



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 35/09-3 Q Garment

Date of award: 20 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: **Ann Vireak**

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

DISPUTANT PARTIES

Employer party:

Name: **3 Q Garment Co., Ltd. (the employer)**

Address: Chom Chao Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 496 223

Fax: N/A

Representatives:

- | | |
|---------------------|-------------------------------|
| 1. Ms Peung Hgechki | Interpreter |
| 2. Mr Seav Kimchay | Representative of the Company |

Worker party:

Name: **Cambodian Workers Labor Federation Union (CWLFU)**

Address: Chom Chao Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 258 006

Fax: N/A

Representatives:

- | | |
|---------------------|-------------------------|
| 1. Mr Chin Sony | Vice-President of CWLFU |
| 2. Mr Ek Sokchea | Secretary of CWLFU |
| 3. Ms Krit Srey Mom | Head of Sewing Section |
| 4. Ms Yem Lak | Sewing Worker |
| 5. Ms Thong Rin | Sewing Worker |
| 6. Ms Chheang Lyda | Sewing Worker |

- | | |
|-------------------|---------------|
| 7. Ms Set Sim | Sewing Worker |
| 8. Ms Krit Sithea | Sewing Worker |

ISSUES IN DISPUTE

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

1. Thirteen workers in the Group B sewing section claim that the employer dismissed them. The employer argues that it did not dismiss the workers, rather they refused to work because they are demanding that the employer reinstate Krit Srey Mom as head of the group.
2. The workers in the Group B sewing section demand that the employer reinstate Krit Srey Mom as head of the group. The employer states that it cannot reinstate Krit Srey Mom because she does not have the ability to work in that role.

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. 178 KB/AK/VK dated 6 March 2009 was submitted to the Secretariat of the Arbitration Council on 11 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: 20 March 2009 at 2:00 p.m.

Procedural issues:

On 2 March 2009, the Department of Labour Disputes received a complaint from CWLFU outlining the workers' demand that the employer reinstate one of its workers, Krit Srey Mom, to her position as head of Group B sewing section. 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 3 March 2009. The issues in dispute were not resolved and the two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 11 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 two non-conciliated issues, held on 20 March 2009 at 2:00 p.m. Both parties were present as summoned by the Arbitration Council. At the hearing, the Arbitration Council conducted a further conciliation of the two non-conciliated issues, but the issues were not resolved.

The Arbitration Council will consider the issues 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:

- 3 Q Garment Co., Ltd. is located in Phnom Penh and employs 140 workers. There is no union of employees at the factory.
- There are 13 claimant workers in this case.
- The 13 workers hold undetermined duration contracts.
- Krit Srey Mom commenced as a sewing worker for the employer on 6 January 2007 on an undetermined duration contract.
- In early July 2007, Krit Srey Mom was promoted to the position of head of Group B sewing section. She supervised 36 workers in that section.
- In her position as head of the sewing section, Krit Srey Mom received a total wage of US\$ 146 per month, which was divided as follows:
 - Main wage: US\$ 80
 - Skill bonus: US\$ 40
 - Bonus : US\$ 20
 - Living allowance: US\$ 6

- On 14 February 2009, the director met with Krit Srey Mom and set a quota of 2,500 pieces per day for Group B.
- Krit Srey Mom asked the employer to allow her group one week to test whether they could meet the quota. At the end of the week her group was unable to meet the quota, so she asked the employer to decrease the quota and said that her group would try harder to meet it.
- On 26 February 2009, Krit Srey Mom allowed all female sewing workers in her group to go home at 5:15 p.m., after they had sewn 2,300 pieces. At the hearing, the workers stated that regular working hours are until 4:00 p.m. and if there is overtime work, the working hours extend until 6:00 p.m.
- Krit Srey Mom allowed the workers to go home at her own initiative, without permission from the employer. She reasoned that her group members had been exhausted since the previous week and they had never managed to sew 2,300 pieces in a day before. Because it was the first day of the week, she decided to allow the workers to leave early in order to motivate them. Moreover, the employer had no more materials for sewing.
- That same evening, after all the group members had gone home, Krit Srey Mom was summoned by the Chinese supervisor and was issued a warning. He told her not to allow the workers to leave early again. The workers should remain at their workstations even if the materials have run out because the employer will pay for overtime work.
- The Chinese supervisor gave Krit Srey Mom an additional chance, giving her more time to supervise the 36 female workers to meet the quota of 2,500 pieces. The next day they sewed 2,000 pieces or fewer.
- On the evening of 27 February 2009, the Chinese supervisor met with Krit Srey Mom and told her that she would no longer work as the head of the sewing section and would be demoted to ordinary sewing worker. This meant that Krit Srey Mom was no longer entitled to the US\$ 40 skill bonus or the US\$ 20 bonus. Therefore, from 28 February 2009 onward, there would be no head of the Group B sewing section. The Chinese supervisor would perform the supervision himself.
- At the hearing, the employer stated that in Krit Srey Mom's time as head of the sewing section, the employer never gave her a warning but it did give her verbal advice. Moreover, the employer never warned her that it would demote her if her group could not meet the quota. However, it did warn her on 26 February 2009, so as to induce her to lead the workers in sewing 2,500 pieces.

- On the morning of 28 February 2009, the Chinese supervisor performed the supervision himself and ordered Krit Srey Mom to work as an ordinary sewing worker.
- Krit Srey Mom did not agree to this order and demanded that she be reinstated as head of the sewing section. Meanwhile, the other female workers in Group B also objected to the Chinese supervisor's order. They stopped working and stood up and demanded that the employer reinstate Krit Srey Mom as the head of the sewing section. However, the employer rejected this demand.
- The employer states that so as not to disturb other people's work, the Chinese supervisor suggested that those workers who were not willing to sew should leave the sewing section. The supervisor then distributed payslips and asked each worker in Group B to sign them, explaining that any worker who was not willing to work would receive their wages and other annual bonuses.
- The workers state that after the Chinese supervisor distributed the payslips, he told them to collect their last wages and annual bonuses and he gathered their [identity] cards. On the understanding that they had been dismissed, the workers demanded that the employer reinstate them, otherwise it would have to pay the dismissal indemnity in accordance with the law.
- On 10 March 2009, the employer paid final wages and annual bonuses to the female workers who were unwilling to work. It also took their [identity] cards.
- At the hearing, the employer denied dismissing the 13 workers, arguing that they were unwilling to work. The employer would still have allowed the workers to work in accordance with its directions. The employer maintained that Krit Srey Mom did not have the ability to perform her duties as head of the sewing group, and that Group B no longer needed a Cambodian head.
- Currently, there are 13 workers who are unwilling to work and who make the following demands:
 1. If the employer reinstates Krit Srey Mom to her position the 13 workers will resume their work, since Krit Srey Mom is a good group leader.
 2. If Krit Srey Mom is not reinstated, the 13 workers demand that the employer pay them a dismissal indemnity in accordance with the Labour Law because the employer has put so much pressure on them that they can no longer work. Therefore, their termination is at the employer's initiative and is unlawful.

REASONS FOR DECISION

Issue 1: The workers demand that the employer reinstate Krit Srey Mom as head of the Group B sewing section.

The workers demand that the employer reinstate Krit Srey Mom to her position as head of the Group B sewing section. However, the employer asserts that it cannot reinstate her because she is not qualified for the position. Therefore, the Arbitration Council will consider whether the 13 workers are entitled to demand that the employer reinstate Krit Srey Mom to her former position.

Article 65, paragraph one of the Labour Law states that “[a] labour contract establishes working relations between the worker and the employer.”

Article 22 of Decree No. 38 on Contract and Other Responsibilities states:

A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties. A contract shall be executed with honesty and according to the will of the parties. A contract binds only the parties to the contract.

In previous arbitral awards, the Arbitration Council explained that:

Based on Article 65 of the Labour Law and Articles 1 and 22 of Decree No. 38 on Contract and Other Responsibilities, the Arbitration Council finds that only the parties to the contract can cancel, terminate, amend or renew the contract. Third parties cannot make orders or demands in the name of the contracting parties unless there is consent from those parties (*see Arbitral Awards 02/05-Bu Min; 88/06-Cambodia Apparel, reasons for decision, issue 3; and 50/07-M & V (Branch 3)*).

In this case, the 13 claimant workers are not parties to the contract between Krit Srey Mom and the employer, but they demand that the employer reinstate Krit Srey Mom to her position as head of the section. At the hearing, Krit Srey Mom did not provide any reasons to support the assertion that the employer had unreasonably demoted her. The demand to reinstate her was made by the 13 workers on the basis that she was a good head of section. The Arbitration Council finds that those 13 workers cannot act on behalf of Krit Srey Mom to demand that the employer reinstate her because they are not parties to the contract between the employer and Krit Srey Mom.

Further, Article 2, paragraph two of the Labour Law states that “[e]very enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.”

In previous cases, the Arbitration Council has interpreted the above article as meaning that employers are entitled to supervise and direct the enterprise as long as this right is exercised lawfully and reasonably (*see Arbitral Awards 39/07-San San, reasons for decision, issue 2; 54/07-Yung Wah, reasons for decision, issue 9; and 47/08-Grandtex, reasons for decision, issue 2*).

In this case, the Arbitration Council finds that the right to supervise and direct the enterprise includes the right to make a decision to promote workers in order to make the operation run smoothly.

As the 13 workers cannot make a demand on behalf of Krit Srey Mom, in order to be consistent with previous decisions the Arbitration Council decides to reject the workers' demand that the employer reinstate Krit Srey Mom to her position as head of the Group B sewing section.

Issue 2: If Krit Srey Mom is not reinstated as head of the Group B sewing section, the 13 female workers demand that the employer pay them a dismissal indemnity in accordance with the Labour Law because it has placed so much pressure on them that they can no longer work for the employer; thus their dismissal was at the employer's initiative and is unlawful.

The Arbitration Council will consider whether the 13 workers chose not to return to work because of the pressure put on them by the employer and whether the workers are entitled to a dismissal indemnity and damages.

Based on the facts, the Arbitration Council finds that from 28 February to 10 March, some of the workers in Group B returned to work. Only 13 workers refused to return and demanded that the employer reinstate Krit Srey Mom. These workers, who held undetermined duration contracts, received their last wages and compensation in lieu of annual leave on 10 March 2009.

The Arbitration Council finds that workers who accuse the employer of oppression bear the burden of providing evidence to support their claim (*see Arbitral Awards 79/05-Evergreen; 77/08-Xing Tai, reasons for decision, issue 1; 101/08-GDM, reasons for decision, issues 1 and 2; and 108/08-Hugo, reasons for decision, issue 4*).

At the hearing, the Arbitration Council found that when Krit Srey Mom was demoted to the position of ordinary worker, the other workers in Group B were unhappy and decided not to work. However, after the employer made an announcement asking those workers to return to work most of them did so, apart from the 13 workers (out of a total of 36), who still chose not to work. The workers claim that they did not return to work because the employer

oppressed them, and therefore they demand that the employer provide a dismissal indemnity in accordance with Articles 90 and 91 of the Labour Law.

Article 90 of the Labour Law states:

Indemnity for dismissal must be granted to the worker and, if applicable, he can also claim damages even though the contract was not terminated by the employer, but the latter, through his incitements, pushed the worker into ending the contract himself. If the employer treats the worker unfairly or repeatedly violates the terms of the contract, he also has to pay indemnities and damages to the worker.

At the hearing, apart from raising their dissatisfaction, the workers did not provide any other evidence or reasons to support their demand.

Based on the facts above, the Arbitration Council does not find a sufficient basis to consider whether the employer has oppressed or committed offences towards the 13 workers as set out in Article 83, Part A of the Labour Law.

Generally, the Arbitration Council will reject workers' demands if they do not present sufficient evidence (*see Arbitral Awards 63/04-Shine Well, reasons for decision, issue 4; 74/07-Global Apparels, reasons for decision, issue 2; 94/07-Fortune Garment, reasons for decision, issues 6 and 8; 101/08-GDM, reasons for decision, issues 1 and 2; and 108/08-Hugo, reasons for decision, issue 4*).

Therefore, the Arbitration Council finds that the employer did not oppress the workers or commit offences which induced the 13 workers to stop working. On the contrary, the workers decided to stop working voluntarily because of the demotion of Krit Srey Mom from her position as head of their section.

Consequently, the Arbitration Council rejects the workers' demand that the employer pay the dismissal indemnity.

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

DECISION AND ORDER

Issue 1: Reject the workers' demand that the employer reinstate Krit Srey Mom to her position as head of the Group B sewing section.

Issue 2: Reject the workers' demand that the employer pay them a dismissal indemnity.

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 Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: