



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 23/11-June Textile

Date of Award: 9 March 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Sin Kim Sean**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTANT PARTIES

Employer party:

Name: **June Textile Garment Co., Ltd. (the employer)**

Address: Russian Federation Boulevard, Teouk Tla Commune, Sen Sok District,
Phnom Penh

Telephone: 012 541 851 Fax: N/A

Representative:

1. Mr Tan Kysay Administration

Worker party:

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

Local Union of FTUWKC

Address: Russian Federation Boulevard, Teouk Tla Commune, Sen Sok District,
Phnom Penh

Telephone: 088 833 5555 Fax: N/A

Representative: Absent

ISSUES IN DISPUTE

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

1. FTUWKC demands that the employer pay the workers' wages before holidays. The employer states that it will follow its existing practice.
2. FTUWKC demands that the employer provide an allowance of US\$ 5 per month for transportation or house rental. The employer states that it is unable to meet the union's demand.
3. FTUWKC demands that the employer provide hourly wages to workers in Group 2, Group 5, and Group 8, who went on strike. The employer states that it cannot meet the union's demand.
4. FTUWKC demands that the employer retain the previous work arrangement in the Cutting Section. The employer states that it is its prerogative to decide whether or not to keep the previous work arrangement in the Cutting Section.
5. FTUWKC demands that the employer stop deducting union contribution fees from its members' wages without consulting the union leaders. The employer states that it will follow the Labour Law and *Prakas* No. 305 SKBY.

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. 184 KB/RK/VK dated 14 February 2011 was submitted to the Secretariat of the Arbitration Council on 14 February 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 hearing: 25 February 2011 at 2:00 p.m.

Procedural issues:

On 9 February 2011, the Department of Labour Disputes received a complaint via telephone from June Textile Garment Co., Ltd about a strike by workers in the Cutting Section, led by FTUWKC. The workers demanded that the employer improve working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the dispute and the last conciliation session was held on 9 February 2011, concluding with none of the five issues conciliated. The five non-conciliated issues were referred to the Secretariat of the Arbitration Council on 14 February 2011 via non-conciliation report No. 184 KB/RL/VK dated 14 February 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the five non-conciliated issues, held on 25 February 2011 at 2:00 p.m. However, the workers did not attend the hearing. The FTUWKC submitted a letter, dated 22 February 2011, stating in the subject matter that it would “not attend the dispute resolution at the Arbitration Council’s request”. The employer, on the other hand, attended the hearing as summoned by the Arbitration Council. The Arbitration Council considers and decides on the issues in this case as follows.

EVIDENCE**Witnesses & Experts:** N/A**Documents, Exhibits and other evidence considered by the Arbitration Council:****A. Provided by the employer party:** N/A**B. Provided by the worker party:**

1. Letter from FTUWKC to the Chief of the Secretariat of the Arbitration Council, regarding its failure to attend the dispute resolution as requested by the Arbitration Council, No. 204/11 SSKPK, dated 22 February 2011.
2. Order of summons for Pheng Chou issued by the Prosecution Department attached to the Phnom Penh Municipal Court in relation to criminal case No. 426, dated 17 February 2011.

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

1. Report on collective labour dispute resolution at June Textile Garment Co., Ltd, No. 184 KB/RK/VK, dated 14 February 2011.
2. Record of collective labour dispute resolution at June Textile Garment Co., Ltd, dated 10 February 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter, No. 128 KB/RK/VK/LKR, dated 15 February 2011, from the Secretariat of the Arbitration Council to the President of the Local Union of FTUWKC, regarding arbitrator selection.

2. Record of arbitrator selection by lot from the employee list, dated 15 February 2011.
3. Notice to attend the hearing addressed to the employer, No. 135 KB/AK/VK/LKA, dated 17 February 2011.
4. Notice to attend the hearing addressed to the workers, No. 136 KB/AK/VK/LKA, dated 17 February 2011.

FACTS

N/A

REASONS FOR DECISION

The worker party did not attend the arbitral process in this case. It submitted a letter, dated 22 February 2011, stating in the subject matter that it would “not attend the dispute resolution at the Arbitration Council’s request”.

Therefore, the Arbitration Council considers the issues as follows:

Rule 4.7 of the Procedural Rules of the Arbitration Council, Annex to *Prakas* No. 099, dated 21 April 2004 states:

If a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award.

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

In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.

In Arbitral Awards 16/07-Lotus and 27/07-M&V 3, the Arbitration Council interpreted this clause to mean that three conditions must be fulfilled for the Council to close a case:

The first condition [is] that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for this lack of appearance.

Based on the above, the Arbitration Council considers in this case that the Arbitral Panel can close a case based on three conditions: first condition, the party was properly notified; second condition, the party did not appear before the Council; and third condition, the party did not provide a proper reason for its non-appearance.

Thus, the Council will consider whether the three conditions are fulfilled in this case.

First condition: the party was properly notified

The officers of the Secretariat contacted the worker party and informed it of the arbitral hearing. However, the worker party responded that it would not attend. According to the facts, the worker party submitted a letter, dated 22 February 2011, stating in the subject matter that it would “not attend the dispute resolution at the Arbitration Council’s request”.

Hence, the first condition is fulfilled.

Second condition: the party did not appear before the Council

The Arbitration Council considers the phrase “appear before the arbitration panel” in the said *Prakas* to mean that parties must (1) be present at the hearing and (2) participate in the whole process.

The arbitral process comprises four steps as follows:

- A. Introduction and disclosure of any conflict of interest by the arbitrators;
- B. Explanation of the arbitral process and confirmation of the issues in dispute;
- C. Conciliation, if the parties agree; and
- D. Arbitration.

In this case, the worker party did not attend or participate in any of the four abovementioned steps. The Arbitration Council notes that the worker party also failed to choose an arbitrator. Thus, the Arbitration Council concludes that the worker party did not appear at the hearing, in accordance with the second condition of the said *Prakas*. **Hence, the second condition is fulfilled.**

Third condition: the party did not provide a proper reason for its non-appearance

In this case, the worker party did not provide a proper reason for non-appearance at the hearing. Rather, it merely submitted a letter to the Secretariat of the Arbitration Council, dated 22 February 2011, stating that it “would not attend the dispute resolution at the Arbitration Council’s request”. In addition, the worker party left the issues for the Council to decide on in accordance with the arbitral process. The employer, on the other hand, attended the hearing as summoned. Thus, the Arbitration Council considers that **the worker party did not provide a proper reason for its non-appearance.** Hence, the third condition is also fulfilled.

The Arbitration Council has provided ample opportunity to the Local Union of FTUWKC, the claimant, to argue the workers’ case in accordance with the Labour Law. However, it opted for non-appearance. The Arbitration Council is of the view that the worker party does not intend to resolve its dispute with the employer in accordance with the law.

Generally, the claimant is obliged to argue its claim before the Arbitration Council by providing reasons and evidence. In this case, the worker party has not fulfilled its obligation to do so. The claimant in this case has not attended the hearing and has lost the opportunity to provide reasons and evidence to support its claim. The Arbitration Council considers that the worker party has dropped its claim. The worker party's decision reflects an unwillingness to bring the labour dispute to the Arbitration Council for resolution.

Thus, the Arbitration Council decides to close case 23/11-June Textile.

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

DECISION AND ORDER

Close case 23/11-June Textile.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: