



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 21/11-Sun Sky

Date of Award: 4 March 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTANT PARTIES

Employer party:

Name: **Sun Sky (Cambodia) Industries Co., Ltd (the employer)**

Address: Prey Tea Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 016 744 723

Fax: N/A

Representatives:

- | | |
|--------------------|--|
| 1. Mr Chey Soroth | Head of Administration |
| 2. Mr Chuon Nim | Assistant in the Human Resources Section |
| 3. Ms Chin Pov | Worker in Sewing Group II |
| 4. Ms Ser Leap | Worker in the Quality Control Section |
| 5. Ms Try Thari | Sewing Worker |
| 6. Ms Sok Sophal | Physician |
| 7. Ms Khiev Naren | Sewing Worker |
| 8. Mr Yos Chanry | Mechanic |
| 9. Mr Chuon Pin | Mechanic |
| 10. Mr Khvan Vutha | Cotton Worker |
| 11. Ms Long Ratana | Worker |

Worker party:

Name: **Coalition Union of Movement of Khmer Workers (CUMW)**

Address: Prey Tea Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 482 284

Fax: N/A

Representative: Absent

ISSUES IN DISPUTE

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

1. The workers demand that the employer recognise the Local Union of CUMW.
2. The workers demand that the employer instruct supervisors and the head of section to use polite language towards them.
3. The workers demand to be allowed to work overtime on a voluntary basis.
4. The workers demand that the employer cease requiring them to sew beyond their capabilities.
5. The workers demand that the employer resume providing an incentive bonus.
6. The workers demand that the employer provide an additional meal allowance of 1,500 riel for overtime work from 4:00 p.m. to 7:30 p.m.
7. The workers demand that the employer allow them to take leave.
8. The workers demand that the employer allow them to leave work at 4:00 p.m. on Saturdays.
9. The workers demand that the employer set up a day-care centre.
10. The workers demand that the employer grant female workers a one hour break so they can breastfeed their children.
11. The workers demand that the employer abandon its practice of requiring workers to have an entry card in order to use the toilet.
12. The workers claim that the employer forced them to affix their thumbprints to documents.
13. The workers demand that the employer install more toilets.
14. The workers demand that the employer build a canteen.

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. 133 dated 9 June 2010 (Eighth 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. 163 KB/RK/VK dated 9 February 2011 was submitted to the Secretariat of the Arbitration Council on 9 February 2011.

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 Quarter, Tuol Kork District, Phnom Penh

Date of hearing: 28 February 2011 at 8:30 a.m.

Procedural issues:

On 10 January 2011, the Department of Labour Disputes received a complaint from CUMW, outlining its demands for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute. The last conciliation session was held on 31 January 2011, resulting in none of the 14 issues being resolved. The 14 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 9 February 2011 via non-conciliation report No. 163 KB/RK/VK, dated 9 February 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and CUMW to a hearing and conciliation of the 14 non-conciliated issues, to be held on 28 February 2011 at 8:30 a.m. However, CUMW did not attend the hearing, nor did it request to postpone the hearing or provide a proper reason for its absence. It merely stated that it would not attend the hearing when contacted by the Secretariat via telephone prior to the hearing date. The employer, on other hand, attended the hearing as summoned by the Arbitration Council. The Arbitration Council considers and decides on the case below.

EVIDENCE

Witnesses & Experts: N/A

Documents, Exhibits, and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Authorisation letter from the director of Sun Sky for Chey Soroeth, dated 16 February 2011.
2. Collective agreement between the union and the management of Sun Sky, dated 10 April 2008.

3. Internal Work Rules of the employer, dated 8 June 2005.
4. Certificate of commercial registration of Sun Sky, dated 6 June 2005.
5. Company statute of Sun Sky, dated 14 February 2005.

B. Provided by the worker party: N/A

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at Sun Sky (Cambodia) Industries Co., Ltd, No. 163 KB/RK/VK, dated 9 February 2011.
2. Record of collective labour dispute resolution at Sun Sky (Cambodia) Industries Co., Ltd, dated 31 January 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 118 KB/RK/VK/LKR dated 11 February 2011.
2. Notice to attend the hearing addressed to the workers, No. 119 KB/RK/VK/LKR dated 11 February 2011.
3. Notice to attend the hearing addressed to the employer, No. 142 KB/AK/VK/LKA dated 21 February 2011.
4. Notice to attend the hearing addressed to the workers, No. 143 KB/AK/VK/LKA dated 21 February 2011.

FACTS

N/A

REASONS FOR DECISION

In this case, CUMW did not attend the hearing, nor did it request to postpone the hearing or provide a proper reason for its absence. It merely stated that it would not attend the hearing when contacted by the Secretariat via telephone prior to the hearing date. Therefore, the Arbitration Council considers the case as follows:

Clause 21 of *Prakas* No. 099 on the Arbitration Council, dated 21 April 2004, provides that “[i]n the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.”

Rule 4.7 of the Procedural Rules of the Arbitration Council, Annex to *Prakas* No. 099 dated 21 April 2004, provides that “[i]f a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award.”

In Arbitral Awards 16/07-Lotus and 27/07-M & V (Branch 3), the Arbitration Council interpreted this clause to mean that three conditions must be fulfilled for the Council to close a case: “The first condition [is] that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for its lack of appearance.”

The Arbitration Council agrees with the interpretation above. Thus, the Council will consider whether the three conditions are fulfilled in this case.

First condition: the party is properly notified

The officers of the Secretariat contacted the worker party and informed it of the arbitral hearing. However, the worker party responded that it would not attend. The Arbitration Council finds that the worker party was properly notified of the hearing by the Secretariat. **Hence, the first condition is fulfilled.**

Second condition: the party does not appear at the hearing

The Arbitration Council considers the phrase “*appear before the arbitration panel*” in the said *Prakas* to mean that parties have to (1) be present at the hearing and (2) participate in the whole process.

The arbitration process comprises four steps as follows:

- A. Introduction and disclosure of any conflict of interest by arbitrators;
- B. Explanation of the arbitral process and confirmation of the issue in dispute;
- C. Conciliation, if the parties agree; and
- D. Arbitration.

In this case, the worker party did not attend any of the four abovementioned steps. Thus, the Arbitration Council concludes that the worker party did not appear at the hearing in compliance with the second condition of the said *Prakas*. **Hence, the second condition is fulfilled.**

Third condition: the party does not provide proper reasons for its lack of appearance

In this case, the Secretariat of the Arbitration Council contacted the employer and the workers to remind them of the hearing. However, the worker party responded that there were no workers making the demands and therefore it would not attend the hearing. The employer, on the other hand, attended the hearing as summoned. Thus, the Arbitration Council considers that **the workers did not provide a proper reason for non-appearance.** **Hence, the third condition is also fulfilled.**

In conclusion, the three conditions stipulated in the aforementioned clause are fulfilled.

Based on the foregoing, the Arbitration Council considers that even though the workers did not attend the hearing, the Arbitration Council is empowered to issue an award.

In addition, the Arbitration Council has provided ample opportunity to CUMW, the claimant, to argue the workers' claim in accordance with the Labour Law; however, the worker party opted for non-appearance and passed up the opportunity to present evidence to support its claim. Generally, the claimant is obliged to argue its claim by providing reasons and evidence before the Arbitration Council; in this case, the worker party has not fulfilled its obligation to do so. The claimant did not attend the hearing and has lost the opportunity to provide reasons and evidence to argue its claim.

Therefore, the Arbitration Council considers that the worker party has dropped its claim.

Thus, the Arbitration Council decides to close case 21/11-Sun Sky.

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

DECISION AND ORDER

Close case 21/11-Sun Sky.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: