



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 129/12-Tai Yang**

**Date of award: 30 July 2012**

### **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: **An Nan**

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

#### **DISPUTANT PARTIES**

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

Name: **Tai Yang Enterprises Co., Ltd. (the employer)**

Address: Thnort Muoy Dem Village, Bekchan Commune, Angsnuol District, Kandal Province

Telephone: 012 568 509

Fax: N/A

Representatives at the prehearing meeting:

- |                     |                                  |
|---------------------|----------------------------------|
| 1. Mr But Thoeun    | Assistant to the general manager |
| 2. Mr Chuon Samnang | Head of administration           |

Representatives at the hearing:

- |                     |                                  |
|---------------------|----------------------------------|
| 1. Mr But Thoeun    | Assistant to the general manager |
| 2. Mr Chuon Samnang | Head of administration           |

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

Name: **Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU)**

Address: Thnort Muoy Dem Village, Bekchan Commune, Angsnuol District, Kandal Province

Telephone: 092 494 707

Fax: N/A

Representatives at the prehearing meeting:

- |                    |   |
|--------------------|---|
| 1. Mr San Sopha    | Officer of C.CAWDU                      |
| 2. Mr Ny Bunthoeun | Organiser                               |
| 3. Ms Ket Mala     | President of the Local Union of C.CAWDU |

- |                     |  |
|---------------------|--|
| 4. Ms Ser Ry        | Vice-president of the Local Union of C.CAWDU |
| 5. Ms Bee Chanra    | Secretary of the Local Union of C.CAWDU      |
| 6. Ms Bee Phalla    | Treasurer of the Local Union of C.CAWDU      |
| 7. Ms Kin Sreymach  | Activist                                     |
| 8. Ms Seang Samarth | Advisor to the Local Union of C.CAWDU        |
| 9. Ms Keurn Kosal   | Worker                                       |
| 10. Ms Chea Samnang | Advisor to the Local Union of C.CAWDU        |
| 11. Ms Thorn Thavy  | Worker                                       |

Representatives at the hearing:

- |                     |  |
|---------------------|--|
| 1. Mr San Sophat    | Officer of C.CAWDU                           |
| 2. Mr Sot Seam      | Officer of C.CAWDU                           |
| 3. Ms Ket Mala      | President of the Local Union of C.CAWDU      |
| 4. Ms Ser Ry        | Vice-president of the Local Union of C.CAWDU |
| 5. Ms Bee Chanra    | Secretary of the Local Union of C.CAWDU      |
| 6. Ms Bee Phalla    | Treasurer of the Local Union of C.CAWDU      |
| 7. Ms Kin Sreymach  | Activist                                     |
| 8. Ms Seang Samarth | Advisor to the Local Union of C.CAWDU        |
| 9. Ms Keurn Kosal   | Worker                                       |
| 10. Ms Chea Samnang | Advisor to the Local union of C.CAWDU        |
| 11. Ms Thorn Thary  | Activist                                     |
| 12. Ms Nou Mok      | Advisor to the Local Union of C.CAWDU        |
| 13. Ms Keurn Sol    | Activist                                     |
| 14. Ms Chuon Chern  | Activist                                     |
| 15. Ms Om Socheat   | Activist                                     |

**ISSUES IN DISPUTE**

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

1. The workers demand that the employer provide a termination payment, including compensation in lieu of prior notice, damages, indemnity for dismissal, payment in lieu of unused annual leave, and outstanding wages, and that the employer maintain the workers' seniority with Tainan Enterprises (Cambodia) Co., Ltd. The employer refuses to accommodate this demand.
2. The workers demand that the employer provide a US\$ 15 accommodation and transportation allowance to each worker. The employer refuses to accommodate this demand.
3. The workers demand that the employer provide a monthly 4,000 riel lunch allowance to each worker. The employer refuses to accommodate this demand.

4. The workers demand that the employer top up increase the attendance bonus to US\$ 12 by providing an additional US\$ 5 monthly.

#### **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. 121 dated 7 June 2012 (Tenth 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. 526/12 KB/KN dated 3 July 2012 was submitted to the Secretariat of the Arbitration Council on 4 July 2012.

#### **HEARING AND SUMMARY OF PROCEDURE**

**Prehearing meeting and 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 prehearing meeting:** 9 July 2012 at 3:30 p.m.

**Date of hearing:** 13 July 2012 at 2:00 p.m.

#### **Procedural issues:**

On 29 June 2012, the Department of Labour Disputes of Kandal Province received a complaint from C.CAWDU. Upon receiving the claim, the department conducted a conciliation session on the six issues, resulting in the resolution of two issues. The four non-conciliated issues were referred to the Secretariat of the Arbitration Council on 4 July 2012 via non-conciliation report no. 526/12 KB/KN dated 3 July 2012.

In this case, since the workers remained on strike, the Arbitration Council issued an interim order no. 018/12 KBR dated 4 July 2012 directed at the striking workers of Tai Yang Enterprises Co., Ltd. to immediately cease the strike and return to their work shift from the morning of 5 July 2012, pending the completion of the entire arbitral process.

The striking workers did not abide by the above order. As such, the Arbitration Council notified both parties of the prehearing meeting on 9 July 2012 at 3:30 p.m. Both parties were in attendance at this meeting. In the meeting, the Council explained its process to the parties and requested that they stay calm in order to avoid aggravating the dispute.

On 10 July 2012, the workers went back to work. The Secretariat of the Arbitration Council invited the employer and the workers to attend the hearing and conciliation on the four non-conciliated issues. The hearing was held on 13 July 2012 at 2:00 p.m. with the workers present. Chuon Samnang, the head of administration, and But Thoeun, the assistant to the general manager, attended the hearing. However, they did not have an authorisation letter from the employer. Given this consequence, the Arbitration Council proceeded with the hearing in the absence of the employer. The Council conducted a further conciliation of the four non-conciliated issues, resulting in issues 2, 3, and 4 being withdrawn by the workers. The issue 1 remained unresolved.

The Arbitration Council considers 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:**

- Tai Yang Enterprises Co., Ltd. operates a garment factory and employs a total of 3,400 workers.
- C.CAWDU is the claimant in this case. According to the evidence submitted by the workers to the Arbitration Council on 10 July 2012, 472 workers authorised C.CAWDU to represent them in the settlement of this case. After examining this evidence closely, the Arbitration Council finds that there were only 471 workers with their names, ID numbers, date of employment commencement, and thumbprints, who had authorised C.CAWDU. The number of 471 workers did not include the other four workers, namely Prum Solang, Sim Van, Deab Dany, and Soeung Ny, because there were no their thumbprints on the evidence. Thus, the Arbitration Council will consider the demand of only 471 workers (see annex A).

**Issue 1: The workers demand that the employer provide a termination payment and maintain their seniority with Tainan Enterprises (Cambodia) Co., Ltd.**

- At the hearing, the workers presented two demands: (1) they demanded that the employer terminate their employment contracts by providing a termination payment, including, a. outstanding wages, b. payment in lieu of unused annual leave, c. compensation in lieu of prior notice, d. indemnity for dismissal, and e. damages, and (2) they demanded that the employer maintain their seniority with Tainan Enterprises (Cambodia) Co., Ltd.
- All the claimant workers hold undetermined duration contracts. The workers make this demand because the establishment of Tainan Enterprises (Cambodia) Co., Ltd. on the premises of Tai Yang Enterprises Co., Ltd. affects their morale.
- The workers acknowledge that their benefits remained intact since the establishment of Tainan Enterprises (Cambodia) Co., Ltd.; and their ID cards remained unchanged as well. They also acknowledge that Tai Yang Enterprises Co., Ltd. and Tainan Enterprises (Cambodia) Co., Ltd. are two separate entities.
- The workers requested the Arbitration Council to resolve this case based on the principles of equity.
- Although the employer representatives attended the hearing, their counter-arguments and statements will not be considered by the Arbitration Council because they have not been authorised to represent the employer in this case.

**REASONS FOR DECISION**

**Issue 1: The workers demand that the employer provide a termination payment and maintain their seniority with Tainan Enterprises (Cambodia) Co., Ltd.**

At the hearing, the workers demanded that the employer terminate the employment contracts of the 471 workers by providing a termination payment, including a. outstanding wages, b. payment in lieu of unused annual leave, c. compensation in lieu of prior notice, d. indemnity for dismissal, and e. damages, and that the employer maintain their seniority with Tainan Enterprises (Cambodia) Co., Ltd.

Before turning to this issue, the Arbitration Council considers the rights of the employer representatives.

At the hearing, Chuon Samnang, the head of administration, and But Thoeun, the assistant to the general manager, attended the hearing, but did not have an authorisation letter from the employer. They state that they were too busy to arrange an authorisation letter to be signed by the employer on time and promised to submit it later, but failed to do so.

Clause 19 of *Prakas* No. 099 SKBY, dated 21 April 2004, states: “A party may appear before the arbitration panel in person... or be represented by any other person expressly authorised in writing by that party.”

Based on this clause, the Arbitration Council considers that the phrase “expressly authorised in writing” means that disputant parties can be represented by other persons before the Arbitration Council only if those persons are expressly authorised in writing.

In Arbitral Award 71/08-River Rich, the Arbitration Council ruled:

there is no authorisation letter from Mr. Sung Chung Kwun or any other executive director of the Company in Cambodia to authorise Mr. Albert Cheung to sign the two agreements as mentioned above. This means that Mr. Albert Cheung cannot be considered a legal representative of River Rich Company in Cambodia.

In Arbitral Award 161/09-Prek Treng, the Arbitration Council ruled:

In this issue, Ork Hour and Mak Sopheak did appear before the hearing at the invitation of the Arbitration Council, but did not have an authorisation letter from the employer. The Arbitration Council finds that Ork Hour and Mak Sopheak, who were not the disputant parties in this issue, did not receive a written permission from the employer to act as legal representatives to deal with the labour dispute before the Arbitration Council. Thus, the Arbitration Council will decide the issue in the absence of the employer.

The Arbitration Council applies these ruling in this case.

In this case, Chuon Samnang and But Thoeun, both of whom are representatives of the employer, were present at the hearing at the invitation of the Arbitration Council. However, they did not have an authorisation letter from the employer. For this reason, the Arbitration Council determines that neither Mr Samnang nor Mr Thoeun has been authorised to appear on the employer’s behalf in the resolution of this labour dispute before the Council. Consequently, the Arbitration Council will rule on this case in the absence of the employer.

The Arbitration Council considers this issue as follows:

**A. Whether the workers are entitled to demand that the employer terminate the employment contracts of the 471 workers and provide them with a termination payment.**

Article 311 of the Civil Code states that, “[a] contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation.”

Article 65, paragraph one of the Labour Law states:

[a] labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.

Based on the above two articles, the Arbitration Council rules that forming, modifying, and extinguishing an obligation arising from an employment contract can be done by the intentions of the contracting parties, that is, the employer and the workers. As such, only the contracting parties are entitled to extinguish an obligation of the employment contract.

In this case, the workers, a contracting party, demand that the employer extinguish obligations in the employment contracts. According to the facts, the workers’ employment contracts have not been terminated by the employer. Thus, the Arbitration Council rules that the workers are not entitled to demand that the employer terminate their contracts, contrary to the employer’s will.

As the employer is not willing to terminate their contracts, the workers are not entitled to demand that the employer provide a termination payment. Normally, the Arbitration Council orders the employer to provide a termination payment to the workers if the employer has terminated their employment contracts without valid reasons (*see Arbitral Awards 154/09-Radio Free Asia; 150/11-SCS, reasons for decision, issue 11(b); 36/12-Yung Wah 2, reasons for decision, issue 5*).

**B. Whether the workers are entitled to demand that the employer maintain the seniority of the 471 workers with Tainan Enterprises (Cambodia) Co., Ltd.**

According to the facts, Tainan Enterprises (Cambodia) Co., Ltd. is a separate legal entity from Tai Yang Enterprises Co., Ltd. It is Tai Yang Enterprises Co., Ltd. who has entered into contracts with the 471 workers. In this case, the 471 workers are the claimants against Tai Yang Enterprises Co., Ltd. This means the disputant parties are the 471 workers and Tai Yang Enterprises Co., Ltd. The Arbitration Council determines that Tainan Enterprises (Cambodia) Co., Ltd. is the third party in this case.

Therefore, the Arbitration Council will not rule on this issue as Tainan Enterprises (Cambodia) Co., Ltd. is not a disputant party in this case. Normally, the Arbitration Council considers and rules on any issues involving the disputant parties.

In conclusion, the Arbitration Council rejects the workers' demand that the employer provide the 471 workers with a termination payment, including a. outstanding wages, b. payment in lieu of unused annual leave, c. compensation in lieu of prior notice, d. indemnity for dismissal, and e. damages, and declines to consider the workers' demand that the employer maintain their seniority with Tainan Enterprises (Cambodia) Co., Ltd.

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

**DECISION AND ORDER**

**Issue 1:**

- Reject the workers' demand that the employer provide the 471 workers with a termination payment, including a. outstanding wages, b. payment in lieu of unused annual leave, c. compensation in lieu of prior notice, d. indemnity for dismissal, and e. damages.
- Decline to consider the workers' demand that the employer maintain their seniority with Tainan Enterprises (Cambodia) Co., Ltd.

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

The award 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: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....