



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 207/13-Quantum Clothing (Cambodia) Limited**

**Date of award: 18 October 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: **Huon Chundy**

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

### **DISPUTANT PARTIES**

#### **Employer party:**

Name: **Quantum Clothing (Cambodia) Limited**

Address: Chrey Korng Village, Sangkat Chom Chao, Khan Po Sen Chey, Phnom Penh

Telephone: 012 963 640

Fax: N/A

Representatives:

- |                    |                                   |
|--------------------|-----------------------------------|
| 1. Mr Kevin Plenty | Country Manager                   |
| 2. Mr Sok Bunleng  | Assistant Country Manager         |
| 3. Ms Von Kakada   | Head of Human Resource Department |

#### **Worker party:**

Name: - **Free Trade Union of Workers of Kingdom of Cambodia (FTUWK)**

- **Local Union of FTUWK (the union)**

Address: House no. 16A, Street 360, Sangkat Boeung Keng Kang 3, Khan Chamkar Mon,  
Phnom Penh

Telephone: 012 724 450

Fax: N/A

Representatives:

- |                           |                                  |
|---------------------------|----------------------------------|
| 1. Mr Yann Roth Keo Pisey | Under-Secretary General of FTUWK |
|---------------------------|----------------------------------|

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- |                   |                       |
|-------------------|-----------------------|
| 2. Ms Sok Sreymom | Head of the union     |
| 3. Mr Kong Chorda | Activist of the union |

### **ISSUES IN DISPUTE**

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

- The workers demand that the employer pay termination compensation in accordance with the Labour Law due to a change in corporate ownership. The employer claims that it does not have any policy to pay termination compensation though the company has new owners. It is still responsible for workers' various benefits and maintains their seniority.

### **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 2011 (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. 1172 dated 18 September 2013 was submitted to the Secretariat of the Arbitration Council on 19 September 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:** 30 September 2013 (at 8:30 a.m.)

#### **Procedural issues:**

On 30 August 2013, the Department of Labour Disputes (the department) received a complaint from FTUWK, outlining the workers' demand that the employer pay termination compensation in accordance with the Labour Law due to a change in corporate ownership. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 13 September 2013, however the conciliation was unsuccessful. The one non-conciliated issue was referred to the Secretariat of the Arbitration Council (SAC) on 19 September 2013.

Upon receipt of the case, the SAC summoned the employer and the workers to a hearing and conciliation of the non-conciliated issue, held on 30 September 2013 at 8:30 a.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue, but it remained unresolved.

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 interest disputes. The parties are able to choose non-binding arbitration for interest 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.

Therefore, the Arbitration Council will consider the issues 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:**

- Quantum Clothing (Cambodia) Limited (hereafter referred to Quantum Clothing) is a factory whose main business is garment manufacturing registered to Inv. 701E/2000 dated 31 July 2000. According to the non-conciliation report no. 1172 dated 18 September 2013, this factory employs 3,200 garment workers.
- FTUWK is the claimant in this case making the demand via authorisation letter dated 5 August 2013 from the union and Mr Cheum Sarith.
- The union received a certificate of registration no. 2965 dated 25 July 2013 under the leadership of Ms Sok Sreymom-President, Mr Pol Voeun-Vice-President, and Mr Nou Vannath-Secretary. At the hearing, the workers claim the union currently has 494

members. The union does not hold most representative status (MRS) at Quantum Clothing.

**Issue: The workers demand that the employer pay termination compensation in accordance with the Labour Law due to a change in corporate ownership.**

- At the hearing, the workers demand that the employer pay each worker termination compensation in accordance with the Labour Law
- To substantiate their claim, the workers assert that this factory has been renamed from New Eastland Clothing to Quantum Clothing during 2013. It now also has a new owner.
  - o To the workers, the change in ownership has dissolved the credibility of the factory.
  - o As ownership has changed, the workers claim that the previous owner must pay each worker's termination compensation.
- The employer contends:
  - o The factory has previously been renamed from New Eastland Clothing to Quantum Clothing. It has been renamed to avoid confusion. There has been no change to the workers' position and benefits during the time. The workers agree to the claim.
  - o There are three Quantum Clothing factories located in three different countries, Cambodia, India, and Pakistan.
  - o All Quantum Clothing are under Brown Hope located in the United Kingdom.
  - o Brown Hope was acquired by Etozo in July 2012. Soon after, the company studied the legal framework as well as other aspects prior to the change of owner on 2 June 2013.
  - o As the result of the purchase of the company:
    - Only the owner of the Parent Company, located in the United Kingdom, was changed. In short, Brown Hope was acquired by Etozo.
    - Management and workers at Quantum Clothing in Cambodia maintained their positions and benefits. The workers agree with the claim.
  - o In the interest of transparency during its acquisition, the management of Quantum Clothing called for a meeting to provide the workers' with information about the process on 6 July 2013.
- In response to the workers' claim that the employer has lost its credibility, the employer claims that Quantum Clothing has been operating in Cambodia for 13 years. The factory is committed to continue its long-term operation in Cambodia. As a case in point, the factory had renewed its land lease contract for another 8 years

starting from 2013. The employer submitted the lease to the Arbitration Council, in which Clause 2 states that *“The contract is valid for 3 (three) years...starting from 10 January 2013...to 31 December 2015...at the conclusion of this contract, it may be renewed for another 5 (five) years under the same terms and provisions...”*

### **REASONS FOR DECISION**

Before considering the workers’ demand, the Arbitration Council distinguishes rights and interests dispute.

Paragraph 2, 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:

An arbitral award which settles an interest 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, Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council dated 21 April 2004 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 legally settles rights disputes (*see the Arbitration Award 05/11-M & V (Branch 1), Reasons for Decision, Issue 1&5, 13/11-Gold Kamvimex, Issue 1&2, 14/11-GXG, Issue 4*) Any kinds of disputes that are not stipulated in the agreement or collective agreement are interests dispute and the Arbitration Council settles interests disputes based on equity (*see Arbitral Award 31/13-Quint Major Industrial, Reasons for Decision, Issue 4 and 62/11-Ocean Garment, Issue 1*).

**Issue: The workers demand that the employer pay termination compensation in accordance with the Labour Law due to a change in corporate ownership.**

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

As the demand is in relation to the workers’ right to receive termination compensation in accordance with the Labour Law, the issue is a rights dispute.

The Arbitration Council will consider whether or not the employer is under an obligation to pay each worker termination compensation, in accordance with the Labour Law, when a change in corporate ownership occurs.

Paragraph 1, Article 87 of the Labour Law states that:

If a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of fund to form a company, all labour contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise.

In previous awards, the Arbitration Council has held that usually, any change in legal status of the employer did not affect contracts of employment (*see Arbitral Award no. 98/07-Sky Sino, Reasons for Decision, Issue 1, 83/08-Le Grand Café, Issue 1 & 2, 100/08-Gawon Apparel, Issue 1*).

The Arbitration Panel in this case agrees with the interpretation made in previous cases.

In this case, Quantum Clothing had been under Brown Hope located in the United Kingdom. Brown Hope was acquired by Etozo. Changes to the new corporate entity have been minimal. The management and workers of Quantum Clothing, as well as their positions and benefits are maintained.

The Arbitration Council finds that due to the change in ownership, the factory loses its credibility to the workers irrespective of whether it will be able to continue its operation. Nonetheless, the employer provides reasons for its renaming and its commitment to continue its operation as well as evidence to support its claims.

The Arbitration Council finds that the change in the employer's legal status does not violate Paragraph 1, Article 87 of the Labour Law. The terms and conditions of the workers' contracts of employment have been maintained and there is no termination of the contracts. Therefore, the employer is not under an obligation to pay each worker termination compensation.

Therefore, the Arbitration Council decides to reject the workers' demand that the employer pay each worker termination compensation in accordance with the Labour Law due to a change in corporate ownership.

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

### **DECISION AND ORDER**

#### **Part I. Rights dispute:**

Reject the workers' demand that the employer pay each worker termination compensation in accordance with the Labour Law due to a change in corporate ownership.

#### **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 MoU dated 3 October 2012.

**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: .....