



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 27/11-Goldfame**

**Date of Award: 30 May 2011**

## **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Ann Vireak**

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

### **DISPUTANT PARTIES**

#### **Employer party:**

Name: **Goldfame Enterprises (Int'l) Knitters Ltd (the employer)**

Address: #13, Group 1, Kampong Pring Khum Sithbo Village, S'ang District, Kandal Province

Telephone: 012 535 955

Fax: N/A

Representatives:

1. Mr Hom Phea                      Lawyer
2. Mr Try Sovyriyak                Representative of the employer
3. Mr Ngeab Vahong                Head of Administration
4. Mr Chea Vuththet                Legal Officer
5. Mr Pich Sophat                  Legal Officer
6. Mr Hout Sokchea                Legal Officer
7. Mr Rim Vireak                    Lawyer's Assistant

#### **Worker party:**

Name: **Cambodian Labour Union Federation (CLUF)**

**Local Union of CLUF**

Address: #788, St. 474, Boeung Trabek Commune, Chamkamorn District, Phnom Penh

Telephone: 011 685 826

Fax: N/A

Representatives:

1. Mr Seng Menghong      Officer of the Local Union of CLUF
2. Ms Tuy Sreylin        Vice-President of the Local Union of CLUF
3. Ms Suon Sophors       Advisor to the Local Union of CLUF

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer maintain the US\$ 6 living allowance for piece rate workers. The employer refuses to accommodate the workers' demand, arguing that it has complied with Notification No. 049 KB/SCN dated 9 July 2010 issued by the Ministry of Labour and Vocational Training. For piece rate workers who do not earn the minimum wage, it will provide a top up in accordance with the Labour Law.

### **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. 054 KB/RK/VK dated 14 February 2011 was submitted to the Secretariat of the Arbitration Council on 21 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:**    19 May 2011 at 2:00 p.m.

#### **Procedural issues:**

The Kandal Provincial Department of Labour Disputes scheduled a conciliation session for 15 January 2011 to resolve this collective labour dispute, but the employer sought to postpone the session until 7 February 2011.

On 7 February 2011, the Department held a second conciliation session. The issue in dispute remained unresolved. The non-conciliated issue was referred to the Secretariat of

the Arbitration Council on 21 February 2011 via non-conciliation report No. 054/11 KB/KN 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 non-conciliated issue, to be held on 3 March 2011 at 2:30 p.m. As the two parties wanted to negotiate first, they sought to postpone the hearing until 19 May 2011. At that hearing, the Arbitration Council conducted a further conciliation of the issue, but it remained unresolved.

As both parties are signatories to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU) dated 28 September 2010, they are bound to accept binding arbitration of rights disputes. However, the parties are not bound to accept binding arbitration of interests disputes. Any objection by the parties to an award on interests disputes will not affect their obligation to implement an award on rights disputes in accordance with the spirit of the MoU.

The Arbitration Council will consider the issue in dispute based on the evidence and reasons below.

#### **EVIDENCE**

**Witnesses and Experts:** N/A

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

##### **A. Provided by the employer party:**

1. Letters from the employer and the Local Union of CLUF to the Head of the Secretariat of the Arbitration Council seeking to postpone the hearing of case 27/11-Goldfame, dated 2 March 2011.
2. Letters from representatives of the employer and the Local Union of CLUF to the Head of the Secretariat of the Arbitration Council seeking to postpone the hearing of case 27/11-Goldfame, dated 24 March 2011.
3. Letter authorising lawyer Hom Phea to represent the employer, dated 19 May 2011.
4. Internal Work Rules of the employer, No. 058 SKBY dated 12 September 2011.
5. Statute of the employer, dated 4 September 2006.
6. Certificate of commercial registration, No. 4921 PN/CBP dated 25 October 2010.

##### **B. Provided by the worker party:**

1. Certificate of registration of the Local Union of CLUF, dated 18 February 2004.
2. Payroll information for Tuy Sreylin.
3. Record of investigation into a request for a two month employment suspension of 5,000 workers, effective 1 January to 28 February 2011, dated 24 December 2010.

4. Letter from the Head of the Department of Labour Disputes to the President of the Local Union of CLUF regarding the union's request for recognition of its leaders and its second term, No. 883 KB/RK/VK dated 6 August 2007.

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

1. Report on collective labour dispute resolution at Goldfame Enterprises (Int'l) Knitters Ltd, No. 054 KB/RK/VK, dated 14 February 2011.
2. Record of collective labour dispute resolution at Goldfame Enterprises (Int'l) Knitters Ltd, dated 7 February 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 153 KB/AK/VK/LKA dated 24 February 2011.
2. Notice to attend the first hearing addressed to the workers, No. 154 KB/AK/VK/LKA dated 24 February 2011.
3. Notice to attend the second hearing addressed to the employer, No. 210 KB/AK/VK/LKA dated 17 March 2011.
4. Notice to attend the second hearing addressed to the workers, No. 211 KB/AK/VK/LKA dated 17 March 2011.
5. Notice to attend the third hearing addressed to the employer, No. 277 KB/AK/VK/LKA dated 25 April 2011.
6. Notice to attend the third hearing addressed to the workers, No. 278 KB/AK/VK/LKA dated 25 April 2011.
7. Notice to attend the fourth hearing addressed to the employer, No. 291 KB/AK/VK/LKA dated 29 April 2011.
8. Notice to attend the fourth hearing addressed to the workers, No. 292 KB/AK/VK/LKA dated 29 April 2011.
9. Notice to attend the fifth hearing addressed to the employer, No. 314 KB/AK/VK/LKA dated 9 May 2011.
10. Notice to attend the fifth hearing addressed to the workers, No. 315 KB/AK/VK/LKA dated 9 May 2011.
11. Agreement on binding arbitration of rights disputes, dated 19 May 2011.

**FACTS**

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers; and
- Having reviewed the additional documents;

**The Arbitration Council finds that:**

- According to the non-conciliation report, Goldfame Enterprises (Int'l) Knitters Ltd operates a factory producing coats for export.
- Goldfame Enterprises (Int'l) Knitters Ltd commenced operation in 1997. It employs approximately 5,800 workers.
- There are six unions at the factory. The Local Union of CLUF, which does not have a certificate of most representative status (MRS), is the claimant in this case.
- Although the Local Union of CLUF represents 300 workers, it has only received union contribution fees from approximately 100 workers' wages. The employer has not objected to the claim that the Local Union of CLUF represents 300 workers.

**Issue 1: The workers demand that the employer maintain the US\$ 6 living allowance for piece rate workers.**

- Notification No. 049/10 KB/SCN on the minimum wage, dated 9 July 2010, directed employers to incorporate the US\$ 6 living allowance into main wages. As a result, the notification increased the monthly minimum wage to US\$ 61. If a piece rate worker earns less than this, the employer must supplement their wage to make US\$ 61.
- The workers make the above demand because they feel that they are not benefiting from the wage increase to US\$ 61. They state that none of the piece rate workers earn less than US\$ 61 per month and that prior to the wage increase they received the US\$ 6 living allowance on top of piece rate wages.
- The employer argues that it has complied with the abovementioned notification. Moreover, it has also increased the piece rate for new purchase numbers. The increased rate does not apply to pre-existing purchase numbers, of which a small number remains.
- The workers argue that they still earn the same rate for work on pre-existing purchase numbers [as they did when the allowance was paid on top of the piece rate]. For this reason, the employer should maintain the US\$ 6 living allowance as a reward.
- There are 2,500 piece rate workers at the factory.

**REASONS FOR DECISION**

**Issue 1: The workers demand that the employer maintain the US\$ 6 living allowance for piece rate workers.**

The Arbitration Council will consider this issue below.

Notification No. 049/10 KB/SCN dated 9 July 2010 states:

1. The living allowance of US\$ 6 of 2008 shall be incorporated into the main wage of workers in the textile, garment, and footwear sector.
2. ...
3. Piece rate workers shall receive wages on actual production. If they earn more than the minimum wage set out in point 2, they shall receive the surplus. If not, the employer shall increase their wages to US\$ 56 per month for probationary workers and US\$ 61 per month for regular workers.

Based on this notification, the Arbitration Council considers that the US\$ 6 living allowance should be incorporated into the workers' main wages, effective from 1 October 2010 to 2014.

In this case, the employer has incorporated the living allowance into the workers' wages and it will bump up a worker's wage to US\$ 61 if they earn less than that amount.

According to the facts, the workers demand that the employer maintain the separate US\$ 6 living allowance because they feel that they do not benefit from the wage increase following the incorporation of the living allowance into their main wages. This is because, they argue, they never received monthly wages of less than US\$ 61. Moreover, the employer has not increased the piece rate for pre-existing purchase numbers. The Arbitration Council considers that there is no provision in the Labour Law, the Internal Work Rules, an agreement, a collective agreement, or the abovementioned notification requiring the employer to provide a separate living allowance of US\$ 6 to the workers. The separate allowance was invalidated when Notification No. 049/10 KB/SCN came into force. Therefore, the Arbitration Council considers that the workers' demand is more than is provided for in the law, thus making this an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the disputant union holds MRS. In this case, the Arbitration Council finds that the Local Union of CLUF does not hold a certificate of MRS.

In previous arbitral awards, the Arbitration Council has declined to consider an interests dispute if the union bringing the dispute to the Council does not hold MRS (*see AA 46/11-San Lei Fung, reasons for decision, issue 3*).

The Arbitration Council has determined that having MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and legal standing to bring an interests dispute before the Arbitration Council for resolution.

The Arbitration Council applies the interpretation above. Having MRS gives a union legal standing to bring an interests dispute before the Council.

Based on the facts, the Arbitration Council considers that the Local Union of CLUF does not have legal standing to bring an interests dispute before the Council for resolution.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer maintain the monthly US\$ 6 living allowance for piece rate workers.

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

**DECISION AND ORDER**

**Issue 1:** Decline to consider the workers' demand that the employer maintain the monthly US\$ 6 living allowance for piece rate workers.

**Type of award: Non-binding award**

This award will become binding eight days after the date of its notification unless one of the parties lodges a written opposition with the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

**SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....