



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 134/07 – Wonrex

Date of Award: 19 January 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

DISPUTING PARTIES

Employer party:

Name: **Wonrex (Cambodia) Co. Ltd. (Wonrex Company)**

Address: Prey Pring Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 284 168 Fax: N/A

Representatives:

1. Mr. Kuan Cheng Koeut Administrative Staff;
2. Ms. Ty Narum Administrative Staff.

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union (KYTU) at Wonrex Factory**

Address: Prey Pring Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 092 785 904 Fax: N/A

Representatives:

1. Mr. Sann Phan Labour Official of KYFTU.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company pay them 100 percent of wages when the company has no work for them. The employer party said when there is no work to do, the company would pay only 50 percent and the workers can stay at home.
2. The worker party demanded that the company maintain their wages and attendance bonus when workers take leave. The employer party claimed that it cannot provide wages and attendance bonus to workers who take leave for personal purposes.
3. The worker party demanded that the company calculate the payment for the unused annual leave as the company did not implement the Labour Law. The employer party said it would follow the current practice regarding annual leave.
4. The worker party demanded that the company build a dining hall for workers within a certain period of time. The employer party said the company can afford a dining hall, but needs some time to study this and cannot determine the date of the construction.
5. Khmer Youth Trade Union at Wonrex Factory demanded that the company deduct the 1,000 riels union contribution fee from its members who agreed to have their wages deducted. The employer party said the company cannot help in deducting the union contribution fee in the near future because the company needs to computerise the payroll system.
6. The worker party demanded that the company announce the piece rate one week prior to the release of new designs. The employer party said the company cannot announce the piece rate one week in advance because currently the company produces only the old design and if there is a new design, the company will announce the piece rate accordingly.
7. The worker party demanded that the company be responsible for the loss of workers' bicycles or motorbikes within the factory premises. The employer party said the company will try to increase the security and take actions on the issue, but would not take responsibility for the loss of workers' bicycles or motorbikes.
8. The worker party demanded that the company provide them with US\$ 20 per month for their cooperation to work overtime. The employer party said the company cannot afford to provide US\$ 20 per month for the overtime work because the company has already provided other incentives.
9. The worker party demanded that the company increase the seniority bonus by US\$ 1 every year. The employer party said the company cannot increase the seniority bonus by US\$ 1 every year for the workers. The company only implements Notification 017 dated 18 July 2000.

10. The worker party still claimed that the transfer of the union leaders' positions without their agreement was illegal. The employer party said the reshuffle and work arrangement for workers are the rights of the company.

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. 076 dated 10 May 2007 (Fifth 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 which took place on 27 November 2007 was unsuccessful, and the non-conciliation report No. 1266 was submitted to the Secretariat of the Arbitration Council on 3 December 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Centre, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh.

Date of hearing:

First hearing: 12 December 2007 (from 15:30 p.m. to 17:00 p.m.)

Second Hearing: 25 December 2007 (from 8:00 a.m. to 12:00 a.m.)

Procedural issues:

On 1 October 2007, the Department of Labour Dispute received a complaint from KYFTU on the demand for the improvement of some working conditions. Having received the complaint, the Department of Labour Dispute designated its officials to conciliate the dispute and the last conciliation session was held on 20 November 2007 as a result which nine out of 19 issues were conciliated. The ten remaining non-conciliated issues were submitted to the Arbitration Council on 3 December 2007 through report No. 1266 dated 27 November 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing to conciliate their dispute, first on 12 December 2007 at 3:30 p.m. and the second hearing on 25 December 2007 at 8:00 a.m.

Both parties were present at the hearing on 12 December 2007 at 3:30 p.m.; however, on 25 December 2007 at 8:00 a.m., the President, Vice-President, and Secretary of the local union were absent, only Mr. Sann Phan, KYFTU official, was present. The Arbitration Council attempted to find out more information regarding the dispute and also attempted to conciliate the non-conciliated issues, as a result of which six out of ten issues – issues 2, 3, 4, 7, 9 and

10 were conciliated. The Arbitration Council also ordered both parties to submit documents and evidence related to the non-conciliated issues – issues 1, 6, 7 and 8, especially the letter authorising Mr. Sann Phan, KYFTU official, to settle the dispute.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter dated 8 February 2007 authorising Mr. Kuan Cheng Koeut and Ms. Ty Narum to represent the company;
- Certificate No. 1260 dated 19 April 2002 on the trade registration of Wonrex Company;
- Internal Work Rules of the company dated 22 October 2002.

Provided by the worker party:

- Registration certificate of KYTU at Wonrex Company dated 8 August 2003. Ms. Khieu Sicheng, President; Ms. Hua Sujing, Vice-Presidence; and Ms. Sorn Pum, Secretary;
- Letter No. 1406 dated 2 October 2006 from the Department of Labour Dispute recognising the new union leaders for the second term – Mr. Lach Sary, President; Mr. Klok Vicheka, Vice-President; and Mr. Pho Phan, Secretary;
- Registration receipt of KYTU at Wonrex dated 18 September 2007. KYTU said in the hearing that the registration was used for the recognition of the new union leaders.

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

1. Report No. 1266 on the collective labour dispute settlement at Wonrex Factory dated 27 November 2007;
2. Minute of the collective labour dispute conciliation dated 20 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 601 dated 5 December 2007 to the worker party to attend the hearing;
2. Invitation No. 600 dated 5 December 2007 to the employer party to attend the hearing;
3. Invitation No. 608 dated 11 December 2007 to the worker party to attend the hearing;
4. Invitation No. 607 dated 11 December 2007 to the worker party to attend the hearing;
5. Invitation No. 619 dated 12 December 2007 to the worker party to attend the hearing;
6. Invitation No. 618 dated 12 December 2007 to the worker party to attend the hearing;
7. Invitation No. 639 dated 18 December 2007 to the worker party to attend the hearing;
8. Invitation No. 638 dated 18 December 2007 to the worker party to attend the hearing.

FACTS:

- Having examined the report on the collective labour dispute conciliation
- Having listened to the testimonies from both the employer party and the worker party
- Having reviewed other supplementary documents

The Arbitration Council finds that:

- Wonrex Company is located in Prey Pring Village, Sangkat Chom Chao, Khan Dangkor of Phnom Penh. The company employs 2,870 workers.
- Khmer Youth Trade Union was registered on 8 August 2003 with Ms. Khieu Sicheng, as President; Ms. Hua Sujing as Vice-President; and Ms. Sorn Pum as Secretary. However, the three union leaders were replaced by Mr. Lach Sary as President; Mr. Klok Vicheka as Vice-President; and Mr. Pho Phan as Secretary through letter No. 1406 dated 2 October 2006 of the Department of Labour Dispute and through registration receipt dated 18 September 2007. According to the union, the registration application was for the recognition of the new union leaders.
- At the hearing held on 25 December 2007, none of the local union leaders or workers from Wonrex Factory attended the hearing.
- At the hearing on 25 December 2007, Mr. Sann Phan, KYFTU official, attended the hearing on behalf of KYTU at the factory and workers. However, KYFTU did not show the letter from KYTU that authorised Mr. Sann Phan to settle the labour dispute. The employer party claimed in the hearing that the representative of KYFTU did not have the rights to represent KYTU or the workers at Wonrex Company and insisted that the representative from KYFTU show the authorisation letter. The Arbitration Council ordered KYFTU to provide the authorisation letter from KYTU and required both parties to provide documents and evidence related to this issue by 28 December 2007 as agreed in the hearing. However, up until the deadline, KYFTU did not provide the authorisation letter, documents, and evidence to the Arbitration Council.
- Representative from KYFTU said the leaders of KYTU at Wonrex Factory had received the information about the hearing, but could not attend the hearing because the employer did not allow the union leaders to come to the hearing.

REASONS FOR DECISION

Article 268 (1) of the Labour Law stipulates that, *“In order for professional organisations to enjoy the rights and benefits recognized by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labor for registration. All requests for registration shall be appended with the statement of constitution of the organisation. ...”*

Article 266 (2) of the Labour Law states that, *“Professional organisations of workers are called “workers’ unions.”*

Based on the above Law, the Arbitration Council considers that generally only registered local unions can represent the workers who are its members. In this case, the Arbitration Council considers that Khmer Youth Trade Union at Wonrex Factory was legally registered and has the rights to represent the workers who are its members.

In this case, the, the claimant, local union leaders and the workers who are members of Khmer Youth Trade Union at Wonrex Factory, did not authorise KYFTU to settle their dispute. Therefore, the Arbitration Council will consider whether or not KYFTU has the right to settle the dispute on behalf of the local union and its members.

Clause 19 of Prakas 099 dated 21 April 2004 on the Arbitration Council states that, *“A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.”*

This clause clearly states that representative(s) of the disputing parties must be authorised in writing by the parties. In this case, KYFTU did not show the authorisation letter from Khmer Youth Trade Union at Wonrex Factory. Therefore, KYFTU could not represent Khmer Youth Trade Union and its members to settle the dispute. (See Arbitral Award 20/07 – Star Knitting)

In this case, none of the local union leaders, its members, or representative was authorised to attend the hearing.

Clause 21 of Prakas 099 dated 21 April 2004 on the Arbitration Council states that, *“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.”*

Moreover, Point 4.7 of Procedural Rules of the Arbitration Council, which is part of the Annex to Prakas 099 dated 21 April 2004 states that, *“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. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”*

In Arbitral Awards 16/07 – Lotus, 27/07 – M&V, and 73/07 – Sun Sin, the Arbitration Council interpreted the above Clause 21 that three conditions must be met in order to close the case *“condition 1: party was appropriately informed; condition 2: party did not show up at the hearing; and condition 3: party did not provide valid reason for the absent.”*

In this case, only the representative from KYFTU was present in the hearing. As analysed above, representative from KYFTU did not have the authorisation letter from the

local union or its members. Besides, none of the local union leaders and its members was present in the hearing. According to KYFTU, Khmer Youth Trade Union at Wonrex Factory has received the information about the Arbitral Hearing. The Arbitration Council considers that the leaders of the local union and its members were informed of the date of the hearing, but the local union, the claimant, did not attend the hearing. KYFTU claimed that the local union could not attend the hearing because the employer did not allow them to come to the hearing. However, the local union, the claimant, did not provide this reason to the Arbitration Council. Therefore, the Arbitration Council considers that this claim was not valid. In conclusion, the Arbitration Council considers that there was no valid reason to support the absence of the worker party in the hearing. Based on the above legal principle, if the claimant was informed of the hearing, but did not show up for the hearing and did not provide valid reason to support his/her absence, the Arbitration Council considers that the claimant gives up the demands.

Therefore, the Arbitration Council decides to close this case because the claimant gave up the demands. (See also Arbitral Awards 27/07 – M&V and 73/07 – Sun Sin)

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

DECISION

Close case 134/07 – Wonrex.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: