



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាពន្យារកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 04/13-CIK CAMBO

Date of award: 13 February 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

DISPUTANT PARTIES

Employer party:

Name: **CIK CAMBO Co., Ltd.**

Address: Ang Village, Sangkat Chom Chao, Khan Po Senchey, Phnom Penh

Telephone: 012 32 32 83

Fax: N/A

Representatives:

- | | |
|-------------------|-----------------|
| 1. Ms Khut Chorvy | Accountant |
| 2. Mr Lim Vanna | Attorney at Law |
| 3. Mr Jin Vanna | Attorney at Law |

Worker party:

Name: - **Cambodian Labour Union Federation (CLUF)**

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

Address: (Borey Solar) #30C, Street 371, Trapeang Chouk Village, Sangkat Teok Tla, Khan
Sen Sok, Phnom Penh

Telephone: 012 837 768

Fax: N/A

Representatives:

- | | |
|---------------------|---------------------------------|
| 1. Mr Jay Sophea | Under-Secretary General of CLUF |
| 2. Mr Seng Menghong | staff member of CLUF |
| 3. Mrs Jeun Minea | President of the union |

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4. Mrs Vath Sokly

Vice-President of the union

ISSUES IN DISPUTE

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

1. (A) The workers demand that the employer permit the workers to take leave one day of annual leave immediately prior to the commencement of the Water Festival public holidays and one day of annual leave immediately after the holiday. (B) The workers demand that the employer permit each worker to receive advanced payment of US\$50 from their wages in order to cover the expenses for travel to and from their homeland.

2. The workers demand that the employer dismiss Kim Heng, the translator, because he has verbally abused the workers.

3. The workers demand that the employer reinstate Hong Jou.

4. The workers demand that the employer comply with the agreement made on 2 November 2012.

5. The workers demand that the employer increase the minimum wage of the workers in the packaging, ironing, and carton section to US\$71 which is equal to the minimum wage received by workers in other sections of the factory.

6. The workers demand that the employer refrain from replacing striking workers with newly recruited workers.

7. The workers demand that the employer provide an additional US\$10 attendance bonus per month.

8. The workers demand that the employer provide a monthly US\$2 payment in lieu of lunch.

9. The workers demand that the employer reinstate all the dismissed 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. 121 dated 7 June 2011 (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. 1506 dated 31 December 2012 was submitted to the Secretariat of the Arbitration Council on 2 January 2013.

HEARING AND SUMMARY OF PROCEDURE

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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: 18 January 2013 (at 08:30 a.m.)

Procedural issues:

On 5 December 2012, the Department of Labour Disputes (the department) received a complaint from CLUF, outlining the workers' demands that the employer improve the working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 24 December 2012, resulting in none of the nine issues being resolved. The nine non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 2 January 2013.

Upon receipt of the case, the SAC summoned the employer and the workers to a hearing and conciliation of the nine non-conciliated issues, held on 18 January 2013. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the nine non-conciliated issues, resulting in the conciliation of Issues 1/A, 3, 4, and 9 and Issues 1/B, 2, 5, 6, 7, and 8 are in arbitration process.

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.

Both parties agree to defer the Arbitral Award issuance from 25 January 2013 to 13 February 2013.

The Arbitration Council considers 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:

- CIK Cambodia Co., Ltd. is a garment factory. The factory employs 979 workers.
- CLUF is the claimant. The union is registered as the professional organisation no. 2634 dated 26 September 2012. The union cannot verify its membership.
- The employer claims the union contribution fee is deducted from 70 workers' wages as payment to Cambodian Labour Union. Subsequently, 57 of 70 workers withdrew their memberships from this union.
- The workers do not dispute the employer's claim.
- In this case, the Arbitration Council recognises that the union has only 13 members.
- At the hearing, the union claims Issue 9 is raised on behalf of all the workers at CIK Cambodia. On 23 January 2013, the union submits 32 of the workers' request soliciting help from CLUF and the union dated 19 January 2013.

Issue 1 (B): The workers demand that the employer permit each worker to receive advanced payment of US\$50 from their wages in order to cover the expenses for travel to and from their homeland.

- At the hearing, the workers claim that the reason of this demand is that the workers need the money to visit homeland.
- The employer claims that it cannot afford to live up to the demand.

Issue 2: The workers demand that the employer dismiss Kim Heng, a translator.

- At the hearing, the workers claim that the demand was made because Kim Heng, a translator, has verbally abused the striking workers.
- The workers claim that they did not hear the verbal abuse firsthand. Other workers told them about this verbal abuse.
- The employer claims it has no knowledge of the verbal abuse.
- The employer claims it rejected the demand.

Issue 5: The workers demand that the employer increase the minimum wage of the workers in the packaging, ironing, and carton section to US\$71 which is equal to the minimum wage received by workers in other sections of the factory.

At the hearing, the workers demand that the employer increase the minimum wage of the workers working in the packaging, ironing, and carton section to US\$71 which is equal to what workers in the sewing section receive.

- The workers argue that: 1) the workers produce the same quantity, 2) the workers have the same level of technical skills, and 3) the workers have the same contracts of employment as workers in the sewing section.
- The employer responds that it rejects the demand because the workers in the sewing section are skilled workers and it's hard to recruit them. The workers in packaging section are not skilled workers, so it's not hard to recruit them.
- The workers on probationary period receive the base wage of US\$68 and US\$71 upon completion of the probationary period. The workers in the packaging section receive the base wage of US\$66 during the probationary period and US\$68 upon completion of the probationary period.

Issue 6: The workers demand that the employer refrain from replacing striking workers with newly recruited workers.

The workers argue that the employer has recruited new workers everyday while existing workers had been on strike (from 23 November 2012 to 30 November 2012).

- Today there is no more strike action.
- The employer responds that it did not recruit new workers to replace the workers on strike. It also does not have a policy to recruit new workers when existing workers are on strike.
- The workers fail to provide sufficient and specific facts to the Arbitration Council.

Issue 7: The workers demand that the employer provide an additional US\$10 attendance bonus per month.

At the hearing, the workers demand that the employer provide an additional US\$10 attendance bonus per month on top of the existing US\$10 attendance bonus that the workers currently receive.

- The workers at CIK Cambo receive a US\$10 attendance bonus per month.
- The workers make this demand based on the fact that workers at other factories receive an attendance bonus of US\$20 per month.
- The employer claims it rejects the demand.

Issue 8: The workers demand that the employer provide a monthly US\$2 payment in lieu of lunch.

- The workers argue that workers at other factories receive US\$13 per month to purchase lunch.
- The employer rejects the demand.

REASONS FOR DECISION

Before considering all of the demand, the Arbitration Council interprets the rights dispute and interests dispute.

Paragraph 2 of Article 312 of the Labour Law states *“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.”*

Clause 43 of the Prakas 099 on the Arbitration Council dated 21 April 2004 states:

An Arbitral Award which settles an interests 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 of Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council 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 jurisdiction to settle the rights disputes (*see the Arbitration Award 05/11-M & V (Branch 1), Issue 1&5, 13/11-Gold Kamvimex, Issue 1&2, 14/11-GXG, Issue 4*). Any kinds of disputes that are not stipulated in the agreement or collective agreement are interests disputes and the Arbitration Council settles interests disputes based on equity (*see the Arbitral Award 31/11-Quint Major Industrial, Issue 4 and 62/11-Ocean Garment, Issue 1*).

Representativeness of the union

In this case, the union has only 13 memberships. The union claims it makes all raises all the nine issues on behalf of all the workers at CIK Cambo.

The Arbitration Council considers whether the union, the claimant, has any legitimate rights to represent all the workers at CIK Cambo.

Clause 19 of the Prakas no. 099 dated 21 January 2004 on the Arbitration Council states *“A party may appear before the arbitration panel in person, be represented by... or any other person expressly authorised in writing by that party.”*

In reference to Clause 19 of the Prakas no.099 above, the Arbitration Council finds that the phrase *“expressly authorised in writing”* means parties in dispute can be represented by any other person to settle the disputes before the Arbitration Council only when that person receive authorised writing to represent the parties (*see the Arbitral Award no. 161/09-Prek Treng and 43/10- Ming Jian, Issue 1, and 140/11-Global Apparel, Issue 2*).

Arbitration Council Panel in this case also agrees with the interpretation made in the previous cases and finds that the union can represent the party in dispute before the Arbitration Council only when the union receives written authorisation letter from the parties.

In this case, the union claims that it raises all the nine issues on behalf of all the workers at CIK Cambo. On 23 January of 2013, the workers submitted the letter of request

for help from 32 workers dated 19 January 2013 to the CLUF and the union to settle their disputes.

The Arbitration Council finds that this letter of request was made after the hearing held on 18 January 2013. Hence, the Arbitration Council does not accept this letter of request.

The Arbitration Council finds that the union has no legitimate right to represent all workers at CIK Cambo.

In conclusion, disputing parties in this case are the 13 members of the union and the employer, CIK Cambo Co., Ltd.

Issue 1 (B): The workers demand that the employer permit each worker to receive advanced payment of US\$50 from their wages in order to cover the expenses for travel to and from their homeland.

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

The Arbitration Council finds that there is no provision in the Labour Law permitting workers to receive advanced payment from their wages. Also, the employer and the workers do not have any collective agreement, agreement, or labour contract stipulating advanced payment from wages.

In this case, the Arbitration Council finds that the issue is an interests dispute.

Paragraph 2 of Article 96 of the Labour Law states:

The collective agreement is a written agreement relating to the provisions provided for in Article 96-paragraph 1. The collective agreement is signed between:

- a. One part: an employer, a group of employers, or one or more organisations representative of employers; and
- b. the other part: one or more trade union organisations representative of workers...

Clause 9 of Prakas no. 305 dated 22 November 2001 states:

Any union holding the status of most representative union (MRS) shall have the right to approach the employer for the purpose of negotiating a collective bargaining agreement applying to all the workers it represents. In this case, the employer shall be required to enter into negotiations.

In reference to Article 96 and Clause 9 above, for the interests dispute, the Arbitration always considers the MRS in dispute. The Arbitration Council finds that the MRS gives legitimate rights to the union to bargain for the collective agreement and the legitimate rights to bring the interests dispute to the Arbitration Council for resolution.

Clause 43 of Prakas 099 dated 21 April 2004 states:

An arbitral award which settles an interests 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.

In reference to Clause 43 above, The Arbitral Award on interests dispute take the place of a collective bargaining agreement that applies on all workers in the company and takes away from other workers who are not the union members the rights to strike on interests disputes in the future. The Arbitration Council cannot settle an interests dispute unless the union that brings the disputes is the union holding the MRS or the collective unions having more than half of the total number of workers in the enterprise (*see the Arbitral Award 81/04-Ever Green, Issue 4 and 98/04-Great Union, Issue 3*).

In case no. 169/11-Fortune Teo , Issue 5, the Arbitration Council declined to consider the interests dispute because the union that brought the dispute did not hold the MRS in the factory (*see the Arbitral Award no. 02/11-Pou Yuen, Issue 2, and 66/11-In Han Sung, Issue1*).

In this case, the union does not have the MRS. Therefore, this union does not meet the legal requirement to bring an interests dispute to the Arbitration Council.

The Arbitration Council decides to decline to consider the workers' demand that the employer permit each worker to receive advanced payment of US\$ 50 from their wages in order to cover the expenses for travel to and from their homeland.

Issue 2: The workers demand that the employer dismiss Kim Heng, the translator.

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

As the issue is in relation to about contracts of employment stipulated in the Labour Law, the Arbitration Council finds that this is a rights dispute.

The workers demand that the employer terminate Kim Heng's contract of employment, the translator, because some workers heard him verbally abuse the workers on strike. The employer claims it does not terminate King Heng's contract of employment.

The Arbitration Council considers whether the workers have the right to demand the termination of Kim Heng's contract of employment.

Paragraph 1, Article 65 states "*A labour contract establishes working relations between the workers and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting party...*"

Article 311 of the Civil Code states "*Contract is the action of two persons or more who are willing to make, modify, or terminate the obligations...*"

In reference to the Article 65 of the Labour Law and Article 311 of the Civil Code above, the Arbitration Council finds that parties which have the rights to terminate the contract are only the contracting parties, the employer and the workers. The third party has no rights to terminate the contract of employment made between the employer and the workers (*see the Arbitral Award no. 116/10-Whitex Garment, Issue1*).

This means that only the employer has the right to terminate the translator's contract of employment, not the workers.

In jurisprudence, the Arbitration Council finds that:

The workers have no right to order or demand the employer to dismiss or transfer any workers unless the workers have evidence to prove that the worker is a dangerous person that cannot be kept in the company or factory or that keeping the worker who is a dangerous person may cause or affect the safety of other workers.

(see the Arbitral Award no. 14/03-Chou Sing, Issue 1, no. 17/03, and 18/03-Ho Hing, Issue 4, no. 87/04-Noble, Issue 5, no. 129/09-Whitex Garment, Reasons for Decision, Issue 1 and no. 123/10-June Textile)

The workers allege that Kim Heng verbally abused workers on strike. Workers attending the hearing did not hear the verbal abuse firsthand. They allegedly heard it from other workers.

In jurisprudence, the Arbitration Council finds that the party making allegations bears the burden of proof *(see the Arbitral Award no. 79/05-Evergreen, 101/08-GDM, Issue 1 & 2, 168/09-Teoktla Plaza, Issue 2, and 115/10-G-Fore Most, Issue 18 and 148/11-Dai Young)*.

In previous arbitral awards, the Arbitration Council rejected disputing parties' claim when the parties did not have specific evidence to prove the claim *(see the Arbitral Award no 63/04-Shine Well, Issue 4, 99/06-South Bay, Issue 5, 33/07-Gold Fame, Issue 4, 51/07-Gold Fame, Issue 3)*.

In this case, the workers did not submit specific evidence to the Arbitration Council to support the allegation regarding the verbal abuse and to prove that Kim Heng was a dangerous person that cannot be kept in the company or the factory and that keeping him would cause or affect the safety of other workers.

Therefore, the Arbitration Council decides to reject the workers' demand that the employer terminate contract of employment of King Heng, the translator.

Issue 5: The workers demand that the employer increase the minimum wage of the workers in the packaging, ironing, and carton section to US\$71 which is equal to the minimum wage that workers in the sewing section receive.

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

Article 106 of the Labour Law states *"For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age."*

As this demand is in relation to equal wages stipulated in the Labour Law, the issue is a rights dispute.

In reference to Article 106 above, the principle of equal wages is under 3 conditions: (1) equal working conditions, (2) equal professional skill, and (3) equal output *(see the*

Arbitral Award 23/07-Jung Min, Issue 1, 84/07-Yung Wah 2, Issue 1, 73/08-Yung Wah 1, Issue 3, 22/09-Global Apparel, Issue 1 & 3, 47/09-Naga World, Issue 4).

The Arbitration Council considers whether the principle of equal wages can be applied to the workers in the packaging, ironing, and carton section and workers in other sections.

The workers argue that: 1) The workers in the packaging, ironing, and carton section produce the same output as the workers in the sewing section, 2) the workers have the same level of technical skills, and 3) the workers have the same types of contracts of employment. The employer responds that the workers in the sewing section are skilled workers and it's hard to recruit them. The workers in the packaging section are not skilled workers, so it's not hard to recruit them.

The workers did not submit evidence to the Arbitration Council to prove the amount of output that those workers produce or the skill that those workers have (see the interpretation on the evidence in Issue 2 above).

The Arbitration Council decides to reject the workers' demand that the employer pay each worker in the packaging, ironing, and carton sections the minimum wage of US\$71 per month which is equal to the wages of the workers in the stitching section.

Issue 6: The workers demand that the employer refrain from replacing striking with newly recruited workers.

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

As this demand is in relation to replacement of striking workers, the issue is a rights dispute.

Currently, there is no strike at the company. The employer claims it does not have any policy to replace workers on strike.

The Arbitration Council finds that the workers' demand has no merit as an on-going issue for the Arbitration Council to take into consideration.

In the case no. 10/03-Jacqsintex, the Arbitration Council interpreted that "*The establishment of the Arbitration Council is to settle labour dispute, not the issues yet to happen.*"

The Arbitration Panel of this case agrees with previous interpretation because no one can predict the issues which will be happening in the industrial relations between the parties.

In the previous cases, the Arbitration Council declined to consider the demand having substance as future disputes (*see the Arbitral Award no. 68/04-City New, Issue 4, 36/06-Mondotex, Issue 5, 58/07-8 Star Sportwear, Issue 1*).

The Arbitration Panel in this case agrees with the interpretation made in previous cases.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer refrain from replacing striking workers with new workers.

Issue 7: The workers demand that the employer provide an additional US\$10 attendance bonus per month.

The Arbitration Council considers whether this issue gives rise to a rights dispute or an interests dispute.

Point 2 of the Notification no. 230 dated 25 July 2012 about the benefits for workers in the garment and footwear sector states "*Workers who attend work regularly in accordance with the number of working days in each month without absence will receive a monthly bonus of at least US\$10.*"

The employer provides workers with a US\$10 attendance bonus per month. This practice complies with the above provision of the notification.

In this case, the workers' demand is more than what the law sets. Hence, this dispute is an interests dispute (see the interpretation about interests dispute in Issue 1/B above).

The Arbitration Council decides to decline to consider the workers' demand that the employer provide an additional US\$10 attendance bonus per month on top of the existing US\$10 attendance bonus.

Issue 8: The workers demand that the employer provide a monthly US\$2 payment in lieu of lunch.

The Arbitration Council considers whether the issue gives rise to a rights dispute or an interests dispute.

The Arbitration Council finds that there is no provision in relation to payment in lieu of lunch in the Labour Law. The employer and the workers do not have a collective agreement, agreement, or contracts stipulating payment in lieu of lunch.

In this case, the Arbitration Council finds that the demand is an interests dispute (*see the interpretation about the interests dispute in the Reasons of Issue 1/B above*).

The Arbitration Council decides to decline to consider the workers' demand that the employer provide a monthly US\$2 payment in lieu of lunch.

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 2:

Reject the workers' demand that the employer terminate contract of employment of Kim Heng-the translator.

Issue 5:

Reject the workers' demand that the employer increase the minimum wage of the workers in the packaging, ironing, and carton section to US\$71 which is equal to the minimum wage received by workers in other sections of the factory.

Issue 6:

Decline to consider the workers demand that the employer refrain from replacing striking workers with newly recruited workers.

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 03 October 2012.

Part II. Interests dispute:

Issue 1/B:

Decline to consider the workers demand that the employer permit each worker to receive advanced payment of US\$50 from their wages in order to cover the expenses for travel to and from their homeland.

Issue 7:

Decline to consider the workers demand that the employer provide an additional US\$10 attendance bonus per month.

Issue 8:

Decline to consider the workers' demand that the employer provide a monthly US\$2 payment in lieu of lunch.

Type of award: non-binding award

The award in Part II 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: **Seng Vuoch Hun**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: