



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអង្គជំនុំជម្រះ

THE ARBITRATION COUNCIL

Case number and name: 256/13-Dignity Knitter

Date of award: 24 December 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

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

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

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

DISPUTANT PARTIES

Employer party:

Name: **Dignity Knitter Limited**

Address: Prek Ta Pring Village, Setbo Commune, Sa Ang District, Kandal Province

Telephone: 067 999 895

Fax: N/A

Representatives:

- | | |
|--------------------|-----------------------------------|
| 1. Mr Zhong Hay | Head of Production Department |
| 2. Mr Tang Sunheng | Head of Administration Department |
| 3. Mr Kang Kimhout | Assistant to Administrator |
| 4. Mr Sim Seang | Assistant to Administrator |

Worker party:

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

- **Local Union of C.CAWDU (the union)**

Address: Prek Ta Pring Village, Setbo Commune, Sa Ang District, Kandal Province

Telephone: 012 504 154

Fax: N/A

Representatives:

- | | |
|-------------------|------------------------|
| 1. Mr Seang Yot | Officer of C.CAWDU |
| 2. Mr Phin Sophea | President of the union |
| 3. Ms Yos Thavy | union activist |

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

ISSUES IN DISPUTE

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

- The workers demand that the employer offer US\$1.7 per lot for products with ID: 1-8022. The employer claims it will offer US\$0.8 per lot.
- The workers demand that the employer offer US\$0.9 per lot for products with ID: 2-11009. The employer claims it will offer US\$0.4 per lot.
- The workers demand that the employer offer US\$1.3 per lot for products with ID: 3-9050. The employer claims it will offer US\$0.55 per lot.
- The workers demand that the employer offer US\$0.85 per lot for products with ID: 4-10034. The employer claims it will offer US\$0.55 per lot.
- The workers demand that the employer offer US\$0.9 per lot for products with ID: 5-10053. The employer claims it will offer US\$0.6 per lot.
- The workers demand that the employer offer US\$1.1 per lot for products with ID: 6-10046. The employer claims it will offer US\$0.7 per lot.

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. 155 dated 17 June 2013 (Eleventh 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. 984/13 dated 29 November 2013 was submitted to the Secretariat of the Arbitration Council on 22 November 2013.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School) Boeung Kak II Commune, Tuol Kork District, Phnom Penh

Date of hearing: 4 December 2013 (at 2 p.m.)

Procedural issues:

On 8 November 2013, the Department of Labour and Vocational Training (the department) received a complaint from Dignity Knitter Limited, outlining the workers' demands for the improvement of working conditions.

Upon receiving the claim, an arbitration panel was formed on 26 November 2013. The Secretariat of the Arbitration Council (SAC) summoned the employer and the workers to a hearing and conciliation of the one non-conciliated issue, held on 4 December 2013 at 2 p.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the one non-conciliated issue, but it remained unresolved. The Arbitration Council set 6 December 2013 as a deadline for evidence submission and 12 December 2013 as the deadline for evidence objection.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interests disputes. The parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties choose non-binding arbitration for their interests disputes.

Both parties agree to defer the date of award issuance from 17 December 2013 to 24 December 2013.

Therefore, the Arbitration Council will consider the issue in dispute in this case 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:

- Dignity Knitter Limited (Dignity) is claimant in this case. According to non-conciliation report no. 984/13 dated 20 November 2013, Dignity employs approximately 1,975 workers.

- The union is registered to no. 1190 dated 30 July 2007 whose leaders are: Mr Phin Sophea-Union President, Mr Chek Bunsan-Union Vice-President, and Ms Sok Sophary-Union Secretary.
- The workers attending the hearing held on 4 December 2013 includes:
 - o Mr Seang Yot-Dispute Resolution Officer of C.CAWDU
 - o Mr Phin Sophea claims he was the President of the union.
 - o Ms Yos Thavry and Ms Our Socheat claims they are activists of the union.
- The workers did not submit a recognition letter of the union leaders for the new term from the Ministry of Labour and Vocational Training to the Arbitration Council. Further, there was no authorisation letter from workers at Dignity to C.CAWDU.

The union holds a certificate of most representative status (MRS) dated 9 January 2008. At the hearing, the workers claim they have not requested the Ministry of Labour to renew its MRS.

Issue:

- **The workers demand that the employer offer US\$1.7 per lot for products with ID: 1-8022. The employer claims it will offer US\$0.8 per lot.**
- **The workers demand that the employer offer US\$0.9 per lot for products with ID: 2-11009. The employer claims it will offer US\$0.4 per lot.**
- **The workers demand that the employer offer US\$1.3 per lot for products with ID: 3-9050. The employer claims it will offer US\$0.55 per lot.**
- **The workers demand that the employer offer US\$0.85 per lot for products with ID: 4-10034. The employer claims it will offer US\$0.55 per lot.**
- **The workers demand that the employer offer US\$0.9 per lot for products with ID: 5-10053. The employer claims it will offer US\$0.6 per lot.**
- **The workers demand that the employer offer US\$1.1 per lot for products with ID: 6-10046. The employer claims it will offer US\$0.7 per lot.**
- The Arbitration Council finds that the employer requests the workers to accept piece rate of six product categories determined by the employer; however, it is rejected by the workers who demand that the employer increase piece rate of those products.
- Below is the information in relation to A) Product serial number; B) Piece rate determined by the employer; C) Piece rate demanded by the workers; and D) Amount of piece rate increase.

A) Product serial number	B) Piece rate determined by the employer	C) Piece rate demanded by the workers	D) Amount of piece rate increase
1.8022	1 lot = US\$0.8	1 lot = US\$1.7	US\$0.9
2.11009	1 lot = US\$0.4	1 lot = US\$0.9	US\$0.5

3.9050	1 lot = US\$0.55	1 lot = US\$1.3	US\$0.75
4.10034	1 lot = US\$0.55	1 lot = US\$0.85	US\$0.3
5. 10053	1 lot = US\$0.6	1 lot = US\$0.9	US\$0.3
6.10046	1 lot = US\$ 0.7	1 lot = US\$1.1	US\$0.4

- The six categories of products at the Trimming Section were put into production in October 2013.
- The workers claim at the hearing and in a statement that:
 - o Piece rate was determined by a test on the number of minutes used in the production. Further, piece rate determination was made based on negotiation upon the test result in which piece rate of all products with the serial number above was higher than base wage or higher than the test result by at least from US\$0.5 to US\$0.6.
 - o This practice had been in place for three years.
- The Arbitration Council ordered the employer to submit evidence proving that piece rate of all product categories was made based on test results and that such practice had been in place for three years. The workers submit thumbprints of 270 workers to support their claim and 72 of whom are workers from Trimming Section.
- The workers agree that the employer has previously rejected piece rate of products with serial 5040.
- The employer shows the process of piece rate determination as follows:
 - o The employer employs an assessment team conducting a test on each product category to determine the base piece rate before making a bargain with buyers.
 - o The employer assesses workers' capacity through testing. Team supervisors submit test results as a proposal to the employer.
 - o The test results are not part of the criteria for determining piece rate; it is just input for the employer's consideration. Management considered a proposal submitted by team supervisors and makes decision at a later time. If the proposal is close to the test results (conducted by the employer before making a bargain with buyers), the employer will accept workers' proposal as piece rate and provide a signature on such a proposal. If the workers' proposal was far from the test results (conducted by the employer before making a bargain with buyers), the employer will not accept the proposal. The employer also enquires to other branches producing the same product categories to verify the test results conducted by workers.

- The official piece rate will be approved by the Factory President and the Company Director.
- The employer responds to the workers' claim that:
 - The test had not been conducted in three years. The employer determined the piece rate at the end of the month. Later, the parties agreed to comply with its agreement made in Case no. 64/12 in which piece rate shall be determined within 7 days before the workers started to produce each product. Since the agreement was made, protests over the piece rate had still existed. Therefore, a section head requested to conduct a test to compare piece rate determined by the employer. The test was only conducted after the agreement was made.
 - Tests had been conducted as usual and the Factory President as well as Company Director approved test results because they found that the results were acceptable. Recently, a test conducted at Trimming Section was abnormal because the results reflected that the duration of the production was unusually long. The employer verified the duration of the jacket production with other factories and found that the workers used much more time than workers at other factories would use to produce the same types of jackets.
 - The Arbitration Council finds that the issue of dispute is that the employer requests the workers to accept piece rate of the six product categories determined by the employer according to its own method of determination and the workers demand that the employer increase piece rate of the six product categories according to the results from the test conducted by the workers.
- The workers provide an argument that:
 - Products with the six serials above had already been tested.
 - Piece rate determined by the employer was lower than minimum wages mandated by law (US\$80 per month) for October 2013.
- The employer confirms that it will not increase the piece rate of such products according to the workers' demand because:
 - The test result is not a criterion for piece rate determination.
 - No workers receive less than the minimum wage if they fully attend work in one month.
- The employer submits a wage payment schedule for October 2013 to the Arbitration Council. According to the schedule, the Arbitration Council finds that hourly wage of piece rate workers in this section is equal to or more than hourly fixed base wage (US\$80 is divided by 26 days and 8 working hours per day). The Arbitration Council finds that only one worker received a wage of only US\$67.57, which is lower than

the minimum wage. However, that particular worker had worked only 6 days in October 2013.

REASONS FOR DECISION

Before considering the demand, the Arbitration Council will:

1) Consider status of workers attending the hearing:

A. Mr Seang Yot-Dispute Resolution Officer of C.CAWDU

Clause 19 of Prakas 99 dated 21 April 2004 states:

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.

According to Clause 19 of Prakas 099/04 above, the Arbitration Council finds that the phrase “*authorised in writing*” means disputing parties can authorise other persons to represent them in the process of dispute resolution before the Arbitration Council and only such persons receive written authorisation to be disputing parties’ representatives (see *Arbitral Award no. 161/09-Prek Treng, 43/10-Ming Jian, and 144/12-E Garment*).

In this case, there was no written authorisation letter from workers at Dignity to C.CAWDU. Therefore, the Arbitration Council finds that C.CAWDU does not represent workers in the process of dispute resolution. Therefore, according to Clause 19 and Prakas 99/04 above and previous arbitral awards, the Arbitration Council finds that Officer of C.CAWDU, although he attends the hearing, has no legitimate right to represent workers at Dignity because he/she does not receive written authorisation letter.

B. Mr Phin Sophea

Article 268 of Labour Law states:

In order for their professional organisation to enjoy the rights and benefits recognised 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 Labour for registration.

... The filing will be renewed when there are changes in the statutes or management.

The Arbitration Council considers that the Article above means a professional organisation is entitled to rights and interests in accordance with the Labour Law when such professional organisation holds a registration certificate and is recognised by the Ministry of Labour.

The Arbitration Council also considers that these rights and interests include the right to represent union members in the resolution of disputes before the Arbitration Council (*see Arbitral Award 62/06-Quick Sew, issue 2 and 31/08-South Bay, and 94/09-Tak Fat*).

In this case, the Arbitration Council agrees with the interpretation in previous cases.

Mr Phin Sophea attended the hearing and claimed he was President of the union. The workers did not submit letter from the Ministry of Labour and Vocational Training recognizing the union leaders in its new term to the Arbitration Council. Therefore, the Arbitration Council does not have any evidence for verification that Mr Phin Sophea is actually President of the union.

Therefore, Mr Phin Sophea has no legitimate right to represent his members who are also workers at Dignity Factory (River Rich). Nonetheless, Mr Phin Sophea, Ms Yos Thavy, and Ms Sour Socheat attended the hearing of Case 256-Dignity Knitter (*see the interpretation on Clause 19 of Prakas 99 dated 21 April 2004, Reasons for Decision, 1-A Mr Orn Pheari, Mr Sorn Prak, and Mr Ros Sovann above*).

Therefore, Mr Phin Sophea, Ms Yos Thavy, and Ms Sour Socheat can make the demands for themselves because they attend the hearing.

In conclusion, the Arbitration Council will decide the demand for only Mr Phin Sophea, Ms Yos Thavy, and Ms Sour Socheat.

2) Distinguish rights and interests disputes

Paragraph 2 of Article 312 of the Labour Law states: *“The Arbitration Council legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council’s decisions are in equity for all other disputes.”*

Clause 43 of the Prakas 099 on the Arbitration Council dated 21 April 2004 states that:

An Arbitral Award which settles an interests dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

Paragraph 2 of Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council states that the Arbitration Council has legal jurisdiction to decide disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council’s decisions are in equity for all other disputes. The Arbitration Council concludes that disputes concerning the

interpretation and enforcement of laws or regulations or of a collective agreement are rights disputes and the Arbitration Council has jurisdiction to settle the rights disputes. Any kinds of disputes that are not stipulated in the agreement or collective agreement are interests disputes and the Arbitration Council settles interests disputes based on equity.

Issue: The employer requests that workers accept the piece rate of the six categories of products determined by the employer using its own method while the workers demand that the employer increase piece rate of the six categories of products

First, the Arbitration Council considers whether the demand gives rise to a rights or an interests dispute.

Because the demand is in relation to the method for determining piece rate which is workers' wages; the Arbitration Council finds that the issue is a rights dispute.

The Arbitration Council considers whether or not the employer is under an obligation to increase piece rate of the six categories of products according to the workers' test results as the workers demand.

Article 2 of the Labour Law (1997) states “...*Every 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 finds that Article 2 of the Labour Law above means the employer has right to direct and supervise as long as such right is practiced in accordance with the law and is reasonable (*see Arbitral Award no. 62/06-Quicksew, Reasons for Decision, Issue 5, 108/06-Trinungal Komara, 33/07-Goldfame, Issue 3, and 119/09-SL, Issues 4 & 5*).

The Arbitration Council in this case also agrees with the interpretation in previous cases.

In this case, the workers claimed the six categories of products had already been tested and the employer determined piece rate according to the test results. The workers further claimed the piece rate of such products determined by the employer was lower than the minimum wage mandated by law (US\$80 per month) for October 2013.

The Arbitration Council finds that method for determining wages is the employer's right which is practiced in accordance with the law and reasonable.

Article 108 of the Labour Law (1997) states:

For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.

Point 3 of Notification no. 103 dated 9 April 2013 states:

Piece rate workers shall receive wages according to their productivity. If their productivity is higher than wages stipulated in Point 2 above, they shall receive wages accordingly. If their productivity is lower than Point 2 above, the employer shall supplement to the amount including US\$75 (seventy-five) per month for workers on probationary period and US\$80 (eighty) per month for permanent workers.

In Arbitral Award no. 03/05-Faying Dragon, the Arbitration Council decided:

The employer shall set the piece rate in a manner to allow the worker of average ability working normally (without overtime, public holidays or Sundays) to earn at least equal to the guaranteed minimum wage. According to the employer's wage payment schedule, 55% of workers could not earn the minimum wage though they work eight hours per day. The Arbitration Council decides that the piece rate is too low.

The Arbitration Council in this case also agrees with the interpretation made in the previous case.

In this case, the employer submitted a wage payment schedule for October 2013 to the Arbitration Council. The Arbitration Council finds that that hourly wage of piece rate workers in this section is equal to or more than hourly fixed base wage (US\$80 is divided by 26 days and 8 working hours per day). The Arbitration Council finds that only one worker received a wage of US\$67.57 which is lower than the minimum wage. However, that particular worker had worked only 6 days in October 2013.

The Arbitration Council notices that the reason behind this issue is that the employer and workers did not clearly and properly negotiate a method for determining piece rate in writing. The workers claimed piece rate had previously been determined by test results; however, recently, the employer did not maintain such a practice, which leads to the workers' protest. Nevertheless, the agreement to have such practice was not in writing and the employer objected that there was such an agreement. Therefore, there was no agreement mandating the employer to determined piece rate according to the test results.

In this case, the arbitration council finds that the employer's method for determining piece rate did not make the workers' wages lower than the minimum wages. Therefore, the employer practiced its right to direct and is in accordance with the law and is reasonable. The employer is not under an obligation to determine the piece rate of the six categories of products according to workers' test results as the workers demand.

The Arbitration Council decides to reject the workers' demand that the employer increase piece rate of the six product categories according to workers' test results.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue: Reject the workers' demand that the employer increase piece rate of the six product categories according to workers' test results.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the parties' agreement on choosing binding award at the hearing held on 4 December 2013.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: