



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 164/11-Good People

Date of award: 1 February 2012

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Ann Vireak**

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

DISPUTANT PARTIES

Employer party:

Name: **Good People (Cambodia) Ltd. (the employer)**

Address: Trapang Lavea Village, Kakap Commune, Dangkor District, Phnom Penh

Telephone: 092 211 172

Fax: N/A

Representatives at the first hearing:

1. Mr Out Sophanarith Head of Administration
2. Mr Mun Hee Chul Interpreter
3. Mr Chet Khemara Officer of the Garment Manufacturers Association in Cambodia

Representatives at the second hearing:

1. Mr Kang Mun Won Head of the Factory
2. Mr Out Sophanarith Head of Administration
3. Mr Moon [Mun Hee Chul] Interpreter
4. Mr Chet Khemara Officer of the Garment Manufacturers Association in Cambodia
5. Mr Piseth Worker delegate

THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.

Worker party:

Name: **Cambodian Workers of Economic Union Federation (CWEUF)**

Address: No. 17E1, Street 2004, Teouk Thla Commune, Sen Sok District, Phnom Penh

Telephone: 012 636 766

Fax: N/A

Representatives at the first hearing:

1. Mr Sreang Narith Vice-President of CWEUF
2. Ms Chhem Sreymean Workers' representative
3. Ms Pon Mai Workers' representative
4. Ms Kit Chanratana Workers' representative

Representatives at the second hearing:

- 1 Mr Sreang Narith Vice-President of CWEUF
- 2 Ms Chhem Sreymean Workers' representative
- 3 Ms Pon Mai Workers' representative
- 4 Ms Vong Lang Workers' representative
- 5 Ms Som Davy Workers' representative
- 6 Mr Chan Sareth Vice-President of CAMDA
- 7 Ms Som Sokhoeun Workers' representative
- 8 Ms It Sophal Workers' representative

ISSUES IN DISPUTE

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

1. The workers demand that the employer convert the status of workers with over two months of service to that of permanent workers.
2. The workers demand that the employer reinstate Sok Ron, Vong Lang, It Sophal, Som Sokhoeun, Ath Nimul, Som Davy, Kit Chanrotny, Chhem Sreymean, Pon Mai, and Va Nayye, whom it dismissed without valid reasons on 15 October 2011.
3. The workers demand that the employer allow pregnant workers to have medical checks once per month and maintain their wages and benefits.
4. The workers demand that the employer provide monthly skill bonuses of US\$ 3, US \$6, and US\$ 15 to workers skilled in using one-needle, two-needle, and three-needle machines respectively.
5. The workers demand that the employer refrain from ordering skilled workers to clean their group's work area.
6. The workers demand that the employer arrange for workers to have medical checks and that it pay the associated expenses.

7. The workers demand that the employer provide a monthly US\$ 10 attendance bonus.
8. The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken.
9. The workers demand that the employer increase the monthly main wages of all workers by US\$ 65.
10. The workers demand that the employer provide a US\$ 10 incentive bonus when production targets are achieved.
11. The workers demand that the employer maintain the attendance bonus when workers take sick leave with certificates issued by doctors from state hospitals.
12. The workers demand that the employer provide a US\$ 15 transportation and accommodation allowance.

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. 1353 KB/RK/VK dated 6 December 2011 was submitted to the Secretariat of the Arbitration Council on 6 December 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 Commune, Tuol Kork District, Phnom Penh

Date of hearing: First hearing: 26 December 2011 at 8:30 a.m.
Second hearing: 6 January 2012 at 2:00 p.m.

Procedural issues:

On 18 October 2011, the Department of Labour Disputes received a complaint, No. 025/11 dated 18 October 2011, from CWEUF outlining the workers' demands for the improvement of working conditions by the employer. 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 25 November 2011. None of the 12 issues were

resolved at the session. The 12 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 6 December 2011, via non-conciliation report No. 1353 KB/RK/VK dated 6 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 12 non-conciliated issues, held on 26 December 2011 at 8:30 a.m. Both parties were present at the hearing, but the employer's representatives requested that the hearing be adjourned because the general director of Good People (Cambodia) Ltd. was abroad on a one-week mission. Both parties agreed to set a second hearing for 6 January 2012 at 2:00 p.m. Both parties were present at the second hearing. The Arbitration Council attempted to conciliate the 12 issues, resulting in 11 of the issues being resolved. The remaining issue in dispute is issue 2.

In this case, both parties chose non-binding arbitration.

At the hearing, the employer and the workers agreed to extend the due date for issuance of the award from 29 December 2011 to 1 February 2012.

The Arbitration Council will consider the issue 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. Letter from the employer to the head of the Secretariat of the Arbitration Council, requesting an adjournment of the hearing in case 164/11, dated 21 December 2011.
2. Certificate of value added tax of the employer, dated 22 April 2011.
3. 2011 patent certificate of the employer, dated 1 April 2011.
4. Certificate of commercial registration of the employer, dated 28 March 2011.
5. Declaration of the opening of the employer's enterprise, dated 22 June 2011.
6. Minutes of the agreement on the use of fixed duration contracts, No. HR-Admin 004-15/2011 GP-C dated 17 October 2011.
7. Photograph of the agreement on the use of fixed duration contracts.
8. Company statute, dated 22 March 2011.
9. Internal Work Rules of the employer, dated 22 June 2011.
10. Collective agreement on wage payment, dated 3 August 2011.
11. Letter from Se Kutkola outlining the process of terminating the probationary contracts of the 11 workers on 15 October 2011, dated 11 January 2012.
12. Authorisation letter from Kang Mun Won for Se Kutkola, dated 14 October 2011.

13. Thumbprints of group leaders and heads of sections on the work evaluation of the 11 workers, dated 11 January 2012.
14. Letter from the employer to the head of the Department of Labour Disputes regarding wage payments to probationary workers whose contracts have not been renewed, No. Admin-HR.021 dated 15 October 2011.
15. Notice of non-renewal of the contracts of eight workers, No. Admin-HR.GP-C005-15.2011 dated 15 October 2011.
16. Announcement by the employer on wage payments to probationary workers who allegedly abandoned their work.
17. Pay slip of Kit Chanrotny.
18. Pay slip of Sok Ron.
19. Probationary employment contract between the employer and Som Davy, dated 17 August 2011.
20. Probationary employment contract between the employer and Som Sokhoeun, dated 18 August 2011.
21. Probationary employment contract between the employer and Pon Mai, dated 17 August 2011.
22. Probationary employment contract between the employer and It Sophal, dated 18 August 2011.
23. Probationary employment contract between the employer and Vong Lang, dated 18 August 2011.
24. Probationary employment contract between the employer and Sok Ron, dated 18 August 2011.
25. Contract in which Sok Ron agrees not to complain to the Ministry of Labour, dated 12 December 2011.
26. Probationary employment contract between the employer and Chhem Sreymean, dated 18 August 2011.
27. Probationary employment contract between the employer and Ath Nimul, dated 17 August 2011.
28. Probationary employment contract between the employer and Kit Chanrotny, dated 18 August 2011.
29. Contract in which Kit Chanrotny agrees not to complain to the Ministry of Labour, dated 26 December 2011.
30. Probationary employment contract between the employer and Neng Sorphorn, dated 18 August 2011.
31. Probationary employment contract between the employer and Yun Sorphea, dated 18 August 2011.

32. Fixed duration contract between the employer and Yun Sorphea, dated 17 October 2011.
33. Resignation letter of Yun Sorphea, dated 6 December 2011.
34. Probationary employment contract between the employer and Va Nayye, dated 18 August 2011.
35. Letter from the employer objecting to the workers' brief statement on the labour dispute, No. HR-Admin 072/Jan2012 dated 17 January 2012.
36. Clarification letter from Chhim Sotheary, dated 17 January 2012.

B. Provided by the worker party:

1. Letter from CWEUF objecting to documents submitted by the employer, No. 029/12 dated 17 January 2012.
2. Brief statement on the labour dispute at the factory, dated 8 January 2012.
3. Minutes of collective labour dispute resolution, dated 25 November 2011.
4. Refusal letter from Sok Ron, dated January 2012.

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

1. Report on collective labour dispute resolution at Good People (Cambodia) Ltd., No. 1353 KB/RK/VK, dated 6 December 2011.
2. Minutes of collective labour dispute resolution at Good People (Cambodia) Ltd., dated 25 November 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 911 KB/AK/VK/LKA, dated 19 December 2011.
2. Notice to attend the first hearing addressed to the workers, No. 912 KB/AK/VK/LKA, dated 19 December 2011.
3. Notice to attend the second hearing addressed to the employer, No. 934 KB/AK/VK/LKA, dated 26 December 2011.
4. Notice to attend the second hearing addressed to the workers, No. 935 KB/AK/VK/LKA, dated 26 December 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:

- Good People (Cambodia) Ltd. operates a garment factory (producing undergarments) which commenced operation in June 2011. It employs a total of 360 workers.
- There is no union at the factory.
- Six workers, assisted at the hearing by an officer from CWEUF and the Vice-President of CAMDA, are the claimants in this case.

Issue 2: The workers demand that the employer reinstate Sok Ron, Vong Lang, It Sophal, Som Sokhoeun, Ath Nimul, Som Davy, Kit Chanrotny, Chhem Sreymean, Pon Mai, and Va Nayye whom the employer dismissed without valid reasons on 15 October 2011.

- According to the non-conciliation report of the Ministry of Labour and Vocational Training, 10 workers made the demand for reinstatement. However, only six workers were present at the hearing, namely Chhem Sreymean, Pon Mai, Vong Lang, Som Davy, Som Sokhoeun, and It Sophal. Sok Ron, Kit Chanrotny, Ath Nimul, and Va Nayye were absent and did not authorise anyone to represent them at the hearing.
- The six workers commenced work on 17 and 18 May 2011 on verbal employment contracts. They obtained their positions after applying for jobs at the factory and passing interviews. The employer subsequently taught them basic daily Korean expressions and trained them in extra sewing techniques because the factory makes undergarments, which require different sewing skills and each worker is required to handle multiple tasks, such handling one-needle or two-needle machines, etc. The workers did not initially work on the production line. During the training period, the employer arranged for them to work on the production line in accordance with their skills. They were paid US\$ 61 per month plus other benefits [during the training period].
- Three months after the workers commenced, the employer signed the following probationary contracts:
 - Two month probationary contract, effective from 18 August to 17 October 2011, with Chhem Sreymean.
 - Two month probationary contract, effective from 17 August to 16 October 2011, with Pon Mai.
 - Two month probationary contract, effective from 18 August to 17 October 2011, with Vong Lang.

- Two month probationary contract, effective from 17 August to 16 October 2011, with Som Davy.
 - Two month probationary contract, effective from 18 August to 17 October 2011, with Som Sokhoeun.
 - Two month probationary contract, effective from 18 August to 17 October 2011, with It Sophal.
- On 15 October 2011, the employer provided the six workers with notices of contract termination and terminated their probationary contracts on the same date.
 - On 6 October 2011, the workers went on strike to demand a US\$ 3 increase in the attendance bonus and a US\$ 4 increase in monthly wages.
 - On 7 October 2011 at noon, representatives from the Ministry of Labour and Vocational Training attended the factory to resolve the dispute, but the employer refused to resolve the dispute at the factory. Consequently, on the same date the Ministry of Labour and Vocational Training notified the employer and the workers of a conciliation session to be held at the Ministry at 2:00 p.m. The workers state that the employer sought to resolve the dispute directly with the concerned workers at the conciliation session and not with the union. Thus, the union sent the concerned workers (the 10 workers whom the employer dismissed) to resolve the dispute at the Ministry, resulting in none of the issues in dispute being resolved.
 - The workers continued to strike until 11 October 2011 at 9:00 a.m. The employer and the workers resolved the dispute by means of an agreement dated 11 October 2011. The workers subsequently returned to work.
 - The employer stated at the hearing that as the workers' contracts had expired, it was not obligated to provide prior notice and valid reasons. The employer added that it opted not to renew their contracts due to poor performance; they did not pay enough attention to their work and liked talking during working hours.
 - The employer explained at the hearing that before offering a probationary contract, it requires workers to undertake a three month training period on a verbal contract in order to familiarise them with the working conditions at the factory.
 - The workers argue that the probationary contracts of the six workers were due to expire on 17 October 2011, but the employer terminated the contracts on 15 October 2011, before they had expired. The workers contend that the premature termination of the contracts was an act of discrimination because the six workers represented other factory workers in negotiations with the employer during the strike (from 6 to 11

October 2011) in which workers demanded a US\$ 3 increase in the attendance bonus and a US\$ 4 increase in monthly wages. The workers add that they had not committed any misconduct in the past, and had worked for the employer for three months before signing probationary contracts.

- The workers state that the six workers were assigned to represent other workers in negotiations with the employer and were dismissed without valid reasons. Therefore, the workers demand their reinstatement.
- The employer maintains its refusal to reinstate them.

REASONS FOR DECISION

Issue 2: The workers demand that the employer reinstate Sok Ron, Vong Lang, It Sophal, Som Sokhoeun, Ath Nimul, Som Davy, Kit Chanrotny, Chhem Sreymean, Pon Mai, and Va Nayye whom the employer dismissed without valid reasons on 15 October 2011.

According to the non-conciliation report of the Ministry of Labour and Vocational Training, 10 workers made the demand for reinstatement. However, only six workers were present at the hearing, namely Chhem Sreymean, Pon Mai, Vong Lang, Som Davy, Som Sokhoeun, and It Sophal. The Arbitration Council considers the issue below.

Clause 19 of *Prakas* No. 099 SKBY dated 21 April 2004 provides that “[a] party may appear before the arbitration panel in person...or be represented by any other person expressly authorised in writing by that party.”

The Arbitration Council interprets 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 Arbitral Award 140/11-Global Apparel, reasons for decision, issue 2*).

According to the facts the six claimants, namely Chhem Sreymean, Pon Mai, Vong Lang, Som Davy, Som Sokhoeun, and It Sophal, appeared before the Council to argue their case. The other four workers, namely Sok Ron, Kit Chanrotny, Ath Nimul, and Va Nayye failed to appear before the Council and did not authorise anyone to represent them at the hearing. Therefore, the Arbitration Council will consider the demand of the former six workers only.

The Arbitration Council will consider whether the employer is obliged to reinstate the six workers.

The employer stated at the hearing that the two month probationary contracts of the six workers terminated upon expiration. The employer explained that before offering a

probationary contract, it requires the workers to undertake a three month training period on a verbal contract in order to familiarise them with the working conditions at the factory. In this period they are taught basic daily Korean expressions and trained in extra sewing techniques because the factory makes undergarments, which require different sewing skills and each worker is required to handle multiple tasks, such handling one-needle or two-needle machines etc. The workers did not initially work on the production line. Thus, the Arbitration Council will consider whether the employer can train workers for a period of three months before signing a probationary contract.

Based on the facts, the Arbitration Council considers that the employment relationship between the employer and the workers began with the verbal contracts, and [during this initial period] the workers became familiar with the working conditions.

Article 68 of the Labour Law states:

A contract for a probationary period cannot be for longer than the amount of time needed for the employer to judge the professional worth of the worker and for the worker to know concretely the working conditions provided. However, the probationary period cannot last longer than three months for regular employees, two months for specialised workers and one month for non-specialised workers.

The Arbitration Council considers that the abovementioned article specifies the maximum period and purpose of a probationary contract, but does not specify when the parties must sign the contract or perform work on a probationary basis. Generally, we observe that work takes place on a probationary basis at the initiation of the relationship. The Arbitration Council finds that no provision in any law, particularly in the Labour Law, prohibits the employer from training its workers before signing probationary contracts. In this case, the workers state that they were aware of and accepted the training period and agreed to sign two month probationary contracts. The workers also argue that the employer terminated the contracts of the six workers without valid reasons.

The Arbitration Council will consider whether the employer terminated the workers' contracts in accordance with the Labour Law.

Article 82 of the Labour Law states that:

The contracting parties are released from the obligation of giving prior notice under the following cases:

1. For a probation or an internship specified in the contract...

In this case, the six workers held two month probationary contracts. Based on Article 82, the employer was not required to give them prior notice.

Apart from this, the Arbitration Council finds that no provision requires the employer to provide reasons for terminating a probationary contract (see *Arbitral Award 27/03-Standard, reasons for decision, issue 1*).

In conclusion, the Arbitration Council rejects the workers' demand that the employer reinstate Chhem Sreymean, Pon Mai, Vong Lang, Som Davy, Som Sokhoeun, and It Sophal.

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

DECISION AND ORDER

Issues 2: Reject the workers' demand that the employer reinstate Chhem Sreymean, Pon Mai, Vong Lang, Som Davy, Som Sokhoeun, and It Sophal.

Type of award: non-binding award

This award 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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: