



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 117/13- Tung Chao Enterprise (Cambodia)

Date of award: 1 July 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): **Run Saray**

DISPUTANT PARTIES

Employer party:

Name: **Tung Chao Enterprise (Cambodia)**

Address: Beong Salang Village, Toul Sangke Commune, Reusey Keo District, Phnom Penh

Telephone: 012 794 029

Fax: N/A

Representatives:

- | | |
|---------------------|-----------------------------------|
| 1. Mr Chhou Chansak | Company Advisor |
| 2. Ms Ouch Chandavy | Head of Administration Department |
| 3. Ms Vann Lyda | Administrative Assistant |

Worker party:

A. Name: - **Cambodian Workers of Economic Union Federation (CWEUF)**
- **Local Union of CWEUF at All Super Enterprise Factory (the union of CWEUF)**

Address: House No. 17, Street 2004, Teok Thla Commune, Sen Sok District, Phnom Penh

Telephone: 012 636 766

Fax: N/A

Representatives:

- | | |
|---------------------|-------------------------|
| 1. Mr Sreang Narith | Vice-President of CWEUF |
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THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.

6. The workers demand the employer reinstate Ms Chea Sachrak, ID: T01699, and maintain full benefits from the date of dismissal to that of reinstatement. The employer claims it will not reinstate her.

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. 121 dated 7 June 2012 (Ten 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. 664 dated 7 June 2013 was submitted to the Secretariat of the Arbitration Council on 7 June 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: 20 June 2013 at 2:00 p.m.

Procedural issues:

On 10 May 2013, the Department of Labour Disputes (the department) received a complaint from the workers, 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 and the last conciliation session was held on 4 June 2013, resulting in two of eight issues being resolved. The six unsuccessfully conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 7 June 2013 via a non-conciliation report no. 664.

Upon receipt of the case, the Arbitration Panel was formed on 10 June 2013. The SAC summoned the employer and the workers to a hearing and conciliation of the six non-conciliated issues, held on 20 June 2013 at 2:00 p.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the six unsuccessfully conciliated issues, resulting in four issues (Issue 3, 4, 5, and 6) being resolved and two issues (Issue 1 and 2) remaining 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 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.

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, See 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:

- Tung Chao Enterprise (Cambodia) is a garment factory registered under Inv.2328 dated 22 September 2011. At the hearing, the workers claim that the enterprise employs approximately 1,115 workers.
- At the hearing, the workers claim that the union of CLIFU and the union of CLKFU are claimants in this case. Neither union holds a certificate of most representative status (MRS) in Tung Chao Enterprise (Cambodia).
- The employer claims that the union of CLIFU received a certificate of registration from the Ministry of Labour and Vocational Training and that the employer already received the certificate from the president of the union of CLIFU. Therefore, the Arbitration Panel in this case assumes that the union of CLIFU holds certificate of registration from the Ministry of Labour and Vocational Training.
- The employer claims that it has not received the certificate of registration from the President of the union of CWEUF. The workers failed to provide the certificate of registration to the Arbitration Council by the submission deadline.
- On 20 June 2013, the workers submitted the following documents to the Arbitration Council:
 - o Notification no. 123/13 dated 10 June 2013 of the union of CWEUF to the President of Tung Chao Enterprise (Cambodia), Re: Notification about the new union members and the committee of the union of CWEUF. The

notification states that “...In the process of requesting the recognition of the new candidates and the newly elected committee of the union of CWEUF from the Ministry of Labour and Vocational Training, the candidates as well as the newly elected committee are under legal protection from discrimination...”

- Participants present at the hearing:
 - o Ms Morn Chantheun and Ms Vun Daly
 - o Vice-President of the union of CWEUF
 - o President of the union of CLKFU and leaders of the union of CLIFU
- The Arbitration Council has not received any authorisation letter from other workers of Tung Chao Enterprise (Cambodia) authorising Ms Morn Chantheun or Ms Vun Daly or the union of CWEUF to resolve the dispute before the Arbitration Council.

Issue 1: The workers demand that the employer provide either lunch or a 5,000 riel payment in lieu of lunch per day to each worker.

- The employer has never provided and does not currently provide lunch or a 5,000 riel allowance per day to the workers.
- The workers claim:
 - o The demand is for the improvement of their livelihoods since the workers receive low wages and house rental fees are rising.
 - o The demand is for purchasing lunch.
- The employer claims that it cannot afford to meet the demand and that it provides extra benefits such as a US\$9 accommodation and transportation allowance per month, in excess of legal requirements. The employer also claims it just increased the base wage for workers.
- Both parties have never had any agreement in relation to this issue.

Issue 2: The workers demand that the employer provide a US\$25 payment in lieu of milk formula per month for babies younger than 18 months old.

- Today, the enterprise provides a day care centre for infants from 18 months to 3 years old and a nursing room for workers who return from maternity leave and need to breastfeed their baby, but workers are not utilising the day care centre or the nursing room.
- The workers claim :
 - o Their wages are low and they cannot afford to purchase milk formula for their children, which costs US\$15 to US\$20 per can.
 - o It is dangerous to take their children to the day care centre because they travel on a crowded truck.
- The employer claims that it cannot afford to meet the demand. The employer claims it already provides a one hour breastfeeding break per day to new mothers.

- Both parties have never had any agreement in relation to this issue.

REASONS FOR DECISION

In this case, the workers claim that the union of CWEUF and the union of CLIFU are the claimants. Since the union of CWEUF has not submitted its certificate of registration to the Arbitration Council, the Arbitration Council will consider the most representative status of the union:

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...If the Ministry in Charge of Labour does not reply within two months after receipt of the registration form, the professional organization is considered to be already registered...

The Arbitration Council finds that Article 268 of the Labour Law above means that the professional organisation enjoys the rights and benefits recognised by this law when that professional organisation is registered at the Ministry in Charge of Labour.

In previous Awards, the Arbitration Council finds that rights and benefits include the right of the union to represent its members to resolve disputes before the Arbitration Council (*see the Arbitral Award no. 62/06-Qicksew, Issue 2, 30/08-E Garment, 31/08-South Bay and 94/09-Tack Fat*).

The Arbitration Panel in this case agrees with the interpretation in the previous cases. In this case, the union of CWEUF did not submit the certificate of registration to the Arbitration Council by the deadline. Moreover, this union sent a notification letter of the union of CWEUF no. 123/13 dated 10 June 2013 to Tung Chao Enterprise (Cambodia)'s President, Re: Notification about the new union members and the committee of the union of CWEUF. The notification states:

...In the process of requesting the recognition of the new candidates and the newly elected committee of the union of CWEUF from the Ministry of Labour and Vocational Training, the candidates as well as the newly elected committee are under legal protection from discrimination...

Based on the above notification letter, the Arbitration Council finds that the union of CWEUF does not have leaders recognised by the Ministry of Labour and Vocational Training. This means that the three elected candidates are waiting for the recognition of the new union leaders from the Ministry of Labour and Vocational Training after the election on 9 June 2013. In short, the Arbitration Council decides that the union of CWEUF is not a professional organisation enjoying the rights and benefits recognised by the law as it has not

yet received recognition from the Ministry of Labour and Vocational Training. Therefore, the three elected candidates do not have the right to represent their members.

Article 19, Prakas 99 dated 21 April 2004 states that *“A party may appear before the arbitration panel in person, be accompanied by... or be represented by other person expressly authorised in writing by that party.”*

Based on Article 19, Prakas no. 99 dated 21 April 2004, the Arbitration Council finds that the word “expressly authorised in writing” means that parties in dispute can assign his or her representative to resolve the dispute before the Arbitration Council only when that person receives a written authorisation to do so (see *the Arbitral Award no. 161/09-Prek Treng and 43/10-Ming Jian*).

In this case, the Arbitration Council finds that there is no authorisation letter from other workers to Ms Morn Chantheun or Ms Vun Daly or the union of CWEUF to resolve the dispute. The Arbitration Council finds that there are two workers, Ms Morn Chantheun and Ms Vun Daly, who were present at the hearing. Therefore, both workers have the right to resolve the dispute before the Arbitration Council.

In conclusion, the Arbitration Council considers the dispute in relation to Ms Morn Chantheun and Ms Vun Daly who were present at the hearing, and the union of CLIFU which, by law, has the right to represent its members.

Issue 1: The workers demand that the employer provide either lunch or a 5,000 riel allowance per day to each worker.

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

The workers demand that the employer provide either lunch or a 5,000 riel allowance per day to each worker because they need it to purchase their lunches and improve their livelihoods.

The Arbitration Council finds that there are no provisions in the Labour Law, agreements, collective agreements, or internal work rules or past practice stipulating that the employer is obligated to provide lunch or a 5,000 riel allowance per day to purchase lunch for workers. Therefore, the Arbitration Council considers this dispute an interests dispute.

For interests disputes, the Arbitration Council considers:

Paragraph 2 of Article 96 of the Labour Law 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 Prakas no. 303 of the Ministry of Social Affairs, Veterans, and Youth Rehabilitation dated 22 November 2001 about the most representative status (MRS) of professional organisations of workers in enterprises and establishments and the rights of collective negotiation and to conclude a collective agreement for enterprises and establishments states:

The union having most representative status has the right to request the employer 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.

Based on Article 96, clause 9, above, the Arbitration Council always considers the MRS of parties in dispute for interests disputes as the MRS of the union provides their right to negotiate a collective agreement in the enterprise and bring an interests disputes to the Arbitration Council for resolution.

Clause 43 of Prakas no.099 of the Ministry of Social Affair, Veterans and Youth Rehabilitation stated 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.

Based on clause 43 above, the Arbitration Council finds that an Arbitral Award of the Arbitration Council on interests disputes will become a collective agreement to be implemented for all workers in the enterprise. This will also strip the workers' of their rights to strike over interests disputes in the future. Therefore, the Arbitration Council cannot resolve the interests disputes unless the union has Most Representative Status (MRS) in the enterprise or a collective of unions has a membership of over half the total workers in the enterprise (*see the Arbitral Award no.81/04-Evergreen, Issue 4 and 98/04-Great Union, Issue 3*).

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

In this case, the union of CLKFU, the claimant, does not have a certificate of MRS at Tung Chao Enterprise (Cambodia). Therefore, the Arbitration Council decides that the union of CLKFU and the two workers (Ms Morn Chantheun and Ms Vun Daly) do not have the right to bring an interests dispute to the Arbitration Council.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide either lunch or a 5,000 riel allowance per day to each worker.

Issue 2: The workers demand that the employer provide a US\$25 payment in lieu of milk formula per month to baby younger than 18 months old.

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

Today, the enterprise provides a day care centre for infants aged 18 months to 3 years old and nursing room for the workers who return from maternity leave and needs to breastfeed their baby.

The workers demand that the employer provide a US\$25 payment in lieu of milk formula per month for babies younger than 18 months by claiming that their wages are low and they cannot afford to purchase milk formula, which cost US\$15 to US\$20 per can for their children; and it is dangerous to bring their children to day care centre because they travel in a crowded truck.

The Arbitration Council finds that there are no provisions in the Labour Law, agreements, collective agreements, or internal work rules or past practice obligating the employer is obligated to provide US\$25 payment in lieu of milk formula per month for babies younger than 18 months.

Therefore, the Arbitration Council finds that it is an interests dispute (*see the interpretation of interests dispute, Reasons for Decision, Issue 1 above*)

The Arbitration Council declines to consider the workers demand that the employer provide a US\$25 payment in lieu of milk formula for babies younger than 18 months old.

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

DECISION AND ORDER

Part I. Rights disputes: N/A

Part II. Interests disputes:

Issue 1: Decline to consider the workers' demand that the employer provide either lunch or a 5,000 riel allowance to purchase lunch per day to each worker.

Issue 2: Decline to consider the workers' demand that the employer provide a US\$ 25 payment in lieu of milk formula per month to baby younger than 18 months.

Type of award: Interests disputes:

The award in Part II 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 within this period, through the Secretariat of the Arbitration Council.

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: **Ruy Saray**

Signature: