

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 34/06- Gold Fame

Date of Award: 9 May 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

1. ARBITRATION PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Ven Pov**

Chair Arbitrator (chosen by the two Arbitrators): **Koy Neam**

2. DISPUTING PARTIES

Employer party:

Name: **Gold Fame Co. Ltd**

Address: Kompong Pring Village, Se Tbou Commune, Sa ang District, Kandal Province.

Telephone: 012 522 266; 012 919 189 Fax: 023 363 515

Representatives:

1- Mr. Long Heang Company's representative

2-Mr. Chea Vuththet President of shipping

Worker party:

Name: Coalition of Cambodian Apparel W.D.U (C.CAWDU)

Address: #189; Street 173 Conner 432; Sangkat Tom nobtek; Khan Chamkamon; Phnom Penh.

Telephone: 023 210 481, 012 998 906

Representative: Absent

3. JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council (AC) 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. 513 dated 19 April 2005 (Third 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 was unsuccessful, and the non-conciliation report No.070/06 dated 2 May 2006 was submitted to the Secretariat of the Arbitration Council.

On 2 May 2006, the Secretariat of the Arbitration Council received case 34/06- Gold Fame; and also was notified [by the parties] that the worker party was on strike at that time. When the Secretariat contacted the worker party to ask them to select an Arbitrator, the worker party refused to select an Arbitrator. The Secretariat followed the procedure in the Prakas on the Arbitration Council (099/04) to select an Arbitrator by lot, and in this way chose Mr. Ven Pov.

4. DECISION TO FINALISE THE CASE

Interim Order of the Arbitration Council

The Arbitration Council issued an Interim Order on 3 May 2006, ordering the workers to stop the strike and to return to work, awaiting the settlement of their issues by the Arbitration Council. On 5 May 2006, the Arbitration Council invited both parties to appear at a pre-hearing meeting in order to inquire about the root cause of the dispute and suggest that the workers return to work as usual which would therefore allow the Arbitration Council to proceed with its procedures in accordance with the law. However the workers refused to join the pre-hearing meeting to which they were invited by the Arbitration Council, and the workers continued their strike.

The Arbitration Council issued a second return to work order on 5 May 2006. Clause 4 of the second Interim Order warned that *“In the event that the workers are still on strike, the Arbitration Council will not continue its proceeding to settle this collective labour dispute”*. However the workers were still on strike. The Arbitration Council also convened a second pre-hearing meeting on 8 May 2006 at 2:00 p.m. in order to explain the consequences of going on strike, which is banned, during the arbitration process. But the workers continued to refuse to appear at the second pre-hearing meeting to which they were invited by the Arbitration Council and the workers continued their strike until the hearing date on 9 May 2006.

Article 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 Labour Law), or any other action likely to aggravate the situation. The parties must attend all meeting to which the arbitration panel calls them”.

In addition, in its previous Interim Orders, the Arbitration Council has interpreted this article to mean that the Arbitration Council will not continue the arbitration process when the worker party is on strike.

For example, in case 04/04-MSI, the Arbitration Council issued a Notification, dated 29 January 2004, paragraph 4 of which states that:

“Considering that the party to a labour dispute has no right to strike during the Arbitration Council process, the Council cannot resolve or issue an award on the collective labour dispute referred to the Council. The Council can begin to resolve this collective labour dispute again when the union and workers stop striking or the employer requests that the Council continue resolving this collective dispute.”

Similarly, in case 18/04-Hotels, the Arbitration Council issued *Interim Order 2*, dated 22 April 2004, Point 9 and 11 of which reads as follows:

“point 9-Form 23 April 2004, all workers must stop strike, demonstration, or any act of disturbance within the campus of the hotels which are the party to this dispute.”

“point 11-The Arbitration Council reserves the rights to terminate the arbitration proceedings in the event one of the parties violates any provision of this order.”

Again, in case 77/05-Franco knitting Garment, the Arbitration Council issued *Interim Order 2*, dated 24 December 2005, and stated in point 4 *“In the event the worker party continues the strike, the Arbitration Council will not proceed to settle the collective labour dispute.”*

In case 28/06-G.D.M; the Arbitration Council also issued its second interim order to close the case because the workers continued their strike during the arbitration process.

Therefore, in order to be in conformity with the law and interim orders in previous cases, the Arbitration Council decides that in this case the Arbitration Council will not make a decision with respect to this case while the workers continue their strike.

Moreover, the worker party does not show any interest in the Arbitration Council, which is the body [established] to resolve collective labour disputes and also does not intend to bring their dispute to the Arbitration Council to be settled. If the case is kept at the Arbitration Council, this will damage the benefits of both parties. Therefore in order that the parties can use another

means to resolve their labour dispute, the Arbitration Council has no option but to dismiss the case 34/06- Gold Fame.

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

DECISION

Dismiss case No 34/06-Gold fame.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Koy Neam**

Signature: