



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**  
**THE ARBITRATION COUNCIL**

**Case number and name: 63/11-Jocam Footwear**

**Date of Award: 22 June 2011**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Sin Kim Sean**

Chair Arbitrator (chosen by the two Arbitrators): **Nhean So Munin**

#### **DISPUTANT PARTIES**

##### **Employer party:**

Name: **Jocam Footwear Co., Ltd (the employer)**

Address: Street 2004, Trapang Chourk Village, Teouk Tla Commune, Sen Sok District,  
Phnom Penh

Telephone: 012 766 423

Fax: N/A

Representatives at the first prehearing:

1. Mr Ly Cheng                      Advisor to the employer
2. Mr David Jen Jen                Administration staff
3. Mr Vincent                        Administration staff
4. Mr Ly Kiman                      Assistant to the head of administration
5. Mr Lou Kimhong                 Interpreter
6. Ms Heng Sreymom                Interpreter

Representatives at the second prehearing:

1. Mr Ly Cheng                      Advisor to the employer
2. Mr David Jen Jen                Administration staff
3. Mr Ly Kiman                      Assistant to the head of administration
4. Ms Heng Sreymom                Interpreter

**Worker party:**

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

**Local Union of VKYUF**

Address: Street 2004, Trapang Chourk Village, Teouk Tla Commune, Sen Sok District,  
Phnom Penh

Telephone: 012 713 065 Fax: N/A

Representative at the first hearing: Absent

Representative at the second hearing: Absent

According to the workers' complaint dated 28 May 2011, attached to the non-conciliation report, the concerned workers are Sorn Chansol, Him Long, Chun Setha, Chan Sopharath, Chea Sarom, Norng Thyda, and Net Sine.

**ISSUES IN DISPUTE**

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

1. The workers demand that the employer reinstate Chun Setha and Chan Sopharath, committee members of the Local Union of VKYUF.
2. The workers demand that the employer refrain from using security guards to threaten the workers and that the competent authority launch an investigation into the case.
3. The workers demand that the employer provide a 1,000 riel meal allowance for overtime work from 7:00 p.m. to 9:00 p.m.
4. The workers demand that the employer set up a day-care centre and breastfeeding room.
5. The workers demand that the employer allow all workers to leave work at 4:00 p.m. every Saturday.
6. The workers demand that the employer rectify underpayments of the seniority bonus.
7. The workers demand that the employer pay their wages before 4:00 p.m. on payday.
8. The workers demand that the employer refrain from discriminating against the leaders, the committee, and the members of the Local Union of VKYUF.
9. The workers demand that the employer immediately dismiss David, a manager at the factory, because he has a bad attitude towards workers and looks down on them.
10. The workers demand that the employer deduct union contribution fees from the wages of members of the Local Union of VKYUF.

### **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. 136 dated 7 June 2011 (Ninth 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. 573 KB/RK/VK dated 2 June 2011 was submitted to the Secretariat of the Arbitration Council on 3 June 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 prehearing: 8 June 2011 at 8:30 a.m.  
Second prehearing: 14 June 2011 at 2:00 p.m.

#### **Procedural issues:**

On 2 June 2011, the Department of Labour Disputes received a complaint from the workers via telephone, in which they demanded that the employer improve working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the dispute at the factory. The issues were not conciliated because the workers did not attend the conciliation session. The 10 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 3 June 2011.

On 3 June 2011, the employer was asked to select an arbitrator from the employer list. The workers, on other hand, did not attend the arbitrator selection session and failed to give proper reasons. Consequently, Arbitrator Sin Kim Sean from the employee list was selected by the chief of the Secretariat of the Arbitration Council. The chair of the Arbitral Panel was selected by lot on 3 June 2011.

On the same date, the Secretariat of the Arbitration Council received a letter from the employer, dated 2 June 2011, requesting the Arbitration Council to issue an interim order. Upon receipt of the employer's request, the Arbitration Council issued Interim Order 008/11 KBA dated 3 June 2011, ordering the workers to cease striking and return to work on 4 June 2011, pending completion of the arbitral process. However, the interim order did not apply to Chun Setha and Chan Sopharath as they were involved in the reinstatement claim.

On 4 June 2011, the Secretariat of the Arbitration Council was informed that the workers had not complied with the interim order. Thus, on 7 June 2011 the Secretariat of the Arbitration Council summoned the employer and the workers to a prehearing, to be held on 8 June 2011 at 8:30 a.m. The employer was present at the prehearing but the workers were absent. The Secretariat contacted An Sakhan, an officer of VKYUF, who confirmed that the strike was ongoing. At the first prehearing, the Arbitration Council noted that VKYUF did not acknowledge its involvement in the case because the concerned workers were from the Forever factory. The employer stated that the Local Union of VKYUF had not been formally registered. Moreover, the employer showed evidence that workers from both the Forever and Jocam factories filed a complaint dated 28 May 2011. Having not received any documentation from VKYUF or letters from Sorn Chansol, Him Long, Chun Setha, Chan Sopharath, Chea Sarom, Norng Thyda, and Net Sine authorising VKYUF, the Arbitration Council considers that the confirmation from the VKYUF officer is inconclusive.

Due to doubts regarding the workers' representation and VKYUF's involvement, as well as the existence of the Local Union of VKYUF, the Arbitration Council requested the Secretariat to summon both parties to a second prehearing. On 9 June 2011, the Secretariat notified the employer and the concerned workers, namely Sorn Chansol, Him Long, Chun Setha, Chan Sopharath, Chea Sarom, Norng Thyda, and Net Sine, who had affixed their thumbprints to the complaint dated 28 May 2011, of the second prehearing to be held on 14 June 2011 at 2:00 p.m. at the Arbitration Council. As instructed by the Council, the Secretariat affixed the notice to attend the second prehearing to the gate of the factory.

On 14 June 2011 at 2:00 p.m., the employer was present at the second prehearing but the claimants, namely Sorn Chansol, Him Long, Chun Setha, Chan Sopharath, Chea Sarom, Norng Thyda, and Net Sine remained absent. According to the employer's statement at the prehearing a number of workers, including some of the claimants, were still on strike in front of the factory on 14 June 2011.

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. Letter from the employer to the Arbitration Council requesting an interim order to cease striking, dated 2 June 2011.
2. Employer's notification, dated 2 June 2011.

**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 Jocam Footwear Co., Ltd, No. 573 KB/RK/VK, dated 2 June 2011.
2. Record of collective labour dispute resolution at Jocam Footwear Co., Ltd, dated 2 June 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter from the Secretariat of the Arbitration Council to the president of the Local Union of VKYUF regarding the selection of arbitrators, No. 358 KB/RK/VK/LKR, dated 3 June 2011.
2. Record of the selection of an arbitrator from the employee list and selection of a chair arbitrator by lot, dated 3 June 2011.
3. Notice to attend the first prehearing addressed to the employer, No. 370 KB/AK/VK/LKA, dated 7 June 2011.
4. Notice to attend the first prehearing addressed to the workers, No. 371 KB/AK/VK/LKA, dated 7 June 2011.
5. Notice to attend the second prehearing addressed to the employer, No. 377 KB/AK/VK/LKA, dated 9 June 2011.

**FACTS**

No facts were presented concerning the issues in dispute contained in the non-conciliation report referred to the Arbitration Council by the Ministry of Labour and Vocational Training. The arbitral process was unable to proceed as the claimant workers failed to comply with the Council's interim order and further, the concerned workers failed to attend the prehearings.

**REASONS FOR DECISION**

Clause 20 of *Prakas* No. 099 dated 21 April 2004 on the Arbitration Council states:

During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labour Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.

In previous arbitral awards, the Arbitration Council has ruled that it will terminate the arbitral process where the workers continue to strike or the employer continues to lock workers out.

In case 04/04-MSI, the Arbitration Council sent a letter to the parties dated 29 January 2004, in which paragraph 4 reads:

Considering that the workers are unable to exercise the right to strike during the arbitral process, the Arbitration Council is unable to resolve or issue an

award to resolve the collective labour dispute referred to it. The Council can continue to resolve the collective labour dispute when the union and all workers have ceased the strike.

In case 77/05-Franco Knitting Garment Factory, the Arbitration Council issued a second interim order dated 24 December 2005, in which point 4 states: "if the workers continue the strike, the Arbitration Council will terminate the collective labour dispute resolution".

In cases 28/06-GDM and 34/06-Goldfame, the Arbitration Council issued awards to close the cases on the basis that the workers continued to strike during the arbitral process (see also AA 97/07-Suit Way).

In this case, the employer asserts that the workers continued to strike until 14 June 2011 despite the issuance of the interim order. The Arbitration Council attempted twice to summon the workers to prehearings; however, the workers failed to appear. Consequently, the Arbitration Council is of the view that the workers did continue to strike despite the interim order being issued.

The Arbitration Council considers that the claimant workers have failed to participate in the arbitral process and have not shown a genuine intention to resolve the dispute at the Council, evidenced by their continued strike, their failure to observe the interim order, and their failure to appear before the Council.

Based on the foregoing, the Arbitration Council rules that the arbitral process be terminated in this case.

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

**DECISION AND ORDER**

Terminate the arbitral process in case 63/11-Jocam Footwear.

**SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Nhean So Munin**

Signature: .....