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the Award.”*

In previous Awards the Arbitration Council found the, *“If the Arbitration Council issues an Award on this issue, it will become a collective bargaining agreement that applies to all workers in the company and it will make other workers lose their rights to strike when there*

are interest disputes in the future; it will cause unfairness to other workers” (see *Arbitral Awards 04/03 - Lida, 06/04 - Chu Sing, 24/03 - Top One, 61/04 - Best Honour, 62/04 - CN, 09/05 - Kin Tai and 07/06 - Dai Young*).

In conclusion, the Arbitration Council declines to consider the demand of the workers for an increase in piece rate of PN 332 in the Weaving Section and PN 335, PN 336 and PN 341 in the Hand Stitching Section.

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 for an increase in the piece rate of PN 332 in the Weaving Section and PN 335, PN 336 and PN 341 in the Hand Stitching Section.

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: **LY TAYSENG**

Signature:

Arbitrator chosen by the worker party:

Name: **VONG VANNA**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: