



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 250/13-Sabrina (Cambodia)

Date of award: 20 December 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Ann Vireak**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTANT PARTIES

Employer party:

Name: **Sabrina (Cambodia) Garment Manufacturing Corp.**

Address: National Road 4, Russey Village, Sambo Commune, Samrong Toung District,
Kompong Speu Province

Telephone: 017 33 80 33

Fax: N/A

Representatives:

- | | |
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| 1. Mr Kim Soheat | Attorney at law |
| 2. Ms San Lychou | staff member of Administration Department |
| 3. Mr Yong Dolin | Assistant to Attorney at law |

Worker party:

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

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

Address: #16A, Street 360, Sangkat Boeung Keng Kong 3, Khan Chamkarmon, Phnom
Penh

Telephone: 017 552 452

Fax: N/A

Representatives:

- | | |
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| 1. Mr Ry Sithyneth | staff member of FTUWKC |
| 2. Mr Moeun Sara | staff member of FTUWKC |

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| 3. Ms Yong Leap | staff member of FTUWKC |
| 4. Mr Sun Vanny | President of the union |
| 5. Mr Seim Sopheak | Vice-President of the union |
| 6. Mr Chy Sakla | Secretary of the union |

ISSUES IN DISPUTE

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

The workers demand that the employer reinstate their union leaders namely:

- 1) Mr Sun Vanny-Union President,
- 2) Seim Sopheak-Union Vice-President, and
- 3) Mr Chy Sakla-Union Secretary.

The employer claims it does not agree to 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 an undated non-conciliation report No. 1544/13 was submitted to the Secretariat of the Arbitration Council on 17 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: 2 October 2013 (at 2:30 p.m.)

Procedural issues:

On 6 November 2013, the Department of Labour Disputes of Kompong Speu Province (the department) received a complaint from FTUWKC, outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 14 November 2013, but it remained unresolved. The one non-conciliated issue was referred to the Secretariat of the Arbitration Council on 21 November 2013.

Upon receipt of the case, an Arbitration Panel was formed on 25 November 2013. The Secretariat of the Arbitration Council (SAC) summoned the employer and the workers to a hearing and conciliation of the one non-conciliated issue, held on 2 December 2013 at 3 p.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the one non-conciliated issue, but it remained 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. In this case, the parties choose non-binding arbitration for their interests disputes.

The parties agreed to defer the date of award issuance from 16 December 2013 to 20 December 2013.

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, 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:

- Sabrina (Cambodia) Garment Manufacturing Corp. (Sabrina) is a garment manufacturer. The company employs approximately 5,043 workers (*according to the non-conciliation report no. 1544/13-Sabrina (Cambodia) Manufacturing*).
- The union received certificate of union registration no. 2687 dated 21 November 2012 and Letter no. 332 dated 21 November 2013 of MLVT from the Ministry of Labour and

Vocational Training on recognition of three union leaders including: 1) Mr Sun Vanny-President, 2) Mr Seim Sopheak-Vice-President, and 3) Mr Chy Sakla-Secretary.

Issue: The workers demand that the employer reinstate the union leaders 1) Mr Sun Vanny, Union President, 2) Seim Sopheak, Union Vice-President, and 3) Mr Chy Sakla, Union Secretary and provide back pay from May 2013 to the date of reinstatement.

- The workers demand that the employer put an end to the suspension of contracts of employment for Mr Sun Vanny, Union President, Mr Seim Sopheak, Union Vice-President, and Mr Chy Sakla, Union Secretary, and reinstate the three workers as well as provide back pay from May 2013 to the date of reinstatement.
- The employer claimed that the issue in this case was the subject of an administrative dispute on which the Primary Court of Kompong Speu is working; therefore, the Arbitration Council has no jurisdiction in this case. The employer requested the Arbitration Council reject the workers' demand and let the court decide on the merits of the case.
- The workers claimed the Arbitration Council had jurisdiction to decide this case on the grounds that:
 - o This case had gone through the process at the Ministry of Labour, and then the non-conciliation report was referred to the Minister of Labour who later referred the case to the Arbitration Council.
 - o Dispute resolution at the court is a different mechanism of dispute resolution to that of the Arbitration Council; therefore, the claim that the Arbitration Council had no jurisdiction over the case should not be made.
- The employer claimed it suspended the three workers on the grounds that:
 - o The three union leaders had committed serious misconduct by: (1) violating Points 3 & 5, Clause 12 (B) of internal work rule, (2) staging a strike before the Arbitration Council had processed the case, (3) violating Clauses 11 & 12 of the collective agreement dated 22 February 2013 made between the employer and workers' representatives, (4) violating Article 323 of the Labour Law because the strike was staged without holding a confidential vote, and (5) violating Article 324 of the Labour Law because the three union leaders failed to notify the employer in writing of the strike, at least seven days in advance.
 - o The three union leaders failed to put the strike on hold in accordance with orders issued by various competent authorities including the Arbitral Order no. 021/113 dated 23 May 2013 and Injunction no. 68 dated 23 May 2013 of the Primary Court of Kompong Speu.
 - o The three union leaders were not able to control strikers resorting to violence.

- The workers claimed according to Article 295 of the Labour Law, that the employer shall seek approval from Labour Inspectors before suspending union leaders. In this case, as the employer failed to seek approval from the Labour Inspectors, the suspension of the union leaders was null and void.
- Concerning the suspension of the three union leaders, the employer claimed:
 - o On 7 June 2013, the employer submitted a request to the Labour Inspector seeking approval for the suspension of three union leaders. The department had not issued a decision one month after submission.
 - o On 2 September 2013, the employer appealed to the Minister of Labour and Vocational Training. Two months upon the appeal, there was no decision issued, which meant the Minister had rejected the appeal.
 - o On 15 November 2013, the employer decided to lodge a complaint with the Primary Court of Kompong Speu in which the objectives were:
 - (1) Object to the decision made by the Minister of Labour and Vocational Training in which the request was made to dismiss the three union leaders; Mr Sun Vanny, Mr Seim Sopheak, and Mr Chy Sakla and (2) Seek approval to dismiss Mr Sun Vanny, Mr Seim Sopheak, and Mr Chy Sakla on the grounds of serious misconduct (*Civil Case no. 293 dated 15 November 2013 of the Primary Court of Kompong Speu*).
 The employer claimed the Primary Court was working on this case and the court also summoned the complainant and the workers to a preliminary testimony on 18 December 2013.
 - o While waiting for the Minister's decision, the employer decided to suspend the three union leaders, on 5 September 2013.

REASONS FOR DECISION

Before considering the demands, the Arbitration Council distinguishes rights and interests dispute.

Paragraph 2, Article 312 of the Labour Law states:

The Arbitration Council legally decides on 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 on 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.

Paragraph 2, Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council dated 21 April 2004 states that 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. The Arbitration Council concludes that disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement are rights disputes and the Arbitration Council has legal jurisdiction to settle rights disputes.

Any kind of dispute that is not stipulated in an agreement or collective agreement is an interests dispute, and the Arbitration Council settles interests disputes based on equity.

Issue: The workers demand that the employer reinstate their union leaders namely, Mr Sun Vanny, Union President, Mr Seim Sopheak, Union Vice-President, and Mr Chy Sakla, Union Secretary and provide back pay from May 2013 to the date of reinstatement.

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

As the demand is about suspension of contracts of employment stipulated in the provision of the Labour Law, the dispute is a rights dispute.

The Arbitration Council considers whether or not it has jurisdiction over the case.

At the hearing, the employer claimed that the issue in this case was an administrative dispute on which the Primary Court of Kompong Speu was working; therefore, the Arbitration Council had no jurisdiction over this case. In contrast, the workers claimed this case had gone through the process at the Ministry of Labour, and then the non-conciliation report was referred to the Minister of Labour who later referred the case to the Arbitration Council. The workers further claimed that dispute resolution at the court was different from the mechanism of dispute resolution at the Arbitration Council; therefore, the claim that the Arbitration Council had no jurisdiction over the case should not be made.

Based on the findings of the facts, the Arbitration Council finds that the Civil Complaint no. 293 dated 15 November 2013 lodged by Sabrina to the Primary Court of Kompong Speu stated its objectives as follows:

- (1) Object to the decision made by the Minister of Labour and Vocational Training in which the request to dismiss the three union leaders namely: Mr Sun Vanny, Mr Seim Sopheak, and Mr Chy Sakla was rejected and
- (2) Seek approval on dismissing Mr Sun Vanny, Mr Seim Sopheak, and Mr Chy Sakla on the grounds of serious misconduct.

The second objective of the Civil Complaint no. 293 dated 15 November 2013 aimed to seek approval to dismiss Mr Sun Vanny, Mr Seim Sopheak, and Mr Chy Sakla. The substance of the second objective is the same as the workers' demand in this particular case: that the employer put an end to the suspension of contracts of employment of Mr Sun Vanny, Union President, Mr Seim Sopheak, Union Vice-President, and Mr Chy Sakla, Union Secretary and reinstate them as well as provide them with back pay from May 2013 to the date of reinstatement.

Therefore, the Arbitration Council finds that the objective of the case on which the Arbitration Council is working is the same as that of the complaint on which the Primary Court of Kompong Speu is working. In short, this complaint is processed at the Primary Court of Kompong Speu at which the employer lodged a complaint to object to the decision made by the Minister of Labour and Vocational Training in which the request to dismiss the three union leaders namely: Mr Sun Vanny, Mr Seim Sopheak, and Mr Chy Sakla was rejected. Therefore, the Arbitration Council decides not to consider the workers' demand that the employer reinstate their union leaders namely, Mr Sun Vanny, Union President, Mr Seim Sopheak, Union Vice-President, and Mr Chy Sakla, Union Secretary and provide back pay from May 2013 to the date of reinstatement.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue: Decline to consider the workers' demand that the employer reinstate their union leaders namely, Mr Sun Vanny, Union President, Mr Seim Sopheak, Union Vice-President, and Mr Chy Sakla, Union Secretary and provide back pay from May 2013 to the date of reinstatement.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 3 October 2012.

Part II. Interests dispute: N/A

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: