



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្នា

THE ARBITRATION COUNCIL

Case number and name: 52/11-Kingdeer

Date of Award: 4 July 2011

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: **Tuon Siphann**

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

DISPUTANT PARTIES

Employer party:

Name: **Kingdeer (Cambodia) Knitting Co., Ltd (the employer)**

Address: Diem Mean Village, Diem Mean Commune, Takhmao City, Kandal Province

Telephone: 012 851 503 Fax: N/A

Representatives at the first hearing:

1. Ms Wang Furong Director
2. Mr Chao Pheng Head of Administration

Representatives at the second hearing:

1. Ms Wang Furong Director
2. Mr Chao Pheng Head of Administration

Worker party:

Name: **Voice Khmer Youth Union Federation (VKYUF)**

Local Union of VKYUF

Address: Diem Mean Village, Diem Mean Commune, Takhmao City, Kandal Province

Telephone: 012 713 065 Fax: N/A

Representatives at the first hearing:

1. Mr Ly Thy Officer of VKYUF
2. Mr Pov Bunthoeun President of the Local Union of VKYUF

3. Mr Sreng Vanthy Vice-President of the Local Union of VKYUF
Representative at the second hearing: Absent

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate the two leaders of the local union of VKYUF, namely the President Pov Bunthoeun and the Vice-President Sreng Vanthy, as well as another eight workers, and provide them with back pay from the date of their dismissal to the date of reinstatement.
2. The workers demand that the employer renew their contracts once a year.
3. The workers demand that the employer set up a day care centre and nursery room.
4. The workers demand that the employer arrange an election to reelect the worker delegates.
5. The workers demand that the employer refrain from discriminating against the members of the Local Union of VKYUF.
6. The workers demand that the employer increase the seniority bonus by US\$ 1 for each year over five years of service.
7. The workers demand that the employer provide an additional 3,000 riel meal allowance for overtime work from 6:00 p.m.
8. The workers demand that the employer provide a monthly US\$10 accommodation or transportation allowance.
9. The workers demand that the employer provide a monthly US\$10 attendance bonus.
10. The workers demand that the employer maintain daily wages and benefits when workers take leave periodically.

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. 133 dated 9 June 2010 (Eighth 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. 173/11 KB/KN dated 25 April 2011 was submitted to the Secretariat of the Arbitration Council on 28 April 2011.

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 Quarter, Tuol Kork District, Phnom Penh

Date of hearing: First hearing: 12 May 2011 at 2:00 p.m.
Second hearing: 16 June 2011 at 8:30 a.m.

Procedural issues:

On 15 March 2011, the provincial Department of Labour Disputes received a complaint from VKYUF outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the provincial Department of Labour Disputes assigned an expert officer to conciliate the labour dispute at the factory on 29 March 2011. None of the 10 issues were conciliated. The 10 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 28 April 2011 via non-conciliation report No. 173/11 KB/KN, dated 25 April 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the 10 issues, held on 12 May 2011 at 2:00 p.m. At the hearing, the worker party requested that the Arbitration Council and the employer adjourn the hearing because they were not well informed of the issues in dispute. The Arbitration Council set 16 June 2011 at 8:30 a.m. as the new hearing date.

At the second hearing, the employer was present but the workers were absent. The Arbitration Council considers and decides on the issue below.

EVIDENCE

Witnesses & Experts: N/A

Documents, Exhibits, and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Brief statement on the labour dispute, dated 6 May 2011.
2. Certificate of commercial registration of the employer, dated 28 September 2009.
3. Internal Work Rules, No. 588/10 dated 29 September 2010.
4. Employment contract and CV of Sreng Vanthy.
5. Employment contract and CV of Pov Bunthoeun.

B. Provided by the worker party: N/A

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at Kingdeer (Cambodia) Knitting Co., Ltd, No. 173/11 KB/RK/VK, dated 25 April 2011.
2. Record of collective labour dispute resolution at Kingdeer (Cambodia) Knitting Co., Ltd, dated 29 March 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 295 KB/AK/VK/LKA, dated 3 March 2011.
2. Notice to attend the first hearing addressed to the workers, No. 296 KB/AK/VK/LKA, dated 3 March 2011.
3. Notice to attend the second hearing addressed to the employer, No. 372 KB/AK/VK/LKA, dated 8 June 2011.
4. Notice to attend the second hearing addressed to the workers, No. 373 KB/AK/VK/LKA, dated 8 June 2011.

FACTS

N/A

REASONS FOR DECISION

The worker party in this case did not attend the hearing at the Arbitration Council and failed to provide proper reasons for its absence. Therefore, the Arbitration Council considers the issue as follows.

Rule 4.7 of the Arbitration Council's Procedural Rules, Annex to *Prakas* No. 099 dated 21 April 2004, states:

If a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award.

Clause 21 of *Prakas* No. 099 on the Arbitration Council dated 21 April 2004 states:

In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.

In Arbitral Awards 16/07-Lotus and 27/07-M&V 3, the Arbitration Council interpreted this clause to mean that three conditions must be fulfilled for the Council to close a case:

The first condition [is] that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for this lack of appearance.

The Arbitration Council will apply the abovementioned interpretation in this case. Thus, the Council considers whether in this case the three conditions are fulfilled.

First condition: the party is properly notified

The officials of the Secretariat sent the workers a notice to attend the hearing, No. 373 KB/AK/VK/LKA dated 8 June 2011. The Arbitration Council finds that the worker party was properly notified by the Secretariat to attend the hearing. Hence, the first condition is fulfilled.

Second condition: the party does not appear at the hearing

The Arbitration Council considers the phrase “appear before the arbitration panel” in the said *Prakas* to mean that parties have to (1) be present at the hearing and (2) participate in the whole process.

The arbitration process comprises four stages as follows:

- A. Introduction and disclosure of any conflict of interest by arbitrators;
- B. Explanation of the arbitration process and confirmation of the issue(s) in dispute;
- C. Conciliation, if the parties agree; and
- D. Arbitration.

In this case, the worker party did not attend any of the four stages above. Thus, the Arbitration Council considers that the worker party did not appear at the hearing, in accordance with the second condition in the *Prakas*. Hence, the second condition is fulfilled.

Third condition: the party does not provide a proper reason for its non-appearance

In this case, the worker party failed to provide any reasons for its non-appearance, apart from stating that the workers had prior arrangements and decided to leave the issue to be addressed by the Council. The employer attended the hearing as invited. Thus, the Arbitration Council considers that **the worker party did not provide a proper reason for non-appearance.** Hence, the third condition is also fulfilled.

In conclusion, the three conditions stipulated in the aforementioned clause are fulfilled.

In addition, the Arbitration Council has provided ample opportunity to the Local Union of RPWFTU, the claimant, to argue its claim in accordance with the Labour Law; however, the worker party opted for non-appearance at the hearing and passed up the opportunity to present evidence to support its claim. The Arbitration Council is of the view that the workers do not intend to resolve the dispute with the employer in accordance with the requisite legal procedure.

Generally, the claimant is obliged to argue its claim by submitting reasons and evidence to the Arbitration Council; however, in this case, the worker party has not fulfilled its obligation to do so. In this case, the claimant did not attend the hearing and has lost the opportunity to provide reasons and evidence to argue its claim. The Arbitration Council considers that the worker party has dropped its claim. The worker party's decision reflects its unwillingness to bring the labour dispute to the Council for resolution.

Thus, the Arbitration Council decides to close the case 52/11-Kingdeer.

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

DECISION AND ORDER

Close case 52/11-Kingdeer.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: