



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 97/07 - Suit Way

Date of Award: 21 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: **Suit Way & La Rissaca Fashion Factory Limited**

Address: Sangkat Toul Sangke, Khan Russey Keo, Phnom Penh

Telephone: 012 666 729

Fax: N/A

Representatives:

- | | |
|----------------------|---------------------------------|
| 1. Mr. Siek Leng | Company's Administrative Staff; |
| 2. Ms. Chen Sou Ping | Administrative Staff; |
| 3. Ms. Lay Cindy | Administrative Staff. |

Worker party:

Name: **Federation Union of Development Workers Rights (FUDWR) at Suit Way**

Garment

Address: Sangkat Toul Sangke, Khan Russey Keo, Phnom Penh

Telephone: 016 202 056

Fax: N/A

Representatives:

- | | |
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| 1. Mr. Cheng Nen | President of FUDWR; |
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- | | |
|------------------------|---|
| 2. Mr. Suy Samnang | FUDWR Official; |
| 3. Mr. Yang Sophea | President of FUDWR at Suit Way Company; |
| 4. Mr. Yo Vuthy | Vice-President of FUDWR at Suit Way Company; |
| 5. Mr. Yun Sareth | Secretary of FUDWR at Suit Way Company; |
| 6. Mr. Phorn Sarum | Committee Member of FUDWR at Suit Way Company; |
| 7. Mr. Chean Thel | Committee Member of FUDWR at Suit Way Company; |
| 8. Mr. Hang Chan Nimol | Committee Member of FUDWR at Suit Way
Company and Worker Delegate; |
| 9. Mr. Chhim Bunthang | Committee Member of FUDWR at Suit Way Company; |
| 10. Mr. Lao Sokhon | Committee Member of FUDWR at Suit Way Company; |
| 11. Mr. Chen Chen Ly | Committee Member of FUDWR at Suit Way Company; |
| 12. Ms. Ros Sopheap | Union Assistant; |
| 13. Ms. Lim Chhuong | Union Assistant; |
| 14. Ms. Say Navy | Union Assistant; |
| 15. Ms. Hun Thach | Union Assistant; |
| 16. Ms. Mao Sang | Union Assistant; |
| 17. Ms. Phan Leakhna | Union Assistant; |
| 18. Ms. Long Samol | Union Assistant. |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Leaders of the FUDWR demanded that the company reinstate the dismissed members of FUDWR because the company discriminated against the union. The company cannot reinstate them arguing that the company did not discriminate against the union; if any worker commits misconduct, the company will implement the Internal Work Rules and the Labour Law.
2. Members of the FUDWR demanded that the company implement the agreement dated 26 June 2007 signed at the Arbitration Council in case 60/07 dated 13 July 2007 and demanded that the company implement the Arbitral Award. The company party claimed that it had already implemented the agreement and the Arbitral Award.
3. Members of FUDWR demanded that the company dismiss Administrative staff members – Siek Leng and Chen Sou Ping because these two persons did not respect the agreement and the Arbitral Award and they dismissed workers without a valid reason. The company representatives claimed they will follow the Labour Law.
4. The worker party demanded that the company register the minutes of the worker delegate election with the Department of Labour Disputes because the election was

witnessed by the Labour Inspector and local authorities. The company representative said the Administration Department did not know about this election.

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 14 September 2007 was unsuccessful, and the non-conciliation report No. 996 was submitted to the Secretariat of the Arbitration Council on 14 September 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khan Chamkarmorn, Phnom Penh.

Date of Pre-Hearing Meeting: 21 September 2007 (from 8:00am to 9:30am)

Procedural issues:

Suit Way Company employs 1,050 workers.

On 14 September 2007, the Secretariat of the Arbitration Council received case 97/07–Suit Way and also received the information that workers were going on strike. The Arbitration Council issued an order on 14 September 2007 asking all workers to return to work on 15 September 2007; however the Secretariat received news from the employer and the union that the worker party refused to return to work because the company would not allow the 12 dismissed workers to return to work. The workers did not return to work until the afternoon of 20 September 2007.

Having received the news, the Arbitration Council invited both parties to a pre-hearing meeting on 21 September 2007 to explain the Arbitration process to them.

In the pre-hearing meeting on 21 September 2007, the worker party claimed that they did not return to work because the company did not allow the 12 dismissed workers to return to work. The company party responded that they would allow all workers to return to work except the 12 dismissed workers and leave this issue for the Arbitration Council to decide. The Arbitration Council made an attempt to convince the worker party to return to work; otherwise the Arbitration Council would not continue the case. The worker party disagreed

and requested the Arbitration Council to close the case and leave it to parties to resolve at the Court.

After the discussion, the Arbitration Council told the parties for the last time that the Arbitration Council is sorry that the worker party chose not to return to work and did not respect the Arbitration process. The consequence of this choice is that the Arbitration Council cannot continue the proceeding.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party: N/A

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

1. Report No. 996 on collective labour dispute conciliation at Suit Way Company dated 14 September 2007;
2. Minutes of the collective labour dispute conciliation dated 13 September 2007.

Provided by the Secretariat of the Arbitration Council:

1. Order No. 009 dated 14 September 2006.

REASONS FOR DECISION

On 21 September 2007, the Arbitration Council met both parties in a pre-hearing meeting and the Arbitration Council clarified with the worker and the employer party again and again that the arbitration process could not proceed unless the worker party stopped their strike, but the worker party kept saying that [they would not return to work] because the company would not reinstate the 12 dismissed workers and requested that the Arbitration Council close the case because the arbitration process could not be continued.

Clause 20 of Prakas 099/04 on the Arbitration Council states that, "*During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labor Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.*"

Furthermore, in previous cases, the Arbitration Council interpreted this Article [to mean] that the Arbitration Council will not continue the arbitration process, if the worker party continues striking.

For example, in Arbitral Award 04/04 - MSI, the Arbitration Council issued a Notification dated 29 January 2004; paragraph 4 of this Notification states that, "*Having seen that disputing parties do not have the right to strike during the Arbitration process, the Arbitration Council cannot resolve or issue an Award for the collective labour dispute that submitted to the Arbitration Council. The Arbitration Council may resolve the collective labour dispute again when the union and workers stop the strike.*"

Similarly, in Arbitral Awards 18/04 - Cambodiana, Raffles Le Royal, Raffles Grand D'Angkor, Sunway, Intercontinental, and Sofitel Angkor Hotels, the Arbitration Council issued the second Order dated 22 April 2004. Clause 9 and 11 of the Order states, "*Clause 9 – From 23 April 2004 all workers must stop the strike, demonstration, or unrest in the premises of hotels that are disputing parties.*

Clause 11 – The Arbitration Council reserves the right to end the Arbitration process in case any party violates any clause of this Order."

In Arbitral Award 77/05 – Franco Knitting Garment, the Arbitration Council issued an Order dated 24 December 2005, which stated in Clause 4 that *in case the worker party continues the strike, the Arbitration Council will not continue the collective labour dispute resolution.*

In Arbitral Awards 28/06 – GDM, 34/06 – Gold Fame and 50/06 – Genuine, the Arbitration Council also issued Awards to close those cases because the workers continued the strike during the arbitration process of the Arbitration Council.

In Arbitral Award 59/06 – Sang Woo, the Arbitration Council also issued an Award to close the case for the reason that the workers continued to strike and the employer continued the lock-out during the arbitration process.

Moreover, in Arbitral Award 22/07 – Park View, the Arbitration Council also issued an Award to close the case because the worker and the employer party did not show that they wanted their disputes to be settled at the Arbitration Council. That was the reason they did not respect the arbitration process and that meant the workers went on strike and the employer undertook a lock out during the Arbitration process; even though the arbitration Council warned them several times that the arbitration process could only proceed if the parties stopped their strike or lock-out.

In this case, the worker party indicated that they wanted the Arbitration Council to close the case because they want to resolve the dispute at the court. Therefore, to comply with the law and the previous Arbitral Awards, the Arbitration Council decides not to continue the arbitration process for this case while the workers continue their strike.

Based on the above reasons, the Arbitration Council makes its decision as follows:

DECISION AND ORDER

Discontinue the Arbitration process of the case 97/07 – Suit Way.

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: