



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 11/09-Gladpeer Garments

Date of award: 20 February 2009

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: **Ann Vireak**

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

DISPUTANT PARTIES

Employer party:

Name: **Gladpeer Garments Factory (Cambodia) Ltd. (the employer)**

Address: National Road 4, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 727 301 Fax: N/A

Representative:

Ms Va Chanda Chief of Administration

Worker party:

Name: **Cambodia Labour Federation Union (CLUF)**

Local Union of CLUF

Address: #788, Street 474, Boeung Trabak Commune, Chamkarmon District, Phnom Penh

Telephone: 017 616 598 Fax: N/A

Representatives:

Mr Hu Pov Officer of CLUF

Mr Khan Yeoun President of the Local Union of CLUF

Ms Chea Mom Vice-President of the Local Union of CLUF

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide an additional day of annual leave for every three years of employment (for example, a worker who has been working for three years should be entitled to 19 days of annual leave; six years, 20 days of annual leave; nine years, 21 days of annual leave, etc.) The employer states that its director provides up to 20 days of annual leave, even for workers who have been working for more than six years.

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. 040 KB/RK/VK dated 22 January 2009 was submitted to the Secretariat of the Arbitration Council on 28 January 2009.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 10 February 2009 at 9:30 a.m.

Procedural issues:

On 16 January 2009, the Department of Labour Disputes received a complaint from the workers of Gladpeer Garments Factory (Cambodia) Ltd. dated 16 January 2009 demanding that the employer grant an extra one day per year of paid annual leave to workers with one year's service or more. Upon receiving the complaint, the Department of Labour Disputes assigned an officer to conciliate the dispute, but the issue remained unresolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 28 January 2009.

Upon receiving the case, the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the non-conciliated issue, held on 10 February 2009 at 9:30 a.m. Both parties were present at the hearing as summoned by the Arbitration Council.

During the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue without success.

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:

- Gladpeer Garments Factory (Cambodia) Ltd. employs approximately 3,000 workers.
- The Local Union of CLUF at the Gladpeer factory is the claimant in this case. The union was registered on 17 October 2001.
- The parties are negotiating a Collective Bargaining Agreement (CBA) and the demand in this case is also a negotiation point in the CBA.
- There are approximately 1,000 workers at the factory with more than three years' service.
- There are approximately 100 workers at the factory with more than six years' service.
- There are approximately 10 workers at the factory with more than 10 years' service.
- The employer's practice is to grant annual leave as follows:

| Years of service | Annual leave entitlement |
|--------------------|--------------------------|
| 1st year | 18 days |
| 2nd year | 18 days |
| 3rd year | 19 days |
| 4th year | 19 days |
| 5th year | 19 days |
| 6th year and above | 20 days |

- The workers demand that the employer grant one extra day of annual leave to workers who have three years or more of service, based on Article 166 of the Labour Law, because the employer provides only 20 days of annual leave from the sixth year of service onwards.
- The employer does not agree to the workers' demand, asserting that the Labour Law is not clear on this issue. The employer leaves the issue for the arbitrators to decide.

REASONS FOR DECISION

The dispute in this case arises from the different interpretations of Article 166, paragraph [four] of the Labour Law. The employer asserts that the Labour Law is not clear, whilst the workers demand that the employer comply with Article 166 of the Labour Law by granting an additional day of paid annual leave for every three years of service, because the employer limits the amount of annual leave to 20 days from the sixth year onwards. Thus, the Arbitration Council will consider this demand as follows:

Article 166, paragraph one of the Labour Law states:

Unless there are more favourable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.

Based on Article 166, paragraph one of the Labour Law, the Arbitration Council considers that all workers are entitled to paid annual leave to be given by the employer at the rate of 18 days [per year] or one and a half work days per month of continuous service.

Article 166, paragraph four of the Labour Law states that "The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service."

In previous arbitral awards, the Arbitration Council has examined at Article 166 [and on the basis of] detailed legal reasons it has ruled that Article 166 of the Labour Law means that workers are entitled to one additional day off after every three years of employment in an enterprise. This means that Article 166 of the Labour Law provides workers with an entitlement to 19 days of annual leave from the fourth year of employment, 20 days from the seventh year, 21 days from the tenth year, and so on (*see Arbitral Awards 62/04-Ecent, reasons for decision, issue 8; 68/05-Gold Lida; 81/07-Supreme, reasons for decision, issue 2; 33/07-Goldfame, reasons for decision, issue 5; and 23/08-M & V (Branch 1), reasons for decision, issue 3*).

The Arbitration Council agrees in this case with the interpretation of the Arbitration Council in previous arbitral awards. This means that the workers are entitled to an additional day of paid leave for every three years of service. The Arbitration Council believes that the additional annual leave encourages workers to increase their seniority at the enterprise. Thus, the Arbitration Council finds that the employer does not have the right to limit the paid annual leave available to workers with six years of seniority and above to only 20 days per year.

In conclusion, the Arbitration Council considers that the employer must provide paid annual leave to workers in accordance with their seniority by adding one day of paid leave for every three years of service based on Article 166, paragraph four of the Labour Law.

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 provide paid annual leave to workers in accordance with their seniority by adding one day of paid leave for every three years of service.

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: **Chhiv Phyum**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: