



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 97/08-Eternity Apparel

Date of Award: 26 August 2008

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: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **Eternity Apparel Company**

Address: National Road 2, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh

Telephone: 011 537 211 Fax: N/A

Representative:

1. Ms. Yao Sokcheng Product manager

Worker party:

Name: **National Industrial Federation Trade Union of Cambodia (NIFTUC) and local union of National Industrial Trade Union of Cambodia at Eternity Factory (NITUC)**

Address: National Road 2, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh

Telephone: 011 369 640 Fax: N/A

Representative:

1. Ms. Ros Kan	Vice-president of NIFTUC
2. Mr. Roeun Ren	Officer of NIFTUC
3. Mr. Neak Nuon	Officer of NIFTUC
4. Mr. Yun Puthy	Officer of NIFTUC
5. Mr. Mel Sokleng	President of local union of NITUC at Eternity factory

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| 6. Ms. Neang Saoneng | Activist |
| 7. Ms. Neang Sreynet | Activist |
| 8. Ms. Non Saly | Activist |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The local union of NITUC demands that the company allows workers to have a 30-minute break if they are required to do overtime work until 08:00 pm.
- 2- The local union of NITUC demands that the company arrange a proper place for the workers to park their motos.
- 3- The local union of NITUC demands that the company ensures proper hygienic conditions on the company premise.
- 4- The local union of NITUC demands that the company build a roof, provide bed and good environment for the infirmary.
- 5- The local union of NITUC demands that the company arrange a sufficient number of toilets for the workers and security guards.
- 6- The local union of NITUC demands that the company arrange to have dust absorbing machine, and to add more fans in the workplace.
- 7- The local union of NITUC demands that the company repair the leaking roof of the building.
- 8- The local union of NITUC demands that the company provide a blind or curtain to protect them from heat and rain.
- 9- The local union of NITUC demands that the company increase wage for all head of groups.
- 10- The local union of NITUC demands that the company convert casual workers to regular workers.
- 11- The local union of NITUC demands that the company advise the head of security to perform his duties and not to do something which are not under his job responsibilities.

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 was unsuccessful, and the non-conciliation report No. 794 KB/AK/VK, dated 23 July 2008 was submitted to the Secretariat of the Arbitration Council on 25 July 2008.

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:

- 6 August 2008 (from 2:00 p.m. to 2:30 p.m.)
- 11 August 2008 (from 2:00 p.m. to 5:30 p.m.)

Procedural issues:

On 3 July 2008, the Department of Labour Dispute received a complaint by the local union of NITU at Eternity Company regarding the demand for the company to improve working conditions. After receiving the complaint, the Department of Labour Dispute assigned an expert officer to conciliate. The last conciliation was held on 11 July 2008, but did not resolve any of the 11 issues. The 11 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 25 July 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and to conciliate the 11 non-conciliation issues on 6 August 2008 at 2:00 p.m. However, the employer was absent at the hearing. With consent by the worker party the Arbitration Council decided to reschedule the hearing date to 11 August 2008 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council further attempted to conciliate the 11 non-conciliation issues mentioned in the non-conciliation report, and achieved conciliated result on issues 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11. Issue 10 remains unsolved. Therefore, the Arbitration Council will consider on issue 10 based on evidence and clarification by the parties in the hearing 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 to Ms. Yao Sokcheng, dated 11 August 2008.

2. Letter by the Company to the Secretariat of the Arbitration Council regarding its disagreement to reinstate Khon Daro, dated 18 August 2008. xxx

Provided by the worker party:

1. List of names of workers who are casual workers at Eternity Company.

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

1. Report of collective labour dispute resolution at Eternity Company No. 794 KB/AK/VK, dated 23 July 2008.
2. Minutes of collective labour dispute conciliation at Eternity Company, dated 15 July 2008.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the company party to attend the first hearing, No. 484 KB/AK/VK/LKA, dated 31 July 2008.
2. Letter of invitation to invite the worker party to attend the first hearing, No. 485 KB/AK/VK/LKA, dated 31 July 2008.
3. Letter of invitation to invite the company party to attend the second hearing, No. 506 KB/AK/VK/LKA, dated 7 July 2008.
4. Letter of invitation to invite the worker party to attend the second hearing, No. 507 KB/AK/VK/LKA, dated 7 July 2008.
5. Letter of the Arbitration Council regarding decision to postpone and reschedule the hearing, No. 002/08 KBA, dated 7 August 2008.

FACTS

- Having examined documents submitted to the Arbitration Council
- Having reviewed the non-conciliation report
- Having listened to the statements by the worker party and the employer party

The Arbitration Council finds that:

Eternity Apparel Company employs approximately 650 workers.

The claimant union in this case is the local union of NITUC.

Issue 10: The workers demand that the company convert all casual workers to regular workers

- According to the worker party, there are around 20 to 30 casual workers who have been working since 2006, and the employer has not converted them to regular workers. The workers claim that these casual workers work from 8 to 10 hours per day for 26 days per month. They work consecutively and some of them have been working since 2007. The workers do not state why they want to become regular

workers, but they want to enjoy the rights and benefits to which regular workers are entitled.

- The workers do not provide list of names of those workers. The Arbitration Council ordered the worker party to provide the list by 14 August 2008. However, the Arbitration Council received a name list of only 6 workers, only four of which had clear date of employment. The four workers are: (1). Ouch Thoeurn, started work on 26 november 2007; (2). Pen Sreyvuth, started work on 27 december 2006; (3) Khon Daro, started work on 2 januar 200/8; (4). Sok Oun, started work on 13 november 2007.
- The employer claims that there are casual workers but they work only 18 days per month. The Arbitration Council ordered the employer to provide a name- and payroll-list by 14 August 2008, but the employer provided the document after the deadline. The Arbitration Council will not consider the document because it was submitted after the deadline.
- The employer submitted a letter to object to Khon Daro on 18 August 2008. In the letter, the company states that it does not agree to reinstate him but does not make any objection to the claim that he is a casual worker.

REASONS FOR DECISION

Issue 10: Local union of NITUC demand that the company convert all casual workers to regular workers

In this case, local union of NITU demands that the company convert all casual workers to regular workers. Based on the findings of fact above, the Arbitration Council finds that there are four casual workers with clear date of employment. Moreover, the company did not object to the list of the workers. Thus, the Arbitration Council considers that there are 4 casual workers. Hence, the Arbitration Council will consider this case as follows:

Article 9 of the Labour Law 1997 states, “... *Casual workers are those who are contracted to perform a specific work that shall normally be completed within a short period of time or perform a work temporarily, intermittently and seasonally.*”

According to previous decisions, the Arbitration Council considers that Article 9 based on Article 166 and 168, which states that, regardless of what the employer calls the workers - whether it be casual, or any other name - if the workers work at least 21 days for two consecutive months, the workers should be treated as regular workers. The principle of working 21 days for two consecutive months has been applied in the Arbitration Council jurisprudence (see Arbitral Awards 55/04-You Chheng, issue 2; 69/04-Common Way, issue 1; 78/04-AIA, issue 3; 85/04-Top One, issue 1; 03/05-Flying Dragon, issue 4; 07/05-

Cambodia Beverage, issue 3; 12/06-HS ENT, issue 2; 44/06-Gold Fame, issue 6; 57/06-Ever Green, issue 1; 66/06-Gold Lida, issue 5).

In this case, the Arbitration Council will consider ***whether the previous jurisprudence of the Arbitration Council in correctly converted casual workers to regular workers after they have been working for 21 days [per month] for two consecutive months..***

Article 10 of the Labour Law states, *“Casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately.”*

The Arbitration Council in this case considers that casual workers and regular workers are entitled to the same rights and obligations. This means that, based on an interests perspective, it is not an issue whether the workers are called casual workers or regular workers, because Article 10 of the Labour Law clearly provides guidance concerning this matter. ***The present dispute concerns the legal effect of the conversion of casual workers to regular workers. However, changing the type of worker does not have any legal effect. The most important thing is workers’ benefits according to the Law.***

If we look at the content of the Labour Law, we observe that the Labour Law provides rights and benefits to workers according to the type of the contract they have with the company, regardless of whether they are employed as casual workers, regular workers, or workers with special protection (such as worker delegates or union leaders who are entitled to special rights and obligations, including special protection by Article 293 regarding termination of employment). This special protection is also granted to workers such as union leaders, candidate for union election and founding members of union. However, if the workers are not a type of worker mentioned above, they are not entitled to special protection according to Article 293. *In this context, that the fact that a worker holds the position of worker delegate or not has legal consequence, not whether the workers are casual workers or regular workers.*

Thus, the Arbitration Council considers that the terms “casual” or “regular” in Article 9 of the Labour Law is only used to describe about the duration and frequency of work of a worker.

Based on the above interpretation, the Arbitration Council considers that, in this case, the employer has an obligation to provide the same rights and benefits to casual workers as it provides to regular workers, specifically with regard to wages, attendance bonus, seniority bonus (if the casual workers’ employment contract has been renewed up to a length of time they should be entitled to seniority bonus according to the law), annual leave and other benefits. For example, if the workers have been working for 7 months (although they are called casual workers by the employer), the workers are entitled to the same rights and

benefits entitled to regular workers who have been working for 7 months, including the right to receive the same termination payment as regular workers who have been working for 7 months when they are unfairly terminated by the employer. Therefore, the employer considers that the employer should provide the same rights and benefits to casual workers as he provides to regular workers.

In conclusion, the Arbitration Council decides to reject the demand for the company to convert all casual workers to regular workers, and orders the employer to provide the same rights and benefits to casual workers as to regular workers.

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

DECISION

- Reject the demand for the company to convert the 4 casual workers to regular workers.
- Order the employer to provide the same rights and benefits to the 6 casual workers as to regular 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 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: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: