



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាពន្ធដំណាច

THE ARBITRATION COUNCIL

Case number and name: 90/07 - GDM

Date of Award: 26 September 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **ING SOTHY**
Arbitrator chosen by the worker party: **ANN VIREAK**
Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **GDM Enterprise Company Limited**
Address: Samaki Village, Sangkat Russey Keo, Khan Russey Keo, Phnom Penh
Telephone: 012 570 976 Fax: N/A
Representatives:
1. Mr. Taing Meng Administrative staff;
2. Mr. Aim Mony Administrative staff.

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union (KYTU) at GDM Branch**
Address: No. 34, Street 265, Sangkat Toeuk Laak III, Khan Toul Kork, Phnom Penh
Telephone: 012 796 007 Fax: N/A
Representatives:
1. Norng Samnang Coordinator of KYFTU;
2. Sear Soly Coordinator of KYFTU;

3. Meak Sarith

Vice-President of KYTU at GDM Branch.

ISSUE IN DISPUTE

(In the Non-Conciliation Report)

Members of Khmer Youth Trade Union demanded that the company maintain Mr. Meak Sarith's position. The employer party said it could not keep Mr. Meak Sarith in the same position adding that the company would like to investigate Mr. Meak Sarith's misconduct first.

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 4 September 2007 was unsuccessful, and the non-conciliation report No. 931 was submitted to the Secretariat of the Arbitration Council on 5 September 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: 11 September 2007 (from 8:00am to 11:00am)

Procedural issues:

On 23 August 2007 the Department of Labour Disputes received a complaint by telephone from the Khmer Youth Trade Union at GDM Branch demanding that the company improve some working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to resolve the dispute at the factory; as a result nine out of ten issues were conciliated. The remaining non-conciliated issue was forwarded to the Arbitration Council on 5 September 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing to conciliate the remaining non-conciliated issue on 11 September 2007 at 2:00pm and on 18 September 2007 at 8:00am. Both parties were present as summoned by the Arbitration Council.

On the hearing date, the Arbitration Council attempted to conciliate the remaining non-conciliated issue stated in the non-conciliation report of the Department of Labour Disputes, but it was not able to be resolved. Thus in this case, the Arbitration Council will consider 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. Authorization letter of the Director of GDM Cambodia Branch dated 11 September 2007;
2. Labour Contract form dated 14 July 2007;
3. Internal Work Rules visa application addressing the Director of the Department of Labour Inspection dated 26 October 2006;
4. Internal Work Rules of GDM Enterprise Co. Ltd. dated 26 December 2006;
5. 2006 Patent dated 26 April 2006;
6. Business license registration of GDM Enterprise dated 2 January 2004;
7. Letter from Cambodian Investment Committee to the Director of GDM about the request for expanded laundry production at the new location dated 24 October 2003;
8. Letter of the Director of GDM dated 13 November 2006 requesting duty-free import of machines, chemical substances for production line;
9. Letter from Cambodian Development Council addressing the governor in charge of the Custom and Tax Department on the request for duty-free import of machines and chemical substances for the production line at the GDM factory dated 27 November 2003;
10. Labour contract of Mr. Meak Sarith dated 24 January 2007;
11. Minutes of the collective labour dispute conciliation dated 23 August 2007;
12. Daily size form;
13. Minutes dated 21 August 2007;
14. Minutes dated 22 August 2007;
15. Letter warning Mr. Meak Sarith dated 27 July 2007.

Provided by the worker party: N/A

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

1. Report on the collective labour dispute settlement at the GDM Branch dated 24 August 2007;
2. Minutes of collective labour dispute conciliation dated 23 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 389 to the worker party to attend the hearing dated 5 September 2007;
2. Invitation No. 388 to the employer party to attend the hearing dated 5 September 2007.

FACTS

- Having examined the documents submitted to the Arbitration Council;
- Having examined the collective labour dispute conciliation report;
- Having listened to the statements of the employer party and the worker party;

The Arbitration Council finds that:

- GMD Factory employs around 420 workers in total;
- Based on the minutes of the collective [labour dispute] conciliation dated 23 August 2007, 346 of 420 workers were involved in this dispute;
- The Khmer Youth Trade Union, the claimant, is not registered. The union did not provide any documents related to the election of the union leader to the Arbitration Council.

Issue: The workers demanded that the company maintain Mr. Meak Sarith's position

- The workers demanded that the company maintain Mr. Meak Sarith in the position of Chief of Dry Unit because his transfer was not valid.
- Meak Sarith said that on 18 August 2007 the Company Director asked him to persuade workers to return to work because the workers were worried about the deduction of wages for night shift work from 200 to 130 percent as a result of an amendment to the Labour Law. He added that on that day his subordinates damaged some 40 trousers – [making them] smaller than the original size of the pattern.
- The company said they dismissed Mr. Meak Sarith because on 18 August 2007 instead of working he chatted with other workers for one and half hours; and [the company produced] a report that shows that Meak Sarith's team had damaged several thousands of garments which showed that Meak Sarith did not follow company direction. The company said Mr. Meak Sarith's work was evaluated by his Supervisor. The company did not refute the fact that he was asked to help persuade

workers to return to work. The Arbitration Council considers that the company's representative did not know about Mr. Meak Sarith's dismissal because the [person] who knew about this case did not attend the hearing.

- According to Mr. Meak Sarith, he was Chief of the Dry Unit and the company transferred him to the Laundry Unit and demoted him from Chief of the Dry Unit on 21 August 2007 and suspended him for one week on 22 August 2007. However, the company allowed him to return to work on 23 August 2007 after the protest and negotiation with workers; and the company did not pay him for the day he was suspended. The company did not refute this claim.
- Mr. Meak Sarith claimed that he had never received any warning letter related to garment damage. The company only raised this reason on the day of his dismissal. The company did not refute this claim.
- According to Mr. Meak Sarith, his work transfer from the Dry Unit to the Laundry Unit did not result in a reduction in his wages because a Chief of Group and [an ordinary] worker receive the same wages and the workplaces were not very far from each other. Since the Dry Unit and the Laundry Unit were in the same warehouse and it was related to his skills, Meak Sarith said there was not much difference and he also received training from the company. Moreover, the transfer did not change his work shift because the company required workers to work half a month in the morning and the other half month in the afternoon. The company did not refute this claim.
- The company said in the hearing that if Meak Sarith worked hard, the company would consider promoting him as Chief of the Laundry Unit. Mr. Meak Sarith disagreed because he considered that his work transfer was not valid and he wanted to return to his old position as Chief of the Dry Unit.
- Article 10 of the company's Internal Work Rules states that, "Workers who commit misconduct on purpose with concrete evidence will be punished based on the level of the misconduct as follows:
 - Minor misconduct: oral warning for the first time and recorded in personal file. If the worker commits misconduct for a second time, he or she will be given a written warning;
 - Medium misconduct: written warning for the first time and recorded in personal file. Suspended without pay (not more than seven days), if misconduct is committed a second time. In cases where the worker continues to commit the misconduct, he or she will be dismissed;
 - Serious misconduct: as stated in the Labour Law, the worker will be dismissed. If necessary, the company will send the case to the authorities to proceed with legal action.

REASONS FOR DECISION

Issue: The workers demanded that the company maintain Mr. Meak Sarith's position

Article 2 (1) of the Labour Law stipulates that, "*All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously.*"

In previous cases, the Arbitration Council considered that Article 2 means that the employer has the rights to manage and direct the company including transferring workers from one place to another, but the employer has to fulfill some requirements including (1) – no reduction in wages, (2) – the transfer should not be to a location which is far away, (3) – the transfer should not involve a change in work shifts from night to day, (4) – the skill set required should be similar (See Arbitral Award 17/03 and 18/03 – Ho Hing, Issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration panel in the above cases. That means the employer has the right to transfer workers from one place to another, but the transfer must not affect the wages of workers, it shall not involve relocation to a location which is far away, it shall not change workers' shift from day to night and the skill set required by workers shall not be much different.

Based on the above interpretation, the Arbitration Council considers that the employer has sufficient rights to transfer Mr. Meak Sarith from the Dry Unity to the Laundry Unit because this is [consistent with] the company's right to manage and direct. Moreover, based on the above facts, Meak Sarith's transfer did not affect his wage and his work location because the Dry Unit and the Laundry Unit are in the same warehouse and do not require a different skill set because the use of laundry and dry machines are not very different. Mr. Meak Sarith also said that he could do it. The work shift was not affected either because the company operates for half a month at night and another half month during the day.

Therefore, the employer had the right to transfer Meak Sarith from the Dry Unit to the Laundry Unit.

However, the employer not only transferred Mr. Meak Sarith, but also demoted him as a normal worker claiming that he had committed misconduct – damaging garments and chatting without working.

Article 27 of the Labour Law states that “*Any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labor Inspector is empowered to control this proportionality.*”

In relation to Article 27 above, the previous Arbitration Panel considered that any disciplinary [action] that an employer applies to a worker must be proportional to the misconduct that he or she has committed (See Arbitral Award 54/04 – Sportwear, Issue 2, and 08/05 – Winner Knitting, Issue 2).

In this case, the Arbitration Council also agreed with the interpretation of previous Arbitration Panels. In this case the Arbitration Council considers that the employer did not have evidence to support the claim or any statement to prove the alleged misconduct that Mr. Meak Sarith had damaged several thousands [garments] and chatted without working. The company’s representative, who attended the hearing, did not sufficiently know about the case; therefore could not refute the claim of the workers.

Moreover, Article 10 of the company’s Internal Work Rules states that workers who commit misconduct on purpose with concrete evidence will be punished according to the level of that misconduct. However, in the hearing the worker party said that he had never received any warning or warning letter related to damaged garments. The company also did not refute this claim. Thus, the Arbitration Council considers that the misconduct that Mr. Meak Sarith committed should be dealt with in accordance with the Internal Work Rules before [he is] demoted. Therefore, the Arbitration Council considers that there is insufficient evidence to prove that Mr. Meak Sarith’s transfer was proportional to the misconduct and [in accordance with] the company’s Internal Work Rules.

Therefore, the company shall maintain Mr. Meak Sarith in the position of Chief of Group.

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

DECISION AND ORDER

- 1- Reject the workers’ demand that the company maintain Mr. Meak Sarith in the Dry Unit.
- 2- Order the employer to maintain Mr. Meak Sarith in the position of Chief of Group.

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 the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **ING SOTHY**

Signature:

Arbitrator chosen by the worker party:

Name: **ANN VIREAK**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: