



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 53/10 – Seeds Garment

Date of Award: 29 June 2010

Dissent to Arbitral Award: Arbitrator Ouk Ry

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Run Saray**

DISPUTING PARTIES

Employer party:

Name: Seeds Garment (Cambodia) Co., Ltd.

Address: Vattanak Industrial Park, Phum Prey Tear, Sangkat Stoeung Meanchey, Khan Meanchey, Phnom Penh.

Telephone: 012 869826 Fax: N/A

Representative:

- | | |
|-----------------------|--|
| 1. Mr. Sum Chomrong | Lawyer |
| 2. Mr. Vong Rithy | Administrative and Human Resource Director |
| 3. Mr. Seang Bun Sean | Assistant to the Director General |
| 4. Mr. Long Heang | GMAC Representative |

Worker party:

Name: - The Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU)

- The Workers Democratic Union in Seeds Garment Co., Ltd.

Address: No. 2/3 G Street 26 BT, Sangkat Boeung Tompun, Khan Meanchey, Phnom Penh.

Telephone: 012 988 623 Fax: N/A

Representative:

- | | |
|--------------------|---|
| 1. Mrs. Meas Vanny | Dispute Resolution Officer in C.CAWDU |
| 2. Chreng Mi | Dispute Resolution Officer in C.CAWDU |
| 3. Von Srun | President of the Workers Democratic Union in the factory. |
| 4. Cheou Vannara | Vice President of C.CAWDU |
| 5. Phal Sovannara | Secretary of C.CAWDU |
| 6. Ya Nop | Activist |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Coalition of Cambodian Apparel Workers Democratic Unions demands that the company reinstate the three union leaders and one union activist 1- Mr. Von Srun, 2- Mr. Chev Vannara, 3- Mr. Phall Sovannara and 4- Mr. Pov Malux and pay back their wages on the grounds that the resignation handed in by these four union leaders was not of their own free will; notably it is alleged that the pressure that was put on them by the company led them to resign. In this case it is asserted that this is a violation of the laws on the establishment and freedom of trade unions. The company party states that it cannot reinstate the three union leaders and one union activist because the three union leaders and the activist readily offered to resign from their work and in this case, the company also notified the Ministry of Labour and Vocational Training of the resignation tendered by the three trade union leaders and one union activist, according to a letter dated 1 December 2009.

2. C.CAWDU demands that the company fully recognise C.CAWDU and not discriminate against C.CAWDU through termination of the union leader's contracts, as well as the contracts of activists and other union members. C.CAWDU claims that the dismissal of the union leaders and C.CAWDU activists occurred subsequently to union activities. It is asserted that those acts bear witness to the discrimination by the company. The company party states that it does not discriminate against C.CAWDU because it did not dismiss the C.CAWDU union leaders or activist; these workers offered to resign of their own free will before the company received the union registration from the Ministry of Labour and Vocational Training (that is, the employees had resigned ahead of the issuance of registration from the MoLVT)

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) 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 No. 099 dated 21 April 2004; 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 the non-conciliation report No. 411 dated 28 May 2010 was submitted to the Secretariat of the Arbitration Council on 31 May 2010.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, No. 72, Street 592 Corner of Street 327 (Opposite Indra Devi High School) Boeung Kak 2 Quarter, Tuol Kok District, Phnom Penh.

Date of hearing: 14 June 2010 at 2:00 p.m.

Procedural issues:

On 24 March 2010, the Department of Labour Disputes received a complaint from the Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU) No. 027/010 dated 18 March 2010 on the demand for the company to improve working conditions.

Having received the complaint, the Department of Labour Disputes dealt with the two non-conciliation points and conducted a final conciliation session on 20 May 2010 but the non-conciliation points were not successfully resolved. The two non-conciliation points were submitted to the Secretariat of the Arbitration Council on 31 May 2010 through a non-conciliation report, No.411 dated 28 May 2010.

Having received the case, the Secretariat of the Arbitration Council extended the invitations to both employer and worker parties to attend a hearing, and conciliate the two non-conciliation points on 14 June 2010 at 2:00 p.m.

The two parties appeared before the hearing held by the Arbitration Council. The Arbitration Council tried to elicit further information concerning the issues and conciliate the two non-conciliation points. As a result, the worker party agreed to withdraw issue 2. Therefore, the Arbitration Council will consider only issue 1 which will be considered and dealt with based on the evidence and fact-finding as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Certificate of business registration of Seeds Garment (Cambodia) Co., Ltd No. 2849 dated 14 July 2009.
2. The Internal Work Rules of Seeds Garment Co., Ltd registered No. 94 dated 10 September 2009.
3. The statute of Seeds Garment Co., Ltd dated 11 June 2009.
4. A brief statement about the labour dispute by the lawyer, Sum Chomrong in case 54/10 dated 10 June 2010.
5. A minute on the collective labour dispute resolution of Seeds Garment dated 20 May 2010.
6. Certificate of business registration of the Workers Democratic Union in Seeds Garment Co., Ltd dated 9 December 2009.
7. A resignation letter from Mr. Von Srun dated 1 December 2009.
8. A resignation letter from Mr. Pov Malux dated 1 December 2009.
9. A resignation letter from Mr. Phal Sovannara dated 28 November 2009.
10. A resignation letter from Mr. Cheou Vannara dated 28 November 2009.
11. The job application form of Mr. Phal Sovannara dated 3 August 2009.
12. A probationary employment contract of Mr. Phal Sovannara dated 3 August 2009.
13. A fixed duration contract of Mr. Phal Sovannara dated 3 August 2009.
14. A biography of Mr. Phal Sovannara dated 23 July 2009.
15. A job application form of Mr. Cheou Vannara dated 12 August 2009.
16. A probationary employment contract of Mr. Cheou Vannara dated 12 August 2009
17. A fixed duration contract of Mr. Cheou Vannara dated 12 October 2009.
18. A biography of Mr. Cheou Vannara.
19. The job application form of Mr. Pov Malux.
20. A probationary employment contract of Mr. Pov Malux.
21. A fixed duration contract of Mr. Pov Malux dated 3 October 2009.
22. The job application letter of Mr. Von Srun.
23. A probationary employment contract of Mr. Von Srun dated 3 August 2009.
24. A fixed duration contract of Mr. Von Srun dated 2 October 2009.
25. A biography of Mr. Von Srun.
26. A certificate of medical check of Mr. Von Srun from the Labour Medical Department dated 13 October 2009.

Provided by the worker party:

- A notification of the election results for establishing the Workers Democratic Union in Seeds Garment No. 137/09 dated 22 October 2009.

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

- A report on the collective labour dispute resolution in Seeds Garment Co., Ltd No. 411 dated 28 May 2010.
- A minute on the collective labour dispute resolution in Seeds Garment dated 20 May 2010.

Provided by the Secretariat of the Arbitration Council:

- An invitation letter for the employer to attend a hearing No. 276 dated 7 June 2010.
- An invitation letter for the worker party to attend a hearing No. 277 dated 7 June 2010.

FACTS

- Having examined a report on the collective labour dispute
- Having listened to the argument of representatives of worker and employer parties, and
- Having reviewed additional documents

The Arbitration Council finds that:

- According to the non-conciliation report, Seeds Garment Co., Ltd employs 980 workers.
- The Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU) is the claimant in the case, and it has a total of 480 members.

Issue 1: The workers demand the company reinstate the four union leaders: 1. Mr. Von Srun, 2. Mr. Cheou Vannara, 3. Phal Sovanna, and 4. Pov Malux back to their respective positions and reimburse them from the date of dismissal to the date of reinstatement.

- Based on the evidence and arguments raised by the worker party during the hearing, the workers called elections to establish a union on 21 October 2009 with 160 voters. Mr. Von Srun was elected as union President, Mr. Cheou Vannara as Vice President, Mr. Phal Sovannara as Secretary, and Mr. Pov Malux as Treasurer. The worker party notified the employer of the election results with a security guard, Dok Thon, signing and accepting the results on 23 October 2009. The company party was not opposed to the argument of the workers but claimed that it did not remember the name of the security guard because there were many guards.
- The worker party argued that the employer discriminated against the union because after C.CAWDU was established the employer started to dismiss union leaders and

certain workers who act as activists by using money to induce them to resign, thereby prompting the four workers to request reinstatement, and reimbursement of wages.

1. Case of Mr. Von Srun

- The worker and employer parties agreed that Mr. Von Srun started his job in the company on 3 August 2009 by being provided with a two-month probationary contract and had a position as a mechanic. Having completed the two-month probationary period, Mr. Von Srun was offered a three-month fixed duration contract from 2 October 2009 to 1 January 2010. However, he handed in his resignation on 30 November 2009.
- Mr. Von Srun claimed that on 29 November 2009 at 6:30 p.m. Mr. Mony Ra, who once served as Administrator in the company, made an appointment with him and Mr. Pov Malux at a restaurant (he could not recall the name of the restaurant) near Tuol Kok District. Mr. Mony Ra did everything possible to lobby them to resign from the job and the company was willing to provide him (Von Srun) with US\$ 1,300 and Mr. Pov Malux with US\$ 650 in exchange for the resignation. Mr. Von Srun approved of the proposal, but he appealed to the company to stop dismissing the C.CAWDU activists. At that time, Mr. Mony Ra promised that the company would not layoff the union activists any longer. Mr. Von Srun maintained that he offered to resign from his work on 30 November 2009 and would accept US\$ 1,300 of severance pay from the company, and he was not subjected to any compulsion or threats from the employer. Mr. Mony Ra was not present at the hearing and the company suggested that he quit his job in late January 2010.

2. Case of Mr. Pov Malux

- The worker and employer parties agreed that he (Pov Malux) commenced work in the company on 11 August 2009 by being provided with a two-month probationary contract and had a position as a mechanic. Having completed the two-month probationary period, Mr. Von Srun was offered a three-month fixed duration contract from 10 October 2009 to 9 January 2010. However, he handed in his resignation on 30 November 2009.
- Mr. Pov Malux claimed that his case was akin to that of Mr. Von Srun as described above. On 30 November 2009, he received only US\$ 650 of payment in return for his resignation because he was not the union President like Mr. Von Srun.

3. Case of Mr. Cheou Vannara

- The worker and employer parties agreed that Mr. Cheou Vannara commenced work in the company on 12 August 2009 by being provided with a two-month probationary contract and had a position as a mechanic. Having completed the two-month probationary period, Mr. Cheou Vannara was offered a three-month fixed duration

contract from 12 October 2009 to 11 January 2010. However, he handed in his resignation on 29 November 2009.

- Mr. Cheou Vannara Claimed that on 10 November 2009, Mr. Mony Ra, an administrator in the company, made an appointment with him and Mr. Phal Sovannara at Full Moon Restaurant near Stoeung Meanchey District. Mr. Mony Ra persuaded him and Mr. Phal Sovannara to resign from the job and the company willing to provide US\$ 650 in severance pay in return for the resignations. The two workers approved of the proposal by accepting US\$ 650 each from the company on 28 November 2009 without any compulsion or threats, and they offered to tender their resignations on 29 November 2009.

4. Case of Mr. Phal Sovannara

- The worker and employer parties agreed that Mr. Phal Sovannara commenced his work in the company on 3 August 2009 by being provided with a two-month probationary contract and had a position as a mechanic. Having completed the two-month probationary period, Mr. Phal Sovannara was offered a three-month fixed duration contract from 3 October 2009 to 2 January 2010. However, he handed in his resignation on 29 November 2009.
- Mr. Phal Sovannara argued that his case was similar to that of Mr. Cheou Sovannara in which case he met with Mr. Mony Ra and accepted US\$ 650 in return for his resignation.
- In this case, the employer party denied categorically that the company provided US\$ 1,300 to Mr. Von Srun and US\$ 650 each to Mr. Phal Sovannara, Mr. Cheou Vannara, and Mr. Pov Malux. The employer maintained that the four workers handed in their resignation of their own free will based on different reasons. The company said it had previously contacted Mr. Mony Ra, who said that he had not been involved in providing money in exchange for their resignations.
- The worker party argued that among the union leaders and activists whose names were on the list given to the employer were those who were terminated on the grounds that their contracts expired. The worker party asserted that upon the expiration of the contracts, the employer prevailed on workers to withdraw their membership of the union, or else the employer would not renew the contract. For instance, one activist, Ya Nop, and other activists were denied the extension of contracts due to their refusal to withdraw their membership of the union. As for Phoung Sreyneth, she was given a contract since the activist offered to withdraw her membership of the union.
- The employer objected that in fact, it was normal that there were workers who join and withdraw from the union at any time and it did not remember how many workers

with union membership worked in the company. The employer said it did not discriminate against the union. Moreover, the Workers Democratic Union in Seeds Garment Co., Ltd was registered at the Ministry of Labour and Vocational Training on 19 December 2009, and those workers had resigned before the company was registered. In this case, the employer party argued it could not reinstate the four workers into their positions because they offered to resign on their own, but if they are willing to work in the company once again in case of future vacancies, they may apply for the jobs and the company will consider their applications.

- When the Arbitration Council asked that the employer to substantiate the movement of the workers, a representative of the employer refused to provide the evidence, citing the need to protect the confidentiality of the company information.

REASONS FOR DECISION

Issue 1: The workers demand the company reinstate the four union leaders: 1. Mr. Von Srun, 2. Mr. Cheou Vannara, 3. Phal Sovanna, and 4. Pov Malux into their respective positions and pay them back from the date of dismissal to the date of reinstatement.

The union party demanded that the company reinstate the four union leaders into their respective positions and reimburse them from the date of dismissal to the date of reinstatement and the four workers offered to return the money they had received from the company. The union argued that the employer had used financial inducement for the purpose of procuring the union leaders' resignations and also terminated the contracts of the union's activists in order to get rid of the union in the company. However, the employer party refused to reinstate the four workers on the grounds that the four mechanics readily resigned without any compulsion from the employer, and the company has never discriminated against the union. In order to deal with the issue, the Arbitration Council will consider if the employer's act can be considered as discrimination against the union, and will further consider whether or not the fact that the employer had tried to persuade the senior union leaders to resign and they had accepted the money in return for resignations, and signed off on resignation letters could pose obstacles to their reinstatement.

Article 266 of the Labour Law states, "[w]orkers and employers have, without distinction whatsoever and prior authorisation, the right to form professional organisations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organisation's statutes.

Professional organisations of workers are called "workers' unions".

Professional organisations of employers are called "employers' associations".

For the purposes of this law, trade unions or associations that include both employers and workers are forbidden."

Article 280 of the Labour Law states, "[a]cts of interference are forbidden. In the senses of the present article, acts of interference are primarily measures tending to provoke the creation of worker organisations dominated by an employer or an employers' organisation, or the support of worker organisations by financial or other means, on purpose to place these organisations under the control of an employer or an employers' organisation."

In this case, the Arbitration Council finds that Article 266 of the Labour Law guarantees the workers' rights to establish a union without any discrimination. Article 280 (of the Labour Law) prohibits all forms of interference with a union from an employer. Those acts include the use of financial or other means with a view to placing these organisations under the control of an employer.

Based on the facts, the Arbitration Council finds that after the workers had founded a union and notified the employer, the senior union leaders such as the President, Vice President, Secretary, and Treasurer were lobbied by the company's Administrator for their resignations with US\$ 1,300 provided to the President, and US\$ 650 each to the Vice-President, Secretary, and Treasurer. Furthermore, the Arbitration Council finds that the union's activists who were named in a list sent to the employer were denied the renewal of their contracts upon expiry. As for any workers who offered to resign as union's activists, the company extended their contracts. For instance, a union activist, Phoung Sreyneth, had her contract renewed when she offered to quit the union. The Arbitration Council finds that based on these acts, the employer did not want the Workers Democratic Union to exist in the company. Such acts are against the existing law stipulating the freedom of trade unions as mentioned above.

In this case, the Arbitration Council finds that the four union leaders were willing to tender their resignations, and had accepted money in return for the resignations. Therefore, the Arbitration Council will consider if the agreement is legitimate and legally binding on the workers.

Paragraph 1 of Article 13 of the Labour Law states, "[t]he provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulting from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void."

Based on Article 13 of the Labour Law above, the Arbitration Council finds that any unilateral decision, a contract or an agreement that do not abide by the provisions of this law or any legal text for its implementation shall be considered null and void. In this case, the Arbitration Council is of the view that the right to establish a union is a significant one to

ensure the balance of power between workers and employer, and this right is protected by law and the Constitution. In this case, the Arbitration Council finds that the fact that the workers resigned and the employer persuaded the union leaders to quit their jobs was for the purpose of eradicating a union. In other words, it was inappropriate and improper that the four workers had accepted payment other than remuneration for work, in return for their resignations. The Arbitration Council finds that the employer's acts, though peaceful in a bid to get rid of a union, are forbidden by the law. Therefore, the fact that the union leaders resigned due to the use of financial incentive from the employer is an agreement which is contrary to the law.

In conclusion, the Arbitration Council orders the company to reinstate Mr. Von Srun, the union President; Mr. Cheou Vannara, the union Vice-President; Mr. Phal Sovannara, the union Secretary; Mr. Pov Malux, the Treasurer, into their respective positions and reimburse them from the date of dismissal to the date of reinstatement. The Council also orders Mr. Von Srun to return US\$ 1,300 of payment he had received to the company; and Mr. Cheou Vannara, Phal Sovannara, and Pov Malux to pay back US\$ 650 of payments they had received from the company.

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

DECISION AND ORDER

- Order the company to reinstate Mr. Von Srun, the union President; Mr. Cheou Vannara, the union Vice-President; Mr. Phal Sovannara, the union Secretary; Mr. Pov Malux, the Treasurer, into their respective positions and reimburse them from the date of dismissal to the date of reinstatement.
- Order Mr. Von Srun to return US\$ 1,300 of payment he had received to the company; and Mr. Cheou Vannara, Phal Sovannara, and Pov Malux to pay back US\$ 650 of payment they had received from the company.

Type of Award: Non binding or binding awards

1- 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: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Run Saray**

Signature:

Annex to the Arbitral Award No. 53/10 – Seeds Garment

Dissent to the Decision about Seeds Garment case

By: Arbitrator Ouk Ry

Chosen by Employer Party

Clause 37 of *Prakas* 099 dated 21 April 2004 of the Ministry of Labour and Vocational Training states, “[a]rbitrators shall record their decisions in an arbitral award signed by the three arbitrators. ***In case that any arbitrator disagrees with the decisions of the majority, that arbitrator may record his dissent as an annex attached in the Arbitral Award.***”

In accordance with the above clause, I, the undersigned, Arbitrator **Ouk Ry**, would like to argue against the Reason for decision of the Arbitral Award 53/10–Seeds Garment in which case the workers demand the company reinstate four union leaders 1. Mr. Von Srun, 2. Mr. Cheou Vannara, 3. Mr. Phal Sovanna, 4. Mr. Pov Malux into their respective positions and reimburse them from the date of dismissal to the date of reinstatement.

Based on the facts, the Arbitration Council finds that the employment contracts of the four workers are three-month fixed duration contracts. The worker party claimed that they had resigned of their own free will, and the resignations were tendered without any compulsion or threats from the employer. In this case, the employer agreed with the argument of the workers, who maintained that the reason for their departure was because the employer had provided them with money in return for the resignations. Hence, to receive the money, they offered to accept the payment and readily resigned. The employer party denied having provided money to the four workers in return for their resignations. The workers asserted that the reason why they demanded the employer reinstate them into their positions was because the employer discriminated against the union.

In this case, the Arbitration Council issued the Arbitral Award, ordering “*the company reinstate four union leaders 1. Mr. Von Srun, 2. Mr. Cheou Vannara, 3. Mr. Phal Sovanna, 4. Mr. Pov Malux into their respective positions and reimburse them from the date of dismissal to the date of reinstatement.*”

In this case, I disapprove of the view and decisions of the other two arbitrators based on the following reasons:

Article 73, paragraph 4 of the Labour Law states, “...[t]he premature termination of the contract by the will of the worker alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the employer to damages in an amount that corresponds to the damage sustained...”

According to Paragraph 4, Article 73 of the Labour Law above, I am of the view that the workers may terminate their fixed duration contracts before the date of expiry. In this

case, the workers are the ones who asked for the termination of their contracts (by resignation) with the employer. Therefore, the relationship between the workers and employer do not exist any more.

I find that the four workers voluntarily offered to quit their jobs without any compulsion or threats from the employer; notably it was the workers' intention to quit their jobs. Therefore, I am of the view that the reason for the four workers' resignations is appropriate in accordance with the Labour Law. Hence, the employer is not obliged to reinstate the workers.

Based on the facts, the workers argued that the reason why they asked for reinstatement is that the employer discriminated against the union. Therefore, I will continue to consider this issue as follows:

According to the contents of Articles 12 and 129 of the Labour Law, and interpretation of the Arbitration Council in Arbitral Award 123/07–E Garment, “[t]he employer may not use the reason for union membership, or union activities for hiring or disciplinary action for terminating their workers’ contracts.”

I am of the opinion that Articles 12 and 279 of the Labour Law only protect those who are dismissed, terminated, or punished by the employer... However, in this case, the employer had not dismissed the workers' contracts because the four workers offered to resign of their own free will.

Moreover, the Arbitration Council invokes Article 280 of the Labour Law for enforcement and interpretation, and this article prohibits interference with the union's activities in which case it will be considered as interference if the company establishes the workers' organisation and place it under the influence and control of the employer.

In this case, the facts do not show that the company interfered with the establishment of a union or workers' organisation, and place it under the influence of the company. In fact, the workers founded an organisation by themselves and it was not under the control of the company.

Therefore, I find that the decision by the Arbitration Council restricted the workers' rights to resign readily and to reach a peaceful dispute resolution between workers and the employer whose rights are protected by the law and the Constitution of the Kingdom of Cambodia.

In conclusion, I, the undersigned, Arbitrator **Ouk Ry**, find that the workers may not demand the company reinstate the four union leaders 1. Mr. Von Srun, 2. Mr. Cheou Vannara, 3. Mr. Phal Sovanna, 4. Mr. Pov Malux into their respective positions and reimburse them from the date of dismissal to the date of reinstatement. Therefore, I, Arbitrator **Ouk Ry**, decide to reject the demand made by the four workers for reinstatement.

Phnom Penh, 29 June 2010

Signed

Ouk Ry