



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 84/07 - Yung Wah II

Date of Award: 14 September 2007

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: **Yung Wah Industrial (Cambodia) Company Ltd II**

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 510 966 Fax: N/A

Representatives:

- | | |
|--------------------|-----------------|
| 1. Ng Min Chuan | Office Manager; |
| 2. Ly Muy Chheng | Administrator; |
| 3. Chen Chhou Fang | Administrator; |
| 4. Tao Davuth | Administrator. |

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) and
Cambodian Apparel Workers Democratic Union (CAWDU)**

Address: No. 6C, Street 476, Sangkat Toul Tumpoung I, Khan Chamkarmon, Phnom Penh

Telephone: 012 988 623 Fax: N/A

Representatives:

1. Meas Vanny	Labour Disputes officer;
2. Chan Dany	President of CAWDU at the factory;
3. Sok Phalla	Vice-President of CAWDU at the factory;
4. Keo Samphors	Secretary of CAWDU at the factory;
5. Tes Sreyrov	Worker Representative;
6. Morn Sok Im	Worker;
7. Tim Sreydy	Treasurer;
8. Oum Kun	Advisor;
9. Dith Chanthy	Worker;
10. Sok Khema	Worker.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company increase the wage to US\$60 (sixty dollars) for 37 workers in the Sample Unit.

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 which took place on 21 August 2007 was unsuccessful, and the non-conciliation report No. 174 was submitted to the Secretariat of the Arbitration Council on 27 August 2007.

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:

- First hearing on 31 August 2007 (at 8:00am)
- Second hearing on 3 September 2007 (at 9:00am)
- Third hearing on 7 September 2007 (at 8:00am)

Procedural issues:

On 17 August 2007, the Kandal Provincial Department of Labour and Vocational Training attempted to conciliate a labour dispute involving one issue, but the issue was not able to be resolved. The unresolved issue was forwarded to the Secretariat of the Arbitration

Council on 27 August 2007 by report No. 175/07 on non-conciliated collective labour dispute dated 21 August 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer and worker parties to a [series of] hearings to conciliate the unresolved issue firstly on 31 August 2007 at 8:00am; secondly on 3 September 2007 at 9:00am; and thirdly on 7 September 2007 at 8:00am.

Both parties were present as summoned by the Arbitration Council. The Arbitration Council tried to obtain more information related to the dispute and attempted to conciliate the unresolved issue but the issue was not conciliated. Thus, in this case, the Arbitration Council will consider and resolve [the dispute] 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. Authorization letter of the Director of Yung Wah Company dated 7 September 2007;
2. Work Timetable;
3. Business License registration dated 27 March 1998;
4. Internal Work Rules of Yung Wa II Company dated 26 May 2006;
5. Minutes of the collective labour dispute conciliation dated 17 August 2007;
6. Memorandum and statute dated 2 April 2002.

Provided by the worker party:

1. Summary statement on the activities of CAWDU at Yung Wah II dated 31 August 2007;
2. Agreement that was reached between workers and employer of Yung Wah during the strike on 01 April 2006;
3. Statute of CAWDU at Yung Wah II dated 23 September 2007;
4. License registration of CAWDU at Yung Wah II dated 11 August 2007.

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

1. Report on the collective labour dispute conciliation at Yung Wah II dated 21 August 2007;
2. Minutes of the collective labour dispute conciliation at Yung Wah II dated 17 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation Letter No. 373 to the employer party to attend the first hearing dated 28 August 2007;
2. Invitation Letter No. 394 to the employer party to attend the third hearing dated 6 September 2007;
3. Invitation Letter No. 374 to the worker party to attend the first hearing dated 28 August 2007;
4. Invitation Letter No. 395 to the worker party to attend the third hearing dated 6 September 2007.

FACTS FINDING

- Having examined the collective labour dispute conciliation report;
- Having listened to the statements of employer and worker parties;
- Having examined the additional documents;

The Arbitration Council finds that:

- The Sample Unit at Yung Wah II started operation in 2003. Currently, it employs approximately 5,500 workers in total;
- CAWDU does not have most representative status;
- The 40 Sample Workers were recruited by Ms. Saly, Chief of Unit, from the ordinary sewing units that consist of 70 to 100 workers. Only one or two workers could be selected from each unit. Those who were selected are considered as outstanding and fast workers. Among the 40 workers, 37 demanded that the company increase their monthly wage to US\$60 (sixty dollars) because they have worked in this Sample Unit for more than three years. Other workers, who have worked in this unit for less than three years, did not demand a wage increase;
- When recruiting workers for the Sample Unit, the Chief of Unit promised to increase their wages (but did not specify by how much). Apparently, up until now there was no increase as promised except three Sample Unit workers, whose wages have been increased – one is the Unit Chief, one is the Translator, and another one is Chief of QC Unit;
- The worker party said that when they were working for the sewing unit (piece rate), the more they sewed, the more wages they received, but when they were selected to work in the Sample Unit, they received only the minimum wage of US\$50 and their work is more difficult than in the Sewing Unit. In the Sewing Unit, they are required to

sew only a part of the shirt, but in the Sample Unit, they are required to sew the whole shirt.

- The employer party said in the hearing that the company has a policy to increase wages for those who were appointed as Chief of Unit, but for normal workers the company would increase their wages based on performance (not yet increased). Clause 5 of the company's Internal Work Rules dated 29 May 2006 states that, "*The company provides wages according to performance, capacity, and result of each worker. The company will make an evaluation to determine whether it is possible to increase wages for workers at the end of each year according to the result of work, disciplines, and individual performance and the ability of the company.*"
- However, regarding the workers in the Sample Unit, the employer said in the hearing that he had already proposed a wage increase to the Director of the company; but the Director said the company could not increase the wages for them; saying that the company would increase wages based on their capacities and; the company planned to increase wages for only half of the 37 workers in Sample Unit, who demanded a wage increase, and; the company considered that the other half did not perform well. The worker party refuted the company's claim arguing that if the company increases wages for workers in the Sample Unit, the company should increase wages for all 37 workers.
- The company party added that in August 2007 before this dispute occurred, the company arranged to increase wages for workers in this Sample Unit. First the company arranged for the increase based on A, B, and C methods (workers disagreed), then based on capacity of workers (workers disagreed) until the increase was postponed because the dispute could not be resolved. In the hearing, the company representatives agreed to increase wages to US\$60 for half of the 37 workers in the Sample Unit. The company needs one month to evaluate the other half. If the company considers that they are good, the company will increase their wages to US\$60.

REASONS FOR DECISION

The worker party demanded that the company increase wages to US\$60 for 37 workers in the Sample Unit. The 37 workers in the Sample Unit were recruited by Ms. Saly, Chief of Unit, from different units and promised that their wages would be increased, but it was not specified by how much. The Arbitration Council considers that the Chief of Unit had performed her duty to recruit workers from different units to work in the Sample Unit and she had a right to propose that the company provide a wage increase, but she did not have any authority to decide whether the increase should be approved. Ms. Saly had proposed to the

company that it increase wages for workers in the Sample Unit, but the Director of the company said the company could not increase their wages and would increase the wages based on their capacity.

The Arbitration Council considers that the workers can only demand a wage increase to US\$60 for the 37 workers if:

- stated in the Labour Law; and
- agreed by the Director of the company or personnel authorized by the Director to decide on behalf of the company.

1. The Arbitration Council shall consider whether or not workers have the right to demand the company increase their wages based on the Labour Law.

Article 104 of the Labour Law stipulates that, "*The wage must be at least equal to the guaranteed minimum wage.*" Notification No. 745/06 (1) states that, "*Minimum wage for textile and footwear worker is set at \$45 per month for the period that probationary worker work from 1 to 3 months. After the probation, regular worker shall receive \$50 per month.*" The monthly wages of the 37 workers in the Sample Unit are US\$50 as provided by law thus according to the law on minimum wage, the employer is not obliged to increase the wages to US\$60 for the 37 workers. (See Arbitral Award 23/07 – Yung Min, Issue 1)

Article 106 of the Labour Law provides that, "*For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age.*" Based on this article, the Arbitration Council considers that the principle of equal pay for equal work set out in Article 106 can be applied when workers have the same job role and [produce the same] output. In this case, no other worker has the same job role and [produces the same] output as the workers in the Sample Unit. For example, other workers in the Sample Unit did not demand [a wage increase] because they do not have the same seniority status. Workers in other sewing units do not have the same job role nor do they achieve the same result (sewing the whole shirt) as the 37 workers in the Sample Unit. Therefore, the principle of equal pay for equal work can not be applied. (See Arbitral Award 23/07 – Yung Min, Issue 1)

2. The Arbitration Council will consider whether or not there was an agreement from the Director of the company or any personnel authorized on his behalf to increase wages for workers in the Sample Unit.

In the hearing, the worker party claimed that the **Chief of Unit** verbally promised to increase the wages for workers in the Sample Unit, but did not specify by how much. The company said that the Chief of Unit only had the right to recruit workers, but he or she does not have the authority to decide whether workers should receive a wage increase. The

Arbitration Council considers that the claim of the workers that the **Chief of Unit** verbally promised to increase their wages has no valid legal basis because Ms. Saly was not authorized by the company; therefore, she did not have the ability to decide and the workers did not provide any evidence to prove that the Chief of Unit has this authority.

Article 5 of the company's Internal Work Rules dated 29 May 2006 clearly states that wage is based on a worker's capacity. In the past the company had not implemented this clause, but in the hearing the company said it planned to increase wages for half of the workers in the Sample Unit, but this was postponed because of this dispute. The 37 workers in the Sample Unit did not agree with the policy to increase wages for only half of the workers based on their capacities arguing that they are all skillful workers and perform well. The Arbitration Council considers that the Internal Work Rules of the company provides that wages should be based on the capacity of workers. The Internal Work Rules of the company do not give the 37 workers the right to demand a wage increase to US\$60.

Moreover, Article 2 of the Labour Law provides that, "*All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously.*

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.

A given establishment shall be always under the auspices of an enterprise. The establishment may employ just one person. If this establishment is unique and independent, it is both considered as an enterprise and an establishment."

In previous cases, the Arbitration Council has interpreted Article 2 to mean that the employer party has the right to manage and direct the company and lead human resource matters as long as the management complies with the law and is reasonable. (Arbitral Awards 17/03 and 18/03 – Ho Hing, Issue 1)

In case *17/03 and 18/03 – Ho Hing, Issue 1*, the Arbitration Council held that the rights of the employer to manage and direct the company included transferring a worker from one place to another with the same conditions such as: **(1) no wage deduction, (2) the worker is not transferred far away, (3) there is no transfer from day to night shift and vice versa, and (4) there is minimal change in skill level between the two positions.**

In this case, the Arbitration Council considers that an employer has the right to manage and direct the company including the right to determine and evaluate which worker deserves a wage increase unless the management and the evaluation are beyond the authority of the manager.

The Arbitration Council considers that the workers' demand that the company increase wages to US\$60 for the 37 workers is a demand that has no valid legal basis.

The Arbitration Council considers that regarding the wage increase, the employer has the rights to evaluate workers based on their capacities, discipline, punctuality, respect for the company's guidelines, performance, skill, and work ethic in order to determine whether they are entitled to a wage increase; however in cases where the workers can provide evidence to show that they performed well, they are skillful and they receive less wages than those workers who have the same capacity, performance, and skills [they are entitled to a wage increase]. The company had increased wages for those [workers] who were appointed as Chief of Unit. Thus, the Arbitration Council considers that in order to evaluate whether workers should receive a wage increase, the company should set up a policy for evaluating the work performance of workers. If the company has such a policy, the workers will have an understanding as to their own capacity and not make a demand for a wage increase. Therefore, the Arbitration Council considers that the decision of the company to increase wages to US\$60 to half of the workers in the Sample Unit and spend one month evaluating the remainder of the workers before increasing their wages to US\$60 is a reasonable decision.

Based on the above facts, the Arbitration Council finds that the union representing the worker party in this case does not have most representative status in the company. In order to achieve most representative status, Article 277 of the 1997 Labour Law and Clause 6 of Notification No. 305/01 requires the union to have a majority of workers in the factory and be registered at the Ministry of Labour and Vocational Training and meet some other requirements as stated in this Article. The Arbitration Council considers that most representative status gives a union legal standing to negotiate a collective bargaining agreement in a company and legal rights to bring an interests dispute before the Arbitration Council for resolution.

In this case, the Arbitration Council finds that no article of the law on labour contracts or any agreement requires the employer to increase the minimum wage to US\$60 for the 37 workers in the Sample Unit. Therefore, this demand is more than what the law or any legal agreement provides regarding the minimum wage determination; thus, this dispute is an interests dispute.

Moreover, Clause 43 of Prakas 099/04 states that, "*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.*"

Generally, the Arbitration Council declines to consider an interests dispute brought by a union that does not have most representative status. (See Arbitral Awards 81/04 – *Evergreen*, Issue 4; 99/04 – *Eternity*, Issue 9 and 09/05 – *Kin Tay*, Issue 2).

Therefore, the Arbitration Council declines to consider the demand of workers on this issue.

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

DECISION AND ORDER

Declines to consider the demand of the workers that the company increase the minimum wage to US\$60 for the 37 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 opposition to 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: