



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាពន្យារកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 93/07 - Global Footwear

Date of Award: 2 October 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: **LIV SOVANNA**
Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **Global Footwear International Corporation**
Address: Poek Village, Poek Commune, Angk Snuol District, Kandal Province
Telephone: 011 749 346 Fax: N/A
Representative:
Mr. Phu Ji Kai Administrative Manager.

Worker party:

Name: **Federation of Trade Union for Development of Workers' Rights (FTUDWR) and Trade Union for Development of Workers' Rights (TUDWR)**
Address: Poek Village, Poek Commune, Angk Snuol District, Kandal Province
Telephone: 012 690 594 Fax: N/A
Representative:
1. Mr. Cheng Nen President of FTUDWR;
2. Mr. Mao Thol President of local TUDWR;

3. Mr. Pok Samnang Vice-President of TUDWR.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand that the company dismiss Mr. Norn Sotheary, Unit Chief, but the employer disagreed.
2. The workers demand that the company reimburse the medical check fee to workers, but the employer disagreed.

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 7 September 2007 was unsuccessful, and the non-conciliation report No. 185 was submitted to the Secretariat of the Arbitration Council on 10 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: 17 September 2007 (from 8:00am to 11:00am)

Procedural issues:

On 28 August 2007, the Kandal Provincial Department of Labour and Vocational Training received a complaint from the Trade Union for Development of Workers' Rights demanding that the company improve some working conditions. Having received the complaint, the Kandal Provincial Department of Labour and Vocational Training designated its officials to resolve the dispute at the factory; as a result four out of six issues were conciliated. The two remaining non-conciliated issues were forwarded to the Secretariat of the Arbitration Council on 10 September 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer and the worker parties to a hearing to conciliate the two remaining non-conciliated issues on 17 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 issues stated in the non-conciliation report of the Kandal Provincial Department of Labour and Vocational Training, as a result Issue 1 was conciliated. Issue 2 (the demand for reimbursement of the medical check fee of 10,100 riels from 1999 to 2006) was not conciliated. Thus, in this case, the Arbitration Council will consider this dispute based on the evidence and parties' testimonies 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 of the Director of Kandal Provincial Department of Labour and Vocational Training addressing the Director of Global Footwear on the appointment of communication staff in the company dated 1 August 2006;
2. Announcement on the launch of the Global Footwear Enterprise dated 28 July 2006;
3. Internal Work Rules of Global Footwear dated 15 March 2006;
4. Minutes of the collective labour dispute conciliation dated 4 September 2007;
5. Letter about the fitness assessment of workers at Global Footwear dated 10 September 2007.

Provided by the worker party:

1. License registration of the Trade Union for Development of Workers' Rights at Global Footwear dated 9 October 2006;
2. Letter from representatives of the Trade Union for Development of Workers' Rights requesting that the company dismiss Norn Sotheary, Chief of Cutting Unit, dated 16 August 2007.

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

1. Letter No. 1303 of the Minister of Labour and Vocational Training requesting the Arbitration Council to help settle the collective labour dispute at Global Footwear Company dated 19 September 2007;
2. Letter No. 185/07 dated 6 September 2007 on the report of the collective labour dispute settlement at the Global Footwear Company;
3. Minutes of the collective labour dispute conciliation dated 4 September 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 402 to the worker party to attend the hearing dated 11 September 2007;
2. Invitation No. 401 to the employer party to attend the hearing dated 11 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 and worker parties;

The Arbitration Council finds that:

- According to the report of the collective labour dispute settlement dated 7 September 2007, Global Footwear employs around 1,600 workers. However, the worker party and the employer party claimed that currently there are approximately 2,000 workers.
- The Trade Union for Development of Workers' Rights, the claimant, has some 1,000 members, but it does not have most representative status. The union did not provide any documents indicating the number of its members.

Issue 2: The workers demand that the company reimburse the 10,100 riel medical check fee [to those workers who met the cost of the check fee themselves] between 1999 and the end of 2006

- The workers demanded that the company reimburse the 10,100 riel medical check fee [to those workers who met the cost of the check fee themselves] between 1999 and the end of 2006 to all workers in the factory saying that it is the responsibility of the company in accordance with the Labour Law.
- The company did not agree to reimburse the 10,100 riel medical check fee [to those workers who met the cost of the check fee themselves] between 1999 and the end of 2006 to workers because Article 247 of the Labour Law and Prakas No. 09 dated 19 January 1994 of the Ministry of Labour do not state the amount that the company shall pay. Moreover, Prakas No. 1191 dated 21 November 2006 does not require the company to reimburse the previous medical check fee. Furthermore, the right to demand reimbursement lasts only three years according to Article 120 of the Labour Law.
- The workers did not respond to the employer party and asked the Arbitration Council to consider this case. The Arbitration Council requested the Trade Union for Development of Workers' Rights to provide the name list of all workers who demand [reimbursement of] the 10,100 riel medical check fee [which they paid] between 1999

and the end of 2006 before 21 September 2007. However, the Arbitration Council did not receive the document by this date.

- The worker party said that after they passed the job interview, they needed to undergo a medical check to get an employment book. The employer did not refute this claim.
- The employer said that the Global Footwear Company started its operation in 2004 having bought the factory from its predecessor. The original name of the factory was Sky Star, which started its operation in 1999. The workers said that the factory owner was the same, even though the factory changed its name. The company did not respond to this claim. The Arbitration Council requires the company to provide the trade registration license and other documents before 21 September 2007. However, the employer party did not provide these documents by the deadline.
- The Arbitration Council finds that the announcement about the launch of Global Footwear Company signed by the Department of Labour and Vocational Training is dated 1 August 2004.
- Article 3 of the registered Internal Work Rules No. 006 dated 4 April 2006 states that, *“When starting work, all workers are required to undergo a medical check at the Department of Occupational Health. During working period, workers can temporarily undergo the medical check by company’s doctor and the company permits the leave and maintains the wage.”*

REASONS FOR DECISION

Issue 2: The workers demand that the company reimburse the 10,100 riel medical check fee [to those workers who met the cost of the check fee themselves] between 1999 and the end of 2006

In this case, the workers demanded that the company reimburse the 10,100 riel medical check fee because they had paid the medical check fee themselves after they started working.

The union demanded this for all workers in the factory. Thus, before considering this demand, the Arbitration Council will consider who the claimants are in this case.

Article 19 of Prakas No. 099 dated 21 April 2004 states that, *“Disputing party may appear before the Arbitration Council in person, or be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.”*

In this case, the union did not provide the written letter of workers who are not its members authorizing the union to bring the complaint before the Arbitration Council. Thus, there is not enough evidence to conclude that the union has legal standing to represent workers other than its members. Therefore, the Arbitration Council determines that the union only has the right to represent its members in this demand. The Arbitration Council continues to consider the demand as follows:

Article 247(a) states that, *“The Ministry in Charge of Labor shall issue a Prakas to determine the conditions under which pre-employment, re-employment, periodical, and special physical exams are given.”* and Article 247(c)(4) stipulates that, *“The Ministry in Charge of Labor shall issue a Prakas to determine the conditions under which employers are required to establish and provide at their expense the medical exams of workers as stated in point a) of this Article.”*

Clause 3 of Prakas No. 09 dated 19 January 1994 on the Medical Examination for Cambodian and Foreigners Working in the Kingdom of Cambodia states that: *“Prior to the commencement of employment, Cambodians and foreigners are required to undergo the medical examination at the Department of Occupational Health located at No. 482, National Road No. 2, Sangkat Chak Angre, Khan Meanchey, Phnom Penh.”* Clause 5 of this Prakas stipulates that: *“The medical examination may include more specific examination based on the actual skills and profession.”* Clause 7 of this Prakas states that: *“The cost of the employee’s medical examination shall be paid by owner of the enterprise, as determined in Article 5 above, in accordance with the actual case.”*

In Arbitral Award 05/06 – W&D, the Arbitration Council held that, “Although, Prakas of the Ministry does not clearly state about medical check in this Clause 7, the Arbitration Council considers that Article 247 of the Labour Law 1997 has the superiority over Prakas No. 09 dated 1994. Therefore, the employer shall pay for the medical check of workers.” (See Arbitral Awards 05/06 – W&D, Issue 1; 02/03 – Chu Xing, Issue 1; 21/03 – Loyal Cambodia, Issue 7; 19/04 – Kbal Koh II, Issue 2; and 53/04 – Kong Hung, Issue 3). In this case, the Arbitration Council also agrees with the interpretation of the Arbitration Council in the previous cases that Article 247 of the Labour Law 1997 has superiority over Prakas No. 09 dated 1994 and based on Article 247, the employer shall pay for the medical check fee for workers.

Moreover, Article 247 of the Labour Law provides sufficient legal basis to conclude that the employer has an obligation to pay for workers’ medical check (See Arbitral Awards 62/04 – Yi Sin, Issue 3; 98/04 – Great Union, Issue 2; 86/06 – King Island, Issue 1). In most cases including recent cases, the Arbitration Council found that an employer has an

obligation to pay the 10,100 riel medical check fees for all workers based on the actual price of the medical check of each worker.

Based on the previous Arbitral Awards, the Arbitration Council finds that the employer has an obligation to pay the 10,100 riel medical check fee to all workers.

However, in this case, the workers demanded that the company reimburse the 10,100 riel medical check fee [to all workers who paid this fee] between 1999 and the end of 2006 because the company was owned by the same owner, even though the factory's name changed from Sky Star to Global Footwear in 2004. In relation to this, the employer party argued that Global Footwear was bought by another person and started its operation in 2004, not in 1999 and the right to demand wage reimbursement last only three years according to the Labour Law. Thus, the Arbitration Council will consider this case as follows:

In this case, the workers demanded that the company reimburse the 10,100 riel medical check fee [to all workers who paid this fee] between 1999 and the end of 2006 but did not demand that the Arbitration Council decide whether the factory started its operation in 1999 or 2004. Therefore, the Arbitration Council considers that the change of factory's name or owner is not the main issue in dispute so the Arbitration Council will not consider this issue. Hence, the Arbitration Council will consider whether or not workers still have the right to demand reimbursement.

Article 120 of the Labour Law stipulates that, "The statute of limitation *for a lawsuit for the payment of wages is three years from the date the wage was due.*"

Claims¹ subject to the statute of limitation of a lawsuit include the actual wage, perquisites and all other claims of the worker resulting from the labor contract, as well as the indemnity in the event of dismissal."

Based on the above article, the Arbitration Council finds that the claim for 10,100 riels occurred out of contract because it is one of the conditions of the labour contract that workers must have a medical check certificate and the [statute of limitation] for a lawsuit for the payment is only three years. Thus, the statute of limitation for a lawsuit [for the reimbursement of] the medical check fee is only three years.

However, when should the statute of limitation start? In award 61/07 – M&V 3, the Arbitration Council held that according to Article 120 of the Labour Law, the statute of limitation for a lawsuit for payment including a lawsuit for medical check fees lasts three years starting from the date that workers may receive that benefit, which can be the date of signing the contract or the first day that workers started working or the date that workers received wages.

¹ Claim means complaint for payment or debt.

In Award 05/06 – W&D, the Arbitration Council held that, “For workers who paid for the 10,100 riels medical check fee to get the medical certificate to apply for the job, the statute of limitation shall start from the date of signing the contract because the employment relationship has commenced even though Article 120 of the Labour Law does not specify this. Article 120 (2) of the Labour Law only specifies that [claims subject to the statute of limitation of a lawsuit include..] *all claims of workers that arise from the labour contract*. The employment relationship commences when workers sign their labour contract with the employer and this relationship provides workers with all rights under the law including all obligations that an employer owes to them.

That means the statute of limitation for the medical check fee lasts for three years starting from the date of signing the contract or the date when workers started working, if workers underwent the medical check before they started work or signed the contract. In case where workers underwent the medical check after they started work, the three year limitation shall start from the date that workers paid the medical check fee themselves or the date that they received wages, if the employer deducted their wages for the medical check.

In this case, the Arbitration Council also agrees with the interpretation of previous awards that the statute of limitation for a lawsuit for medical check fees lasts three years starting from the date of signing the contract or the date that workers started working in cases where workers underwent the medical check before they started working. In cases where workers underwent the medical check after they started working, the three-year limitation shall start from the date that workers paid for the medical check fee.

In this case, the workers claimed that they underwent the medical check after they passed the interviews. The Arbitration Council considers that medical checks were done after workers started working and paid for the fee themselves. Therefore, in this case, the limitation for the lawsuit for the medical check fees lasts three years starting from the date that workers underwent the medical check and paid for the medical check fee.

Because the Trade Union for Development of Workers’ Rights at Global Footwear filed the complaint with the Kandal Provincial Department of Labour and Vocational Training on 28 August 2007 only those workers who underwent the medical check on 28 or after 28 August 2004 until 28 August 2007 and met the cost of the fee themselves, have the right to demand the reimbursement of the medical check fee. In this case, the employer agreed to reimburse the medical check fee to workers who underwent the medical check between January 2007 and met the cost of the fee themselves and who were present at the hearing on 17 September 2007. Thus, only workers who are members of the union and underwent the medical check between 28 August 2004 and the end of 2006 and paid the fee

themselves have the right to demand that the company reimburse the 10,100 riel medical check fee.

The Arbitration Council considers that the employer has an obligation to reimburse the 10,100 riel of medical check fee to those members of the Trade Union for Development of Workers' Rights who paid for their medical check fee from 28 August 2004 to 27 August 2007. However, because both parties already agreed [about the reimbursement of] the medical check fee [to workers from] 1 January 2007, the Arbitration Council orders the employer to reimburse the 10,100 riel medical check fee to those members of the Trade Union for Development of Workers' Rights who paid for the medical check fee from 28 August 2004 to the end of 2006.

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

DECISION AND ORDER

Issue 2: Order the employer to reimburse the 10,100 riel medical check fee to members of the Trade Union for Development of Workers' Rights who had paid for the medical examination fee from 28 August 2007 to the end of 2006.

Type of Award: Binding Award

This Award is immediately binding upon the parties after the notification of the award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **ING SOTHY**

Signature:

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: