



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 44/09-South Bay

Date of award: 9 April 2009

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: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTANT PARTIES

Employer party:

Name: **South Bay Enterprise Co., Ltd. (the employer)**

Address: Vathanak Park, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 385 705

Fax: N/A

Representatives:

- | | |
|-----------------------------|--------------------------|
| 1. Ms Sung Guo Hong | Head of Administration |
| 2. Ms Chea Sovanchansambath | Administrative assistant |
| 3. Mr Srien Chuny | Administrative assistant |
| 4. Mr Wu Jian Ji | Foreman |

Worker party:

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

Local Union of CLUF

Address: No. 30C, Borey Solar, Street 371, Teouk Thla Commune, Russei Keo District,
Phnom Penh

Telephone: 016 657 556

Fax: N/A

Representatives:

- | | |
|--------------------|---|
| 1. Mr Khin Sokhorn | Secretary of CLUF |
| 2. Mr An Sareun | Vice-President of the Local Union of CLUF |

THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.

- | | |
|-------------------|--|
| | (at Golden Crown) |
| 3. Mr Khim Meas | Advisor to the Local Union of CLUF
(at Golden Crown) |
| 4. Mr Pen Phina | First Vice-President of the Local Union of CLUF
(at Golden Crown) |
| 5. Mr Mao Saveun | General Secretary of the Local Union of CLUF |
| 6. Mr Kim Sarong | Advisor to the Local Union of CLUF |
| 7. Mr Yong Yan | Secretary of the Local Union of CLUF |
| 8. Mr Thon Veasna | 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 provide them with full wages and other benefits when it does not have work for them to do, that is, in cases of work suspension without permission from the Ministry of Labour and Vocational Training. The employer states that it is not able to meet this demand and during work suspensions it offers the following:
 1. US\$ 8 monthly accommodation allowance.
 2. US\$ 6 monthly living allowance.
 3. Seniority bonus based on the worker's length of service.

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 was unsuccessful, and non-conciliation report No. 224 KB/AK/VK dated 19 March 2009 was submitted to the Secretariat of the Arbitration Council on 20 March 2009.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Tonle Bassac Commune, Chamkarmorn District, Phnom Penh

Date of hearing: 27 March 2009 at 2.00 p.m.

Procedural issues:

On 23 February 2009, the Department of Labour Disputes received a complaint from CLUF demanding that the employer provide full wages and benefits when it has no work for the workers to do, that is, when it implements a work suspension without permission from the Ministry of Labour and Vocational Training. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 16 March 2009. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 20 March 2009.

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, held on 27 March 2009. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue but it remained unresolved. The Arbitration Council will consider the issue in dispute based on the evidence and reasons below.

EVIDENCE

This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.

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:

- There are approximately 600 workers at South Bay Enterprise Co., Ltd. (South Bay). There is only one union at the enterprise, which holds a certificate of most representative status (MRS), No. 065/08 dated 17 September 2008, from the Ministry of Labour and Vocational Training.

Issue 1: The workers demand that the employer provide their full wages and other benefits when it does not have work for them to do, that is, when it implements a work suspension without permission from the Ministry of Labour and Vocational Training.

- From [6] December 2008 until 5 February 2009, South Bay suspended the workers' employment contracts with permission from the Labour Inspector. The employer notified the workers one day prior to the suspension.

- Of the 600 workers employed by South Bay, 559 were suspended for a second time from 6 February 2009 until 5 April 2009. The employer sought permission from the Labour Inspector on 4 February 2009 but received no response. The reason for the suspension was that the employer did not receive any purchase orders from buyers due to the global financial crisis.
- The workers agree that recently there have been no purchase orders and no work.
- During the first work suspension, the employer paid the workers an accommodation allowance of US\$ 8 per month, a living allowance of US\$ 6 per month, and a seniority bonus proportionate to each worker's length of service. In total, each worker received between US\$ 14 and US\$ 19 per month.
- South Bay currently has only 41 workers who are not suspended, including heads of groups and six union leaders.
- The workers demand full wages and other benefits, such as a living allowance, for the duration of the second suspension from 6 February 2009 to 5 April 2009 because the second suspension has not been authorised by the Labour Inspector and is therefore unlawful. The employer maintains that it will only pay the workers an accommodation allowance of US\$ 8 per month, a living allowance of US\$ 6 per month, and a seniority bonus proportionate to each worker's length of service, because it has no purchase orders from buyers due to the global financial crisis.

REASONS FOR DECISION

The Arbitration Council will consider whether the second work suspension from 6 February 2009 to 5 April 2009 is consistent with the law.

The Arbitration Council finds that South Bay first suspended 559 workers for two months from 6 December 2008 to 5 February 2009 with permission from the Labour Inspector. The employer submitted a letter dated 4 February 2009 to the Labour Inspector seeking permission for another two month suspension from 6 February 2009 to 5 April 2009. However, it did not receive a response.

Article 71(11) of the Labour Law provides that a labour contract can be suspended:

When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and [shall] be under the control of the Labour Inspector.

According to Article 71(11), a work suspension by reason of economic difficulty shall not exceed two months and shall be under the control of the Labour Inspector.

According to the facts, the second two month suspension of the 559 workers was not authorised by the Labour Inspector, and the total duration of the two suspensions exceeds two months, contrary to Article 71 of the Labour Law. The Arbitration Council finds that the second suspension of the 559 workers from 6 February 2009 to 5 April 2009 is unlawful.

The Arbitration Council will consider whether the workers are entitled to wages and other benefits for the duration of the unlawful suspension.

The Arbitration Council has found in previous cases that where a work suspension is unlawful it is considered that the workers' contracts are not suspended and that the employer has merely failed to provide the workers with work. Therefore, the employer's obligation to pay full wages is still in effect. In cases of unlawful work suspension, the employer must provide workers with their full wages (*see Arbitral Award 21/03-Loyal Cambodia, reasons for decision, issue 8; 46/04-M & A Cambodia, reasons for decision, issue 1; 60/04-United Art, reasons for decision, issue 1; and 43/09-Hugo, reasons for decision, issue 1*).

The Arbitration Council agrees in this case with the finding made in previous cases; if a work suspension is unlawful, the employer is obliged to pay the workers' full wages.

The Arbitration Council will consider the workers' demand for other benefits, such as the US\$ 6 living allowance.

Point 1 of Notification No. 032/08/SCN dated 17 April 2008 stipulates that employers must:

provide an additional living allowance to support workers, apprentices, casual or floating workers, probationary workers and full-right workers who are working in garment and footwear manufacturing factories, enterprises, and establishments in the amount of US\$ 6 (six US Dollars) per month. This allowance is not included as a part of the actual wage (main wage).

Point 2 of the minutes regarding the procedure for determining eligibility for the US\$ 6 living allowance for workers in the garment and footwear manufacturing industry, dated 5 May 2008, states that “[a]ll workers/employees, both new workers/employees who commence a subsequent month of employment and pre-existing workers/employees of all types, shall be entitled to the full cost of living allowance, i.e. US\$ 6 without any conditions.”

The Arbitration Council has found in previous cases that the phrase “**without any conditions**” in the minutes includes unpaid leave taken with the employer's permission. Even if female workers take an additional month's leave, they are still entitled to receive the US\$ 6 living allowance (*see Arbitral Award 119/08-New Hung Wah, reasons for decision, issue 3*).

In this case, the Arbitration Council agrees with the interpretation in previous cases. The Arbitration Council finds that regardless of whether the work suspension is lawful or unlawful, the workers are still entitled to the US\$ 6 living allowance because the living allowance must be provided to workers without any conditions.

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

DECISION AND ORDER

Issue 1: Order the employer to pay full wages plus the monthly US\$ 6 living allowance to the 559 workers who were suspended from 6 February 2009 to 5 April 2009.

Type of award: non-binding award

This award of the Arbitration Council 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 period.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Chhiv Phyum**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: