



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 26/11-June Textile

Date of award: 9 March 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Ven Pov**

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

DISPUTANT PARTIES

Employer party:

Name: **June Textile Garment Co., Ltd. (the employer)**

Address: Russian Federation Boulevard, Teouk Thla Commune, Sen Sok District, Phnom
Penh

Telephone: 012 541 851

Fax: N/A

Representative:

1. Tang Kysay

Administration

Worker party:

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

Local Union of FTUWKC

Address: Russian Federation Boulevard, Teouk Thla Commune, Sen Sok District, Phnom
Penh

Telephone: 088 833 5555

Fax: N/A

Representative: Absent

ISSUES IN DISPUTE

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

1. The workers demand that the employer dismiss Meng Kry and Ing Sokret Yuthea. The employer requests the workers and leaders of FTUWKC to provide evidence of their misconduct before it can dismiss them.

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. 210 KB/RK/VK dated 21 February 2011 was submitted to the Secretariat of the Arbitration Council on 21 February 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 Commune, Tuol Kork District, Phnom Penh

Date of hearing: 3 March 2011 at 8:30 a.m.

Procedural issues:

On 17 February 2011, the Department of Labour Disputes received a complaint from the workers at June Textile Garment Co., Ltd. regarding their demand that the employer dismiss Meng Kry and Ing Sokret Yuthea. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute but the issue was not resolved. The Department of Labour Disputes submitted the non-conciliation report, No. 210 KB/RK/VK, to the Arbitration Council on 21 February 2011.

As the workers at the factory had gone on strike, the Arbitration Council issued an interim order on 24 February 2011. On the morning of 26 February 2011, the striking workers returned to work. The Secretariat of the Arbitration Council summoned the workers to a hearing scheduled for 3 March 2011 via letter No. 170 KB/RK/VK/LRK dated 28 February 2011, and summoned the employer via letter No. 169 KB/RK/VK/LKR dated 28 February 2011.

The Arbitration Council will consider and decide on the issue below.

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party: N/A

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 June Textile Garment Co., Ltd., No. 210 KB/RK/VK dated 21 February 2011.
2. Minutes of collective labour dispute resolution at June Textile Garment Co., Ltd., dated 17 February 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 FTUWKC regarding arbitrator selection, No. 146 KB/RK/RK/VK/LKR dated 22 February 2011.
2. Notice to attend the hearing addressed to the employer, No. 169 KB/AK/VK/LKA dated 28 February 2011.
3. Notice to attend the hearing addressed to the workers, No. 170 KB/AK/VK/LKA dated 28 February 2011.

FACTS

N/A

REASONS FOR DECISION

In this case, the union and the workers did not attend the arbitral proceedings.

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 that "[i]f 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 that "[i]n 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 (Branch 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.”

Based on the foregoing, the Arbitration Council considers in this case that the arbitral panel can close a case if three conditions are met, i.e. first condition: the party was properly notified; second condition: the party did not appear before the Council; and third condition: the party did not provide a proper reason for its non-appearance.

Thus, the Council will consider whether the three conditions are fulfilled in this case.

First condition: the party is properly notified

The Secretariat of the Arbitration Council issued an official notice for the workers to attend the hearing held on 3 March 2011 via letter No. 170 KB/RK/VK/LKR dated 28 February 2011. On the hearing date, the workers were absent without informing the Arbitration Council of the reason for their non-appearance. **Hence, the first condition is fulfilled.**

Second condition: the party does not appear before the Council

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 interests by arbitrators;
- B. Explanation of the arbitration process and confirmation of the issue in dispute;
- C. Conciliation, if the parties agree; and
- D. Arbitration.

In this case, the union and the workers did not attend any of the four stages mentioned above. The Arbitration Council notes that the workers also failed to attend to select an arbitrator. Thus, the Arbitration Council concludes that the workers did not appear at the hearing in accordance with the second condition of the said *Prakas*. **Hence, the second condition is fulfilled.**

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

In this case, the union and the workers did not provide a proper reason for not attending the hearing. The employer attended the hearing as summoned by the Council. 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 abovementioned *Prakas* have been fulfilled.

In addition, the Arbitration Council has provided ample opportunity to the Local Union of FTUWKC, the claimant, to argue the workers' claim in accordance with the Labour Law. However, the worker party opted for non-appearance. The Arbitration Council is of the view that the worker party does not intend to resolve its dispute with the employer in accordance with the law.

Generally, the claimant is obliged to argue its claim by providing reasons and evidence before the Arbitration Council; however, in this case the worker party has not fulfilled its obligation to do so. In this case, the claimant has not attended 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 Arbitration Council for resolution.

Thus, the Arbitration Council decides to close case 26/11-June Textile.

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

DECISION AND ORDER

Close case 26/11-June Textile.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: