



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 193/13-Whitex Garment (Cambodia)

Date of award: 10 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: **An Nan**

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

DISPUTANT PARTIES

Employer party:

Name: **Whitex Garment (Cambodia)**

Address: Trapeang Tleong Village, Sangkat Chomchao, Khan Porsenchey, Phnom Penh

Telephone: 012 626 868

Fax: N/A

Representatives:

- | | |
|----------------------|--------------------------------------------|
| 1. Mr Hom Phea | Attorney at Law |
| 2. Mr Roem Virak | Assistant to Attorney at Law |
| 3. Ms Shirley Joseph | Factory Manager |
| 4. Ms Sothan Sim | staff member of Human Resources Department |
| 5. Ms Bun Narin | staff member of Admin/Finance Department |

Worker party:

Name: - **Workers Union Federation (WUF)**

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

Address: Chomchao Village, Sangkat Chomchao, Khan Dangkor, Phnom Penh

Telephone: 012 330 181

Fax: N/A

Representatives:

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|------------------|------------------------|
| 1. Mr An Pheary | Vice-President of WUF |
| 2. Mr Ros Sovann | Under-Secretary of WUF |
| 3. Mr Yeun Yuthy | Secretary of the union |
| 4. Mr Yin Pho | President of the union |

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide a free lunch per day. The employer claims it cannot afford to meet the demand.
2. The workers demand that the employer provide each worker with a US\$15 accommodation and transportation allowance per month. The employer claims it will comply with the notification of the Ministry.
3. The workers demand that the employer provide each worker with a US\$15 attendance bonus per month. The employer claims it will maintain current practice in which it provides US\$10 per month.
4. The workers demand that the employer increase their base wage to US\$95 per month for each and every worker. The employer claims it cannot afford to meet the demand.

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. 1129 dated 9 September 2013 was submitted to the Secretariat of the Arbitration Council on 9 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: 23 September 2013 at 8:30 a.m.

Procedural issues:

On 16 August 2013, the Department of Labour Disputes (the department) received a complaint from the Workers Union Federation (WUF), outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute. The last conciliation session, held on 2 September 2013, resulted in four of thirteen demands still unresolved. The four non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 9 September 2013.

Upon receipt of the case, the Arbitration Panel was formed on 10 July 2013. The SAC summoned the parties to a hearing and conciliation of the four non-conciliated issues, held on 17 September 2013 at 2:00 p.m. At the employer's request, the hearing was deferred to 23 September 2013 at 8:30 a.m.

Both parties were present.

The Arbitration Council conducted a further conciliation of the four non-conciliated issues, but they remained unresolved.

At the conciliation hearing, the Arbitration Council set 25 September 2013 as the deadline for evidence submission and 27 September 2013 as the deadline for any objections to evidence submitted.

Both parties agreed to defer the date of award issue from 1 October 2013 to 10 October 2013.

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 considers 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:

- Whitex Garment (Cambodia) Co., Ltd (“Whitex”) is a garment manufacturer registration no. Inv. 983 E/2005 dated 25 September 2005. Whitex employs a total of 800 workers.
- WUF is the claimant in this case.
- The union received a certificate of union registration no. 2896 dated 16 May 2013, whose leaders are: Yin Pho (Phon)-Union President), Koy Bunthat-Union Vice-President, and Yeun Yuthy-Union Secretary. The union has 78 members and does not hold the ‘most representative status’ (MRS) in the factory.

Issue 1: The workers demand that the employer provide each worker with a free lunch per day.

- At the hearing, the workers demanded that the employer provide each worker with a free lunch per day. The workers claimed:
 - o The cost of consummable goods in the market is increasing;
 - o Factories neighboring Whitex (such as ABC, American, Sanchow, and Quantum) provide their workers with a free lunch per day;
 - o Whitex faces challenges recruiting workers because it does not provide the same benefits as other factories. Therefore, if the employer provides workers with a free lunch per day, recruitment of workers will be easier for the employer.
- The employer claimed:
 - o The minimum wage increase from US\$61 to US\$80 was already a cost the employer could not afford to meet.
 - o Workers do not favour working at Whitex because Whitex does not offer overtime hours for workers.

Issue 2: The workers demand that the employer provide workers with a US\$15 accommodation and transportation allowance per month.

- The employer currently provides each worker with a US\$10 accommodation and transportation allowance.
- The workers demanded that the employer provide each worker with a US\$15 accommodation and transportation allowance. In short, the workers demanded that the employer provide an additional US\$5 accommodation and transportation allowance on top of the existing US\$10 allowance per month.
- The workers claimed:

- The cost of rent and transportation was increasing. Some factories provided US\$12, US\$13 or US\$15 allowance per month. Regardless, the allowance provided by other factories was over US\$10.
- The employer responded that:
 - The employer provided a US\$10 accommodation and transportation allowance per month before the employer was required by Notification No. 230/12 to provide a US\$7 allowance per month.
 - The employer cannot afford the demand.

Issue 3: The workers demand that the employer provide workers with a US\$15 attendance bonus per month.

- The employer currently provides each worker with a US\$10 attendance bonus per month.
- The workers demanded that the employer provide each worker with a US\$15 attendance bonus per month. In short, the workers demanded that the employer provide an additional US\$5 attendance bonus on top of the existing US\$10 bonus per month.
- The workers claimed:
 - It was the request from the workers.
 - Other factories such as Syldron provided an US\$18 attendance bonus per month, Hong Va Factory (manufacturing the same underwear as Whitex) provided more than US\$10 per month.
- The employer responded that it would not meet the demand. The employer claimed the comparison between Whitex and other factories could not be made because they were different in business.

Issue 4: The workers demand that the employer increase base wages to US\$95 per month for workers.

- The employer provides base wages of:
 - US\$99 per month to heads of tailors;
 - US\$80 per month to permanent workers (not head of tailors); and
 - US\$75 per month to workers on probation.
- The workers claimed an increase in base wages to US\$95 per month to permanent workers (not head of tailors). In short, the workers demanded that the employer increase permanent workers' base wages (not heads of tailors) by US\$15 per month on top of the existing base wage.
- The employer claimed it had recently increased base wages from US\$61 to US\$80 per month for workers. Therefore, it could not afford to meet the demand.

REASONS FOR DECISION

Before considering the demands of the parties, the Arbitration Council will distinguish rights disputes and interests disputes:

Paragraph 2 of Article 312 of the Labour Law states *“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.”*

Clause 43 of the Prakas 099 of 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.

The Arbitration Council concluded 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 rights disputes. Any kind of dispute not stipulated in the agreement or collective agreement is interests disputes and the Arbitration Council settles interests disputes based on equity.

Issue 1: The workers demand that the employer provide each worker a free lunch per day.

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

Having considered Issue 1, the Arbitration Council finds that there is no legal provision, collective agreement, agreement, internal work rule or past practice obligating the employer to provide workers with a free lunch per day. Therefore, the Arbitration Council finds the workers’ demand in this case is an interests dispute.

Concerning this rights dispute, the Arbitration Council considers:

Paragraph 2, Article 96 of the *Labour Law* 1997 states:

The collective agreement is a written agreement relating to the provisions provided for in Article 96 - paragraph 1. The collective agreement is signed between:

- a) One part: an employer, a group of employers, or one or more organisations representative of employers; and
- b) The other part: one or more trade union organisations representative of workers...

Moreover, Clause 9 of the Prakas 305 dated 22 November 2001 states:

The union having most representative status has the right to request the employer to negotiate a collective agreement, which applies to all workers represented by that union. In this case, the employer has the obligation to negotiate with the union.

Pursuant to Article 96 of the Labour Law (1997) and Clause 9 of the Prakas 305/11, in relation to an interests dispute, the Arbitration Council should consider the most

representative status (MRS) of the union because it provides unions with lawful right to form collective agreement with the employer, and the union has lawful right to bring an interests dispute to the Arbitration Council for resolution.

Clause 43 of Prakas Number 099 dated 21 April 2004 states:

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.

Pursuant to Clause 43 of Prakas 99/04, an arbitral award, which settles an interests dispute, takes the place of a collective bargaining agreement. It binds all workers in the company and strips them of their right to strike over interests disputes covered in a collective agreement for a one year period and this includes workers who are not members of the union. Therefore, the Arbitration Council can only settle interests disputes brought by unions holding MRS in the enterprise or collective unions which have more than half the number of workers as members in the enterprise (*see award no. 81/04-Evergreen, Issue 4, and Number 98/04-Great Union, Issue 3*).

In case no. 169/11-Fortune Teo, Issue 5, the Arbitration Council declined to consider an interests dispute because the union that brought the case did not hold MRS (*see award no. 02/11-Pou Yuen, Issue 2, and Number 66/11-In Han Sung, Issue 1*).

The Arbitration Panel agreed with the interpretation of the Arbitration Panel in Case Nos. 02/11, 66/11 and 169/11.

In this case, WUF and the union do not hold MRS at Whitex. Therefore, the Arbitration Council finds that the workers do not meet the legal requirement to bring interests disputes to the Arbitration Council for resolution.

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide each worker with a free lunch per day.

Issue 2: The workers demand that the employer provide an additional US\$5 accommodation and transportation allowance on top of the existing US\$10 allowance per month.

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

Point 1 of Notification No. 230 dated 25 July 2012 states that: "A US\$7 accommodation and transportation allowance is provided..."

In this case, the employer provides each worker with a US\$10 accommodation and transportation allowance per month. The Arbitration Council finds that the employer practice is better than the one mandated by Notification No. 230/12. Moreover, the Arbitration Council finds that there is no legal provision, agreement, collective agreement, internal work rule, or past practice obligating the employer to provide an additional US\$5 accommodation and transportation allowance on top of the existing US\$10 per month. The Arbitration Council

finds that the workers' demand exceeds the one mandated by law. Therefore, the issue is an interests dispute.

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer an additional US\$5 accommodation and transportation allowance on top of the existing US\$10 per month (*see the interpretation regarding interests disputes in this case in Reasons for Decision, Issue 1 above*).

Issue 3: The workers demand that the employer provide an additional US\$5 attendance bonus on top of the exiting US\$10 bonus per month.

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

Point 2 of Notification No. 230/12 dated 25 July 2012, of the Ministry of Labour and Vocational Training states: "*Workers who attend work regularly in accordance with the number of working days in each month without absence will receive a monthly bonus of at least US\$10.*"

In this case, the employer provides each worker with a US\$10 attendance bonus per month. The Arbitration Council finds that the employer is compliant with Notification No. 230/12. Moreover, the Arbitration Council finds that there is no legal provision, collective agreement, agreement between the parties, internal work rule, or past practice obligating the employer to provide an additional US\$5 attendance bonus on top of the existing US\$10 bonus. Therefore, the Arbitration council finds that the workers' demand exceeds what is mandated by law. Therefore, the demand is an interests dispute.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide an additional US\$5 attendance bonus on top of the existing US\$10 bonus (*see the interpretation regarding interests disputes in this case in Reasons for Decision, Issue 1 above*).

Issue 4: The workers demand that the employer increase base wages by US\$15 from US\$80 per month for normal permanent workers (not heads of tailors).

Firstly, the Arbitration Council considers whether the dispute was a rights dispute or an interests dispute.

Point 2 of Notification No. 103 dated 9 April 2013 states:

The minimum wage for workers in textile, garment, and footwear manufacturing is set to US\$75 (seventy-five) per month for workers on probationary period from one to three months (this minimum wage of US\$75 is the sum of a previous minimum wage of US\$56, an additional US\$14 wage, and a US\$5 health allowance). Upon the conclusion of probation, permanent workers are entitled to a minimum wage of US\$80 (eighty) per month (the minimum wage of US\$80 is the sum of the previous minimum wage of US\$61, an additional US\$14 wage, and a US\$5 health allowance).

In this case, the employer provides normal permanent workers (not head of tailor) with a minimum wage of US\$80. The Arbitration Council finds that the employer is compliant

with Notification No. 103/13. Moreover, the Arbitration Council finds that there is no provision the *Labour Law*, collective agreement, agreement between the parties, internal work rule, or past practice obligating the employer to increase the base wage by US\$15 from the existing US\$80 per month. Therefore, the Arbitration Council finds that the workers' demand exceeds what is mandated by law. Therefore, the demand in this case is an interests dispute.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer the employer increase the base wages by US\$15 from the existing US\$80 per month (*see interpretation regarding interests disputes in this Case in Reasons for Decision, Issue 1 above*).

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

DECISION AND ORDER

Part I. Rights dispute: N/A

Part II. Interests dispute:

Issue 1: Decline to consider the workers' demand that the employer provide each worker with a free lunch per day.

Issue 2: Decline to consider the workers' demand that the employer provide an additional US\$5 accommodation and transportation allowance on top of the existing US\$10 per month.

Issue 3: Decline to consider the workers' demand that the employer provide an additional US\$5 attendance bonus on top of the existing US\$10 bonus.

Issue 4: Decline to consider the workers' demand that the employer the employer increase the base wages by US\$15 from the existing US\$80 per month.

Type of award: binding award

The award of the Arbitration Council will be final and is enforceable by the parties in accordance with the parties' decision to choose binding award at the hearing on 23 September 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: