



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 02/12-Tae Young

Date of award: 9 February 2012

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: **Tuon Siphann**

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

DISPUTANT PARTIES

Employer party:

Name: **Tae Young (Cambodia) Co., Ltd. (the employer)**

Address: National Road 4, Bek Chan Commune, Angsnoul District, Kandal Province

Telephone: 099 323 231 Fax: N/A

Representative at the first hearing:

1. Mr Prak Boranet Head of Administration

Representative at the second hearing:

1. Mr Prak Boranet Head of Administration

Worker party:

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

Local Union of CLUF

Address: No. 30C, Borey Solar, Street 371, Teouk Thla Commune, Sen Sok District, Phnom
Penh

Telephone: 012 837 768 Fax: N/A

Representatives at the first hearing:

1. Mr Khen Sokhorn General Secretary of CLUF

- | | | |
|----|------------------------|-----------------|
| 2. | Mr Hour Pov | Officer of CLUF |
| 3. | Ms Lei Socheat | Worker |
| 4. | Ms John Ravy | Worker |
| 5. | Mr Van Bon | Worker |
| 6. | Mr Chhem
Pengthoeun | Worker |
| 7. | Mr Sorn Phally | Worker |
| 8. | Mr Pok Oudom | Worker |

Representatives in the second hearing:

- | | | |
|----|----------------|----------------------------------|
| 1. | Mr Chay Sophea | Deputy General Secretary of CLUF |
| 2. | Ms Lei Socheat | Worker |
| 3. | Ms John Ravy | Worker |
| 4. | Mr Van Bon | Worker |

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate Lei Socheat, John Ravy, and Van Bon to their former positions and back pay their wages from the date of dismissal to the date of reinstatement. The employer refuses to reinstate them because the employer's request for their work suspension is being reviewed by the Department of Labour Disputes of Kandal province. The employer adds that it has not terminated their contracts and it has maintained their wages and benefits.
2. The workers demand that the employer dismiss Kheng Borey, the head of the sewing section. The workers allege that he used abusive language towards them and yelled loudly at workers. The workers claim that the employer has failed to implement the agreement dated 12 December 2011. The employer refuses to dismiss him and will follow its administrative procedure.
3. The workers demand that the employer dismiss Sout Rithy and Kruy Ratana, the heads of sections. The workers allege that they continue to use insulting language towards workers. The employer states that it has already given them a verbal and a written warning.

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. 136 dated 7 June 2011 (Ninth 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. 034 KB/KN dated 27 December 2011 was submitted to the Secretariat of the Arbitration Council on 6 January 2012.

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 Commune, Tuol Kork District, Phnom Penh

Date of hearing: First hearing: 17 January 2012 at 2:00 p.m.

Second hearing: 19 January 2012 at 8:30 a.m.

Procedural issues:

On 27 December 2011, the Department of Labour Disputes of Kandal province held a conciliation session which resulted in two of the five issues being resolved. The three non-conciliated issues were referred to the Secretariat of the Arbitration Council on 6 January 2012, via the non-conciliation report dated 27 December 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the three non-conciliated issues, held on 13 January 2012 at 2:00 p.m. and on 19 January 2012 at 8:30 a.m. Both parties were present at both hearings. The Arbitration Council conducted a further conciliation of the three issues, resulting in issues 2 and 3 being resolved. The remaining issue in dispute is issue 1.

As both parties are signatories to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU) dated 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. In accordance with the MoU, both parties have agreed to choose binding arbitration on rights disputes. However, this does not apply to interests disputes. The parties are able to choose non-binding arbitration of interests disputes, and can object to an arbitral award on such disputes. Such an objection will not affect the parties' obligation to implement an award on rights disputes in accordance with the spirit of the MoU.

In this case, both parties chose non-binding arbitration of interests disputes. The workers and the employer agreed to extend the due date for issuance of the award from 27 January to 9 February 2012.

The Arbitration Council will consider the issues in dispute based on the evidence and reasons below.

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party:

1. Authorisation letter from the employer for Prak Boranet, submitted to the chief of the Secretariat of the Arbitration Council, dated 30 December 2011.
2. Notice to the employer of a seven day strike from the Local Union of CLUF, aimed at pushing the employer to implement the agreement dated 12 December 2011 and to improve some working conditions, dated 22 December 2011.
3. Order for provisional relief issued by the Court of Kandal province, dated 9 December 2011.
4. Company statute of the employer, dated 6 April 2011.
5. Certificate of commercial registration of the employer, No. 2574 dated 10 May 2011.
6. Suspension notice, effective from 7 December 2011, from the employer to Lei Socheat, No. HR-Admin-017-12/2011TYC dated 7 December 2011.
7. Record of information provided by Lei Socheat, John Ravy, and Van Bon who are suspended from work by the employer, dated 7 December 2011.
8. Internal Work Rules of the employer, No. 379/11 dated 23 August 2011.
9. Endorsement thumbprints of the workers who participated in the strike on 6 December 2011.
10. Minutes of individual labour dispute conciliation between the employer and John Ravy, dated 17 January 2012.
11. Minutes of individual labour dispute conciliation between the employer and Lei Socheat, dated 17 January 2012.

B. Provided by the worker party:

1. Registration certificate of the Local Union of CLUF, No. 2259 dated 22 September 2011.
2. Letter from the Minister for Labour and Vocational Training confirming that the Local Union of CLUF has been formally registered, effective from the date of signature at the Ministry of Labour and Vocational Training, No. 233 dated 22 September 2011.

3. Endorsement thumbprints of the workers who participated in the strike on 6 December 2011.

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

1. Report on collective labour dispute resolution at Tae Young (Cambodia) Co., Ltd., No. 034/11 KB/KN, dated 27 December 2011.
2. Minutes of collective labour dispute resolution at Tae Young (Cambodia) Co., Ltd., dated 27 December 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 032 KB/AK/VK/LKA dated 10 January 2012.
2. Notice to attend the first hearing addressed to the workers, No. 033 KB/AK/VK/LKA dated 10 January 2012.
3. Notice to attend the second hearing addressed to the employer, No. 056 KB/AK/VK/LKA dated 16 January 2012.
4. Notice to attend the second hearing addressed to the workers, No. 057 KB/AK/VK/LKA dated 16 January 2011.
5. Agreement on binding arbitration of rights disputes, dated 13 January 2012.

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:

- Tae Young (Cambodia) Co., Ltd. commenced operation on 13 June 2011. Currently, it employs a total of 647 workers.
- There are three unions in the factory: the Local Union of CLUF, the Local Union of the Cambodian Union Federation (CUF), and the Local Union of the Voice Khmer Youth Union Federation (VKFTU). The claimant union represents 472 workers.

Issue 1: The workers demand that the employer reinstate Lei Socheat, John Ravy, and Van Bon to their former positions and back pay their wages from the date of their dismissal to the date of reinstatement.

- Lei Socheat, the president of the Local Union of CLUF, commenced work in the sewing section on 13 June 2011 on an undetermined duration contract.

- John Ravy, the vice-president of the Local Union of CLUF, commenced work in the sewing section on 17 June 2011 on an undetermined duration contract.
- Van Bon, the secretary of the Local Union of CLUF, commenced work in the sewing section on 15 June 2011 on an undetermined duration contract.
- The employer's practice was to provide a daily 1,000 riel incentive bonus to sewing workers when the production target is achieved. The employer later changed its practice, providing the same incentive bonus but for meeting the production target for a full week. However, the workers did not agree to the change. Three union leaders held a negotiation meeting with the employer over the change of practice, but the employer refused to accommodate the workers' demand [to keep the original practice]. Consequently, a strike broke out.
- The employer accused the three union leaders of committing serious misconduct under Article 83, part B, point 5 of the Labour Law by inciting other workers to go on strike. Consequently, the employer suspended them on 6 December 2011 and on 17 January 2012 it notified them of their dismissal, effective from 17 February 2012. The employer has paid their outstanding wages for December 2011.
- The employer made a request to the Department of Labour Disputes on 20 December 2012 [2011] for authorisation to dismiss the three union leaders.
- The Arbitration Council did not receive by 24 January 2012, the deadline for evidence submission, evidence of the response from the Labour Inspector to the employer's request for authorisation to dismiss the three union leaders. The evidence submitted by the employer on 27 January 2012, after the deadline, is not considered by the Arbitration Council.

REASONS FOR DECISION

Issue 1: The workers demand that the employer reinstate Lei Socheat, John Ravy, and Van Bon to their former positions and back pay their wages from the date of their dismissal to the date of reinstatement.

Before determining this issue, the Arbitration Council considers whether the demand gives rise to a rights dispute.

In previous arbitral awards, the Arbitration Council has ruled that "a rights dispute is a dispute which has a basis in the law, an agreement [employment contract], or a collective agreement" (see *Arbitral Awards 05/11-M & V (Branch 1), reasons for decision, issue 1*;

13/11-Gold Kamvimex, reasons for decision, issues 1 & 2; and 14/11-GHG, reasons for decision, issue 4).

The Arbitration Council applies this ruling in this case. The Arbitration Council considers this demand, concerning reinstatement and back payment of wages, to be a rights dispute as it has a basis in the Labour Law.

Article 293 of the Labour Law states:

The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector. The same protective measures apply to former shop stewards three months following the end of their terms and to unelected candidates during three months following the proclamation of the results of the ballot. Any reassignment or transfer that would end the shop steward's term is subject to the same procedure.

The Labour Inspector, who has been referred a request to authorise the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question as well as to the union organisation to which the worker belongs, within one month at the latest upon receipt of the case.

On receipt of the decision, the employer, the worker in question, or the union organisation to which the worker belongs has a period of two months to appeal to the Minister in Charge of Labour. The Minister in Charge of Labour can cancel or reverse the decision of the Labour Inspector.

If there is no notification of the Labour Inspector's decision within the allotted time, or if there is no notification of the decision of Minister in Charge of Labour within two months upon receipt of the appeal, the case and the appeal are considered to be rejected.

This article also applies to union leaders; Clause 4 of *Prakas* No. 305 dated 22 November 2001, issued by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, states that: "..., this protection shall be provided to the three union leaders pursuant to the conditions stipulated in Articles 282 and 293 of the Labour Law."

Based on Article 293 of the Labour Law, the employer is required to make a request to the Labour Inspector for authorisation to dismiss the union leaders.

According to the facts, the employer made a request for authorisation to dismiss the three union leaders to the Department of Labour Disputes of Kandal province on 20 December 2012 [2011]. On the due date for evidence submission set for both parties, over a month had passed since the request was submitted. The Arbitration Council did not receive

evidence of a response to the employer's request from the Department of Labour Disputes of Kandal province.

Based on Article 293, the Arbitration Council considers that the absence of a response from the provincial Department of Labour Disputes to the employer's request for authorisation to dismiss the three union leaders suggests that the employer's request is rejected. Furthermore, the Arbitration Council did not receive any evidence of an appeal being made against the decision of the Labour Inspector.

Article 295 of the Labour Law states:

In the case of serious misconduct, the manager of enterprise can render the decision to instantly suspend the party in question pending the Labour Inspector's decision. If the Labour Inspector turns down the dismissal, the suspension is annulled and its effects are cancelled lawfully.

In this case, the employer has accused the three union leaders of committing serious misconduct. Therefore, it has suspended their contracts; however, the employer's request for authorisation to dismiss the three union leaders has been rejected [because if there is no response from the Labour Inspector after one month, the decision is deemed to be a refusal of the request for authorisation for dismissal]. Based on Article 295 of the Labour Law, the effects of the suspension, that is, the workers being unable to work and not being entitled to wage payment, are cancelled by law.

Clause 34 of *Prakas* No. 099 dated 21 April 2004 on the Arbitration Council states:

it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:

- A. orders to reinstate dismissed employees to their former or any other appropriate position;
- B. orders to the immediate payment of back pay;

In conclusion, the Arbitration Council orders the employer to reinstate Lei Socheat, John Ravy, and Van Bon and back pay their wages from the date of their dismissal to the date of reinstatement.

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: Order the employer to reinstate Lei Socheat, John Ravy, and Van Bon and back pay their wages from the date of their dismissal to the date of reinstatement.

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 28 September 2010.

Part II. Interests dispute: N/A

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: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: