



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 54/09-USA Fully Field**

**Date of award: 30 April 2009**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Huon Chundy**

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

#### **DISPUTANT PARTIES**

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

Name: **USA Fully Field (Cambodia) Garments Co., Ltd. (the employer)**

Address: National Road No. 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

Telephone: 012 893 113 or 023 425 237 Fax: 023 424 232

Representatives:

- |                 |                        |
|-----------------|------------------------|
| 1. Mr Phal Path | Head of Administration |
| 2. Mr Lim Gek A | Shipping Officer       |

##### **Worker party:**

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

##### **Local Union of FTUWKC**

Address: No. 28B, Street 222, Boeung Raing Commune, Daun Penh District, Phnom Penh

Telephone: 012 839 521 Fax: N/A

Representatives:

- |                     |  |
|---------------------|--|
| 1. Ms Soth Chanthou | Officer of FTUWKC                      |
| 2. Mr Hiem Mom      | President of the Local Union of FTUWKC |
| 3. Mr Hok Setha     | Secretary of the Local Union of FTUWKC |

## ISSUES IN DISPUTE

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

1. The workers in the fray trimming section demand that the employer pay their full wages for the period it has suspended their contracts because the factory is still operating and exporting products. Moreover, there is still work in the fray trimming section but it is currently being performed by workers from the ironing section.

The employer refuses to provide full wages to the workers in the fray trimming section because those workers did not take responsibility for their tasks, leading to a decrease in production and a failure by the employer to meet market demand. The employer's management seeks to reform the production line to ensure that it can meet market demand and ensure long term stability for all workers.

## 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. 076 dated 10 May 2007 (Fifth 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. 286 KB/AK/VK dated 2 April 2009 was submitted to the Secretariat of the Arbitration Council on 3 April 2009.

## HEARING AND SUMMARY OF PROCEDURE

**Hearing venue:** The Arbitration Council, Phnom Penh Center, Building A, Sotheaeros Blvd., Tonle Bassac Commune, Chamkarmorn District, Phnom Penh

**Date of hearing:** First hearing: 10 April 2009 at 8:00 a.m.

Second hearing: 24 April 2009 at 10:00 a.m.

### **Procedural issues:**

On 23 March 2009, the Department of Labour Disputes received a complaint from the workers via mobile telephone that 43 workers from the fray trimming section (based on the report of the Ministry of Labour) had been suspended and placed on half wages. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute on the same date. The issue remained unresolved. As a result, the non-conciliated issue was referred to the Secretariat of the Arbitration Council on 3 April 2009 via non-conciliation report No. 286 KB/AK/VK dated 2 April 2009.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the non-conciliated issue, held on 10 April 2009 at 8:00 a.m. A second hearing was held on 24 April 2009 at 10:00 a.m. Both parties were present at each hearing as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue but it was not resolved. The Arbitration Council will consider the issue 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:**

- USA Fully Field (Cambodia) Garments Co., Ltd. commenced operation in 1999 and currently employs around 508 workers. Of these, 42 workers from the fray trimming section were suspended on half wages from 19 March to 20 April 2009.
- The Local Union of FTUWKC, the claimant in this case, stated at the hearing that it has 130 members at the factory.

#### **Issue 1: The workers demand that the employer provide full wages to workers in the fray trimming section for the duration of their suspension (i.e. pay the remaining 50% of the workers' wages).**

- The workers stated at the hearing that the 42 workers from the fray trimming section demand that the employer pay the remaining 50% of their wages for the duration of their suspension from 19 March to 20 April 2009. However, the workers did not state how many of the 42 workers are members of the union and how many are not members but nevertheless sought assistance from the union.
- Based on the evidence provided by the employer to the Arbitration Council on 24 April 2009 and the evidence provided by the workers after the second hearing on 27 April 2009, the Arbitration Council finds that 14 workers from the fray trimming section are members of the union and another 10 workers sought assistance from the union.

Therefore, the Arbitration Council's decision on this issue will only apply to the 24 workers from the fray trimming section listed below:

Workers who are members of the union:

1. Chamreoun Sotheun: ID 3116
2. Nith Reasmey: ID 1936
3. Nov Path: ID 1932
4. Sok Sopheak: ID 1920
5. Meoun Sareth: ID 3122
6. Path Sothea: ID 1904
7. Chun Lyhong: ID 1923
8. Math Lyfast: ID 3104
9. Mam Peun: ID 3123
10. Pheng Savan: ID 1916
11. Touch Sreydeth: ID 3126
12. En Savun: ID 1927
13. Man Sokuntheary: ID 3126
14. Som Sreymom: ID 3129

Workers who sought the union's assistance:

1. Seth Kanika: ID 3146
2. Chil Sophoun: ID 3118
3. Un Sreymom: ID 3153
4. Ly Somali: ID 3142
5. Mak Socheng: ID 3129
6. Sman Sampri: ID 2397
7. York Sary: ID 1948
8. Sorn Chanty: ID 3143
9. Chum Somaleap: ID 3113
10. Chan Sreymom: ID 3144

- The parties agree that the employer has provided 50% of the workers' wages during the suspension and that there is no agreement between the parties on this matter.
- The workers stated at the hearing that the employer used to grant leave to workers in the fray trimming section and other sections, such as the ironing and controlling sections, and provide 50% of their wages. The workers agreed to this and do not demand compensation from the employer in relation to this practice. However, in this case the workers in the fray trimming section were suspended and offered 50% of their wages from 19 March to 20 April 2009, to which they did not agree because

there was still work to complete in their section which was being completed by workers from the ironing section. The employer does not object to this statement.

- The employer states that it suspended the workers in the fray trimming section and provided 50% of their wages because those workers did not take responsibility for the tasks they were allocated and did not listen to the employer's instructions. This led to a decrease in production and as a result the employer failed to meet market demand on time. Therefore, the employer must improve the production line to ensure that it is able to meet demand in the future. The employer decided to suspend the workers in the fray trimming section and provide 50% of their wages. The workers state that only some of the workers contributed to the decrease in production, whilst other workers improved productivity.

- The fifth point of the workers' summary statement states:

the employer told the workers to take leave on 50% of their wages and wait for the employer to determine if any workers who work hard would be reinstated. Of those workers on leave with 50% of their wage, only a few failed to take responsibility for the tasks delegated by the employer and lowered productivity.

- The employer argues that it incurred losses because the workers in the fray trimming section lowered productivity and the employer then provided 50% of their wages. Therefore, it cannot provide the remaining 50% of their wages as they demand.
- The employer noted at the second hearing that as of that date they had already reinstated the suspended workers. The workers did not respond to this point.
- Clause 10 of the employer's Internal Work Rules dated 6 March 1999, on penalties for misconduct, states:

Employees or workers who commit any misconduct evidenced by the employer will be punished based on level of the misconduct as follows:

- Minor misconduct: direct warning and note in personal file on first occurrence.
- Medium misconduct: warning letter on first occurrence.
- Serious misconduct: as stated in Labour Law will result in termination of the contract.

## REASONS FOR DECISION

### **Issue 1: The workers demand that the employer provide full wages to workers in the fray trimming section for the duration of their suspension (i.e. pay the remaining 50% of the workers' wages).**

In this case the employer suspended the workers in the fray trimming section from 19 March to 20 April 2009 and provided 50% of their wages because they did not take responsibility for the tasks delegated by the employer, leading to a decrease in the employer's production and a failure to meet market demand. Having reviewed the evidence provided by the employer on 24 April 2009 and provided by the workers after the second hearing on 27 April 2009, the Arbitration Council finds that 14 workers from the fray trimming section are union members and another 10 are not union members but sought the union's assistance in this dispute. Therefore, there are only 24 claimant workers involved in this case.

The Arbitration Council will consider whether or not the employer's act of suspending the employees (by placing them on compulsory leave) is an appropriate punishment that complies with the Labour Law.

Article 71(7) of the Labour Law (1997) provides that a labour contract is suspended in the case of "temporary layoff of a worker for valid reasons in accordance with internal regulations." In accordance with Article 71(7), the Arbitration Council considers that the employer cannot suspend a worker's contract as a disciplinary measure unless it is permitted to do so by its internal work rules.

Moreover, in previous cases the Arbitration Council has explained that an employer cannot suspend a labour contract as a disciplinary measure unless the internal work rules specifically state that it is able to do so (*see Arbitral Awards 54/04-Cambodia Sportswear, reasons for decision, issue 2 and 70/04-Hanna Cambodia, reasons for decision, issue 1*).

The Arbitration Council agrees in this case with its previous finding that the Labour Law allows an employer to suspend a labour contract, but the suspension must comply with the law. In this case the Arbitration Council finds that the employer placed the workers on leave because they did not take responsibility for the tasks delegated by the employer, leading to a decrease in production. The Arbitration Council finds that the employer's action is a disciplinary measure that is not provided for in its internal work rules, therefore the suspension does not comply with Article 71(7) of the Labour Law.

Article 72(1) of the Labour Law states:

The suspension of labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer,

and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

The Arbitration Council considers that if labour contracts are suspended without compliance with the law, no suspension in fact takes place and therefore, Article 72(1) above does not apply. Therefore, the employer's act of placing the workers on leave (illegal work suspension) from 19 March to 20 April 2009 and providing 50% of their wages is invalid and inconsistent with the Labour Law.

Furthermore, Clause 10 of the employer's Internal Work Rules dated 6 March 1999, on penalties for misconduct, states:

Employees or workers who commit any misconduct evidenced by the employer will be punished based on level of the misconduct as follows:

- Minor misconduct: direct warning and note in personal file on first occurrence.
- Medium misconduct: warning letter on first occurrence.
- Serious misconduct: as stated in Labour Law will result in termination of the contract.

The Arbitration Council understands that the workers' failure to take responsibility for their tasks in the fray trimming section, which led to a decrease in production, can be considered misconduct. Therefore, the employer party is entitled to take disciplinary action as provided for in its internal work rules. In this case the Arbitration Council finds that the employer has not taken measures consistent with Article 10 of its internal work rules against the workers in the fray trimming section; it has only asked them to take leave. Therefore, the Arbitration Council considers that the employer has not complied with the disciplinary action provision of its internal work rules.

Therefore, the Arbitration Council finds that as no valid suspension of the labour contracts has occurred the employer must pay the workers' full wages.

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

#### **DECISION AND ORDER**

**Issue 1:** Order the employer to pay the remaining 50% of the workers' wages to the 24 workers in the fray trimming section who were placed on leave from 19 March to 20 April 2009.

**Type of award: non-binding award**

This award of the Arbitration Council 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 through the Secretariat of the Arbitration Council within this period.

**SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Huon Chundy**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....