



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 09/11-M & V (Branch 1)

Date of award: 21 January 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL 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**

DISPUTANT PARTIES

Employer party:

Name: **M & V International Manufacturing Ltd. (Branch 1) (the employer)**

Address: National Road 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

Telephone: 016 707 046

Fax: N/A

Representative:

1. Mr Yin Nak

Head of Administration

Worker party:

Name: **Cambodian Industrial Union Federation (CIUF)**

Local Union of CIUF

Address: National Road 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

Telephone: 012 699 395

Fax: N/A

Representatives:

1. Ms Hem Sokponlork

President of CIUF

2. Mr Tith Sokchan

Vice-President of CIUF

3. Ms Chan Thy

President of the Local Union of CIUF

Name: **Cambodian Federation of Independent Trade Unions (CFITU)**

Local Union of CFITU

Address: National Road 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

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Telephone: 012 884 057

Fax: N/A

Representative:

1. Ms Sean Sivorn President of the Local Union of CFITU

ISSUES IN DISPUTE

(From the Non-Conciliation Report of the Ministry of Labour and Vocational Training)

1. The workers demand to be paid for the time in which they are permitted to breastfeed their children and demand that the employer calculate the hourly wage of piece rate workers based on their total wages for this purpose. The employer refuses to accommodate the demand on the basis of its existing practice.
2. The workers demand that the employer calculate payments in lieu of annual leave based on the workers' average wages over the previous 12 months. The employer refuses to accommodate the demand on the basis of its existing practice.
3. The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken. The employer refuses to accommodate the demand on the basis of its existing practice.
4. The workers demand that the employer pay the wages of 25 workers in the stitching section for the period from 15 November 2010 until the date the dispute is resolved. The employer refuses to accommodate the demand because:
 - a. The workers have been on strike since 15 November 2010.
 - b. The employer has had work for them to do, but they have refused to do it.
 - c. Only 25 of the 45 workers in the stitching section refused to work in accordance with the employer's work arrangement.
 - d. Moreover, the employer invited the Ministry to conduct a conciliation session on its premises on 17 November 2010, resulting in the issues being referred to the Arbitration Council. However, the workers withdrew their demands at that time, which suggests that their intention was to cause disorder at the factory and consequently disrupt production.
5. The workers demand that the employer allow them to take leave for personal commitments. The employer states that it will allow workers to take this leave if they give a specific reason and their leave will not affect the production line.
6. The workers demand that the employer provide sufficient work to workers with seniority, rather than providing the work to workers on short term employment contracts or outsourcing it. The employer states that it has sufficient work for the

workers in the stitching section (both easy and difficult work), but it selects easy work for the workers with many years of seniority and assigns the more difficult work to workers on short term employment contracts.

7. The workers demand that the employer refrain from discriminating against workers with many years of seniority. The employer denies the allegation of discrimination.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the Labour 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. 133 dated 9 June 2010 (Eighth 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 non-conciliation report No. 41 KB/RK/VK dated 13 January 2011 was submitted to the Secretariat of the Arbitration Council on 13 January 2011.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Quarter, Tuol Kork District, Phnom Penh.

Date of pre-hearing meeting: 17 January 2011 at 4:30 p.m.

Procedural issues:

On 20 December 2010, the Department of Labour Disputes received a complaint from of the Local Unions of CFITU and CIUF, outlining their demands for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the dispute and the last conciliation session was held on 5 January 2011. As a result, one of the eight issues was conciliated. The seven non-conciliated issues were referred to the Secretariat of the Arbitration Council on 13 January 2011.

Upon receipt of the non-conciliation report from the Ministry of Labour and Vocational Training, the Secretariat of the Arbitration Council informed the Council that 51 workers in the stitching section were on strike. However the workers claimed that they were not on strike.

On 14 January 2011, the Arbitration Council requested the Secretariat to summon the employer and the workers to a pre-hearing meeting, held on 17 January 2011.

On 17 January 2011, the employer and the workers were present as summoned by the Secretariat of the Arbitration Council. At the pre-hearing meeting, the Arbitration Council

asked the workers to confirm whether or not they were on strike. The workers denied that there was a strike in the stitching section. They acknowledged that the employer had work for them to do, but they had not done it. They had been sitting still in their section (the stitching section), because the employer had not met their demands. The employer stated that it had work for them but they refused to do it.

Having listened to the statements of the parties at the pre-hearing meeting, the Arbitration Council attempted to explain the arbitral process to the parties and asked the workers to perform their duties as usual in order to avoid aggravating the situation. This would allow the Arbitration Council to legally continue the dispute resolution process.

On 18 January 2011, the Arbitration Council was informed by the Secretariat that the workers in the stitching section were still not doing their work. Thus, the Council issued an interim order directing the workers to cease striking (i.e. refusing to do work) until the arbitral process was completed. The order stated that the workers were to recommence work from 18 January 2011 at 12:30 p.m. onwards, and the employer was to provide work as usual to the striking workers. At about 3:00 p.m. on that date, the Arbitration Council was informed by the Secretariat that the workers had not followed the order and were still not doing their work.

The Arbitration Council considers this case as follows.

EVIDENCE

Experts and Witnesses: N/A

Documents, Exhibits, and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Letter from the director of the employer to the Arbitration Council requesting issuance of an interim order to halt the strike in the stitching section, dated 14 January 2011.
2. Letter from representatives of the workers in the stitching section to the employer withdrawing the complaint in case 134/10, dated 8 December 2010.

B. Provided by the worker party: N/A

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at M & V International Manufacturing Ltd. (Branch 1), No. 041 KB/RK/VK, dated 13 January 2011.
2. Record of collective labour dispute resolution at M & V International Manufacturing Ltd. (Branch 1), dated 5 January 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the pre-hearing meeting addressed to the employer, No. 45 KB/AK/VK/LKA dated 14 January 2011.

2. Notice to attend the pre-hearing meeting addressed to the workers, No. 46 KB/AK/VK/LKA dated 14 January 2011.

FACTS

Due to the termination of the arbitral process, no facts were submitted to the Arbitration Council regarding the issues in the non-conciliation report of the Ministry of Labour and Vocational training.

REASONS FOR DECISION

The workers acknowledged in this case that the employer had work for them, but they sat still in their section (the stitching section), insisting that the employer meet their demands.

Article 318 of the Labour Law states: “A strike is a concerted work stoppage by a group of workers...for the purpose of obtaining the satisfaction for their demand from the employer...”

In this case, the Arbitration Council considers that the workers’ act of sitting down in their section and not performing work, insisting that the employer meet their demands, is a strike in accordance with the above article.

Clause 20 of *Prakas* No. 099 SKBY on the Arbitration Council, dated 21 April 2004, states:

During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labour Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.

In previous arbitral awards, the Arbitration Council has interpreted this clause to mean that the Council will terminate the arbitral process where workers remain on strike or the employer persists in imposing lockouts (*see AAs 59/06-Sangwoo; 39/08-Zhong Yov; 137&138/09-New Point; and 103/10-Whitex*).

The Arbitration Council has found the following in previous cases relating to strikes during the arbitral process.

In case 04/04-MSI, the Arbitration Council issued a notification, dated 29 January 2004, paragraph 4 of which states:

Considering that a disputant party has no right to strike during the arbitral process, the Council is not able to resolve or issue an award on the collective labour dispute that has been referred to it. The Council will be able to resolve the collective labour dispute once the union and workers end the strike or the employer requests the Council to continue resolving the dispute.

In case 77/05-Franco Knitting, the Arbitration Council issued an interim order, dated 24 December 2005, of which point 4 states, "in the event that the workers continue striking, the Arbitration Council will not continue the process of collective labour dispute resolution."

The Arbitration Council issued awards closing cases 28/06-GDM and 34/06-Goldfame on the grounds that the workers continued to strike during the arbitral process (see also AAs 97/07-Suit Way and 63/08-South Bay & Golden Crown).

Further to the abovementioned jurisprudence, the Arbitration Council considers that the workers have not shown a genuine intention to have their collective labour dispute resolved by the Council. They continue to strike, contravening the interim order and request of the Arbitration Council.

Therefore, based on the law and previous arbitral awards, the Arbitration Council decides to terminate the arbitral process in this case.

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

DECISION AND ORDER

Close case 09/11-M & V (Branch 1).

SIGNATURES OF MEMBERS OF THE ARBITRAL 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: