



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**  
**THE ARBITRATION COUNCIL**

**Case number and name: 147/11-Hung Wah**

**Date of Award: 14 December 2011**

### **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: **Ann Vireak**

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

#### **DISPUTANT PARTIES**

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

Name: **Hung Wah (Cambodia) Garment Manufacturing Ltd (the employer)**

Address: Trapang Thloeng Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 726 113

Fax: N/A

Representatives:

1. Mr Chan Ven Director of the employer
2. Mr Heng Sokha Head of Administration

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

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

##### **Local Union of FTUWKC**

Address: #28B St. 222, Boeung Raing Commune, Daun Penh District, Phnom Penh

Telephone: 012 935 496

Fax: N/A

Representatives:

1. Mr Man Senghak Officer of FTUWKC
2. Ms Touch Ser President of the Local Union of FTUWKC
3. Mr Hol Sokun Representative of workers
4. Mr Oun Sokseyha Representative of workers
5. Ms Khut Sovann Representative of workers

- |    |                 |                           |
|----|-----------------|---------------------------|
| 6. | Ms Nghin Sinuon | Representative of workers |
| 7. | Mr Mao Kimhuy   | Representative of workers |
| 8. | Mr Im Touch     | Representative of workers |
| 9. | Mr Pen Simy     | Representative of workers |

### **ISSUE IN DISPUTE**

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

The workers demand that the employer provide workers in the Training, Finishing and Quality Control Sections with the monthly US\$ 3 incentive bonus that it provides to workers in the Sewing Section. The employer states that its current policy is to provide incentive bonuses of 500, 1,000 or 2,000 riels to any worker who has achieved production targets in the Training, Finishing, and Quality Control Sections.

### **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. 1249 KB/RK/VK dated 7 November 2011 was submitted to the Secretariat of the Arbitration Council on 14 November 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:** 24 November 2011 at 8:30 a.m.

**Procedural issues:**

On 17 October 2011, the Department of Labour Disputes received a complaint from the Local Union of FTUWKC, No. 394/11 dated 11 October 2011, outlining the workers' demand for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the dispute and the last conciliation session was held on 28 October 2011. The issue was not resolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 14 November 2011 via non-conciliation report No. 1249 KB/RK/VK dated 7 November 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 non-conciliated issue, held on 24 November 2011 at 8:30 a.m. Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the issue, but it remained unresolved.

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 of rights disputes. The parties remain free 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 have chosen non-binding arbitration of interests disputes, and have agreed to an extension of the due date for issuance of the award until 14 December 2011.

The Arbitration Council will consider the issue in dispute based on 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. Brief statement on the labour dispute.
2. Certificate of commercial registration of the employer, dated 19 October 2011.
3. Internal Work Rules of the employer, dated 5 August 2004.
4. Letter confirming the provision of a US\$ 3 transportation allowance, dated 2 August 2010.
5. Company statute of the employer, dated 10 June 1997.

### **B. Provided by the worker party:**

1. Complaint by the Local Union of FTUWKC that the employer has not provided a US\$ 3 incentive bonus, No. 394/11 dated 13 October 2011.
2. Authorisation letters from representatives of the Local Union of FTUWKC and representatives of workers at the factory to the President of FTUWKC requesting the President to help resolve an issue regarding the employer's non-compliance with an agreement, dated 3 October 2008.
3. Certificate of registration of the Local Union of FTUWKC, dated 14 January 2008.
4. Statute of the Local Union of FTUWKC, dated 14 January 2008.
5. Articles 35 and 36 of the Constitution of the Kingdom of Cambodia.

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

1. Report on collective labour dispute resolution at Hung Wah (Cambodia) Garment Manufacturing Ltd, No. 1249 KB/RK/VK, dated 7 November 2011.
2. Record of collective labour dispute resolution at Hung Wah (Cambodia) Garment Manufacturing Ltd, dated 28 October 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend to the hearing addressed to the employer, No. 829 KB/AK/VK/LKA, dated 17 November 2011.
2. Notice to attend the hearing addressed to the workers, No. 830 KB/AK/VK/LKA, dated 17 November 2011.
3. Agreement on a binding award on rights disputes, dated 24 November 2011.

**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:**

- Hung Wah (Cambodia) Garment Manufacturing Ltd employs a total of 2,200 workers.
- The Local Union of FTUWKC, representing 150 workers, is the claimant in this case.
- The workers claim that 1,000 workers are involved in this case.
- Based on a list of names submitted by the workers, the Arbitration Council finds that only 939 workers have authorised the Local Union of FTUWKC to represent them. The employer does not object to the list of names.

**Issue: The workers demand that the employer provide a monthly US\$ 3 incentive bonus to workers in the Training, Finishing, and Quality Control Sections.**

- The workers demand that the employer provide to workers in the Training, Finishing, and Quality Control Sections the monthly US\$ 3 incentive bonus that it provides to workers in the Sewing Section.
- The employer argues that the US\$ 3 is not an incentive bonus. It is provided to piece rate workers, who have the US\$ 6 living allowance incorporated into their wages, after they have achieved production targets.
- The workers state that Sewing Section workers have been provided with the US\$ 3 per month for almost a year.

**Workers in the Training Section:**

- The workers state that workers in the Training Section are versatile. They work in different sections, possess multiple skills, and handle different tasks, with the exception of sewing tasks. They are not piece rate workers.
- The workers further state that their tasks involve drawing collar plugs, ironing, and cutting, as well as boring, driving, and modifying buttons and sending them to the Sewing Section.

**Workers in the Finishing and Quality Control Sections:**

- The workers state that the tasks of workers in the Finishing Section include trimming threads, ironing, and packaging, and the task of workers in the Quality Control Section is to check finished products.
- The workers state that workers in the Training, Finishing, and Quality Control Sections only receive a US\$ 61 main wage as well as a seniority bonus and attendance bonus. They are not provided with the monthly US\$ 3 incentive bonus, although they have achieved production targets.
- The workers state that workers in the Training, Finishing, and Quality Control Sections work as hard as workers in the Sewing Section. The workers contend that products would not be finished without the efforts of the workers in the Training, Finishing, and Quality Control Sections.
- The employer refuses to accommodate the workers' demand. The employer states that it provides the US\$ 3 to workers in the Sewing Section because they are piece rate workers, whose wages are incorporated with US\$ 6 living allowance.
- The employer states that for almost two months it has provided a new daily incentive bonus of 500 riels, 1,000 riels, or 2,000 riels to workers in each section. The employer further states that it plans to provide the new incentive bonus to all workers.
- The workers argue that the new incentive bonus applies to only some sections. The workers state that they will not accept the new incentive bonus if they are not provided with the US\$ 3.
- The workers cited the Cambodian Constitution, stipulating equal pay for the same work, as the basis for their demand but could not recall the specific articles of the Constitution. On 28 November 2011, the workers submitted Article 36 of the Constitution to substantiate their claim.

## REASONS FOR DECISION

Before deciding the issue, the Arbitration Council will consider whether the demand gives rise to an interests dispute or rights dispute.

In previous Arbitral Awards, the Arbitration Council has held that “a rights dispute is a dispute concerning entitlements in the law, an agreement or a collective agreement” (see AAs 05/11-M&V 1, reasons for decision, issues 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issues 1 and 2; 14/11-GHG, reasons for decision, issue 4; and 37/11-ASD, reasons for decision, issue 1).

The Arbitration Council will apply the abovementioned interpretation in this case. The Arbitration Council considers that the issue in dispute (the US\$ 3 incentive bonus) is a rights dispute as it concerns entitlements in the Labour Law [i.e. the principle of equal pay for the same work]. The Arbitration Council considers the demand as follows.

Clause 19 of Prakas No. 099 KSBY dated 21 April 2004 states:

A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorised in writing by that party.

The Arbitration Council has interpreted the phrase “**expressly authorised in writing**” to mean that disputant parties can be represented by other persons before the Arbitration Council only if those persons are expressly authorised in writing (see AAs 161/09-Prek Treng and 43/10-Ming Jian).

In this case, the Arbitration Council finds that 939 workers authorised the Local Union of FTUWKC to represent them in resolving the issue in dispute. Therefore, the Local Union has legal standing to represent the 939 workers before the Council. As to whether the 939 workers’ thumbprints are genuine or faked, the Arbitration Council is not competent to examine the thumbprints. The employer does not object to the thumbprints on the list of names submitted by the Local Union of FTUWKC.

Article 2 of the Labour Law states:

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in [a] factory, workshop, work site, etc., under the supervision and direction of the employer.

In previous Arbitral Awards, the Arbitration Council has ruled that the employer has the right to direct and supervise its enterprise as long as it does so lawfully and reasonably (see AAs 06/06-M&V, reasons for decision, issue 1 and 108/06-Trinunggal, reasons for decision, issue 1).

The Arbitration Council will apply the abovementioned ruling in this case.

In this case, workers in the Training, Finishing, and Quality Control Sections receive a US\$ 61 main wage, the same amount earned by workers in the Sewing Section. However, they are not provided with the US\$ 3 incentive bonus that the employer provides to workers in the Sewing Section. At the hearing, the workers cited the Cambodian Constitution, which stipulates equal pay for the same work, as the basis of their demand.

Article 36, paragraph 2 of the Constitution states that “Khmer citizens of either sex shall receive equal pay for the same work.”

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.

In previous Arbitral Awards, the Arbitration Council has ruled that a difference in professionalism or productivity can be a basis for a difference in wages (*see AA 68/04-City New, reasons for decision, issue 2*).

The Arbitration Council will apply the abovementioned ruling in this case.

The Arbitration Council finds that workers in the Training, Finishing, and Quality Control Sections have different skills and work on different tasks to workers in the Sewing Section; moreover, the productivity achieved is different. On the basis that workers’ tasks, professionalism, and productivity are different, the Arbitration Council considers that Article 106 of the Labour Law is not applicable to this case. Therefore, the workers in the Training, Finishing, and Quality Control Sections are not entitled to the US\$ 3 incentive bonus.

In conclusion, the Arbitration Council rejects the workers’ demand that the employer provide a US\$ 3 incentive bonus to workers in the Training, Finishing, and Quality Control Sections.

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

### **DECISION AND ORDER**

#### **Part I. Rights dispute:**

Reject the workers’ demand that the employer provide a US\$ 3 incentive bonus to workers in the Training, Finishing, and Quality Control Sections.

#### **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 time 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: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....