



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 51/09-Yung Wah (Branches 1 and 2)

Date of award: 30 April 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

DISPUTANT PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co., Ltd. (Branches 1 & 2) (the employer)**

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 510 966 / 012 899 370 Fax: N/A

Representatives:

- | | |
|-----------------------|--|
| 1. Ms Iris Teng | Human Resources Manager based in Singapore |
| 2. Ms Jane Lee | Human Resources Manager based in Cambodia |
| 3. Mr Som Uy Pisey | Administration Staff |
| 4. Ms Chhin Chou Fang | Administration Staff |

Worker party:

A. Name: **Federation Union of Khmer Democracy Workers (FUKDW)**

Local Union of FUKDW

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 016 211 433 Fax: N/A

Representatives:

- | | |
|-------------------|--|
| 1. Mr Rim Bora | President of FUKDW |
| 2. Mr Chim Bora | Vice President of FUKDW |
| 3. Mr. Sin Sophat | Vice-President of the Local Union of FUKDW |

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|------------------------|---------------------------------------|
| 4. Ms Yarn Norng In | President of the Local Union of FUKDW |
| 5. Ms Chhoeun Srey Mom | Head of Sewing Section |

B. Name: Coalition of Cambodian Apparel Worker Democratic Union (C.CAWDU)
Local Union of C.CAWDU

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 988 623

Fax: N/A

Representatives:

- | | |
|----------------------|---|
| 1. Ms Meas Vanny | Dispute resolution officer of C.CAWDU |
| 2. Ms Sok Phalla | President of the Local Union of C.CAWDU at Yung Wah (Branch 2) |
| 3. Mr Mom Sovann | President of the Local Union of C.CAWDU at Yung Wah (Branch 1) |
| 4. Ms Chan Dany | Vice-President of the Local Union of C.CAWDU at Yung Wah (Branch 2) |
| 5. Ms Keo Samphos | Secretary of the Local Union of C.CAWDU at Yung Wah (Branch 2) |
| 6. Ms Ken Doung Maly | Team Leader |
| 7. Ms Men Sopheap | Team Leader |
| 8. Mr Kol Saveurn | Team Leader |

C. Name: Cambodian Labour Union Federation (CLUF)
Local Union of CLUF

Address: No. 30C, Street 371, Trapang Chhouk Village, Teouk Thla Commune, Russei Keo District, Phnom Penh.

Telephone: 011 685 826

Fax: N/A

Representatives:

- | | |
|-----------------------|--|
| 1. Mr Seng Meng Hong | Officer of CLUF |
| 2. Mr Keh Sothea | President of the Local Union of CLUF at Yung Wah (Branch 4) |
| 3. Mr Phin Thouk | President of the Local Union of CLUF at Yung Wah (Branch 2) |
| 4. Ms Oum Sothea | President of the Local Union of CLUF at Yung Wah (Branch 1) |
| 5. Mr Duch Dy Chan Ka | Vice-President of the Local Union of CLUF at Yung Wah (Branch 3) |
| 6. Ms Soun Sokha | Vice-President of the Local Union of CLUF at Yung Wah (Branch 1) |

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| 7. Mr Seng Vichna | Secretary of the Local Union of CLUF at Yung Wah (Branch 2) |
| 8. Ms Chhok Chan Nann | Secretary of the Local Union of CLUF at Yung Wah (Branch 1) |
| 9. Mr Meas Vanny | Advisor to the Local Union of CLUF |

D. Name: Trade Union Workers Federation of Progress Democracy (TUWFPD)

Local Union of TUWFPD

Address: No. 197, Chong Thnol Khang Lech Village, Teouk Thla Commune, Russei Keo District, Phnom Penh

Telephone: 012 417 357

Fax: N/A

Representatives:

- | | |
|-----------------------|---|
| 1. Ms Chea Srey Neang | President of the Local Union of TUWFPD |
| 2. Ms Meas Sopheap | Vice-President of the Local Union of TUWFPD |
| 3. Ms Heng Chom Reoun | Secretary of the Local Union of TUWFPD |

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

Local Union of FTUWKC

Address: No. 28B, Street 222, Boeung Raing Commune, Daun Penh District, Phnom Penh.

Telephone: 012 839 515

Fax: N/A

Representatives:

- | | |
|---------------------|---|
| 1. Ms Soth Chanthou | Officer of FTUWKC |
| 2. Ms Chhay Sok Lay | President of the Local Union of FTUWKC |
| 3. Mr Im Pisey | Vice-President of the Local Union of FTUWKC |
| 4. Mr Pen Sarith | Secretary of the Local Union of FTUWKC |

F. Name: Cambodian Union Federation (CUF)

Local Union of CUF

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 658 129

Fax: N/A

Representatives:

- | | |
|-------------------|--|
| 1. Mr Mom Thun | Dispute Resolution Officer of CUF |
| 2. Mr Chea Sopha | Dispute Resolution Officer of CUF |
| 3. Ms Long Somaly | Secretary of Local Union of CUF at Yung Wah (Branch 2) |

G. Name: Khmer Youth Federation Trade Union (KYFTU)

Local Union of KYFTU

Address: Thmey Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 906 811

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 pay full wages for the duration of the two month work suspension from 1 April 2009 to 31 May 2009. The employer does not agree to the demand, and will instead follow Articles 71 and 72 of the Labour Law, the request letter by the employer dated 17 March 2009, and the letter regarding suspension of employment (from 1 April 2009 until 31 May 2009) No. 130-131/09 KB/KN dated 30 May 2009 (This suspension is for the period from 1 April 2009 to 31 May 2009).

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. 076 dated 10 May 2007 (Fifth 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. 133/09 KB/KN dated 1 April 2008 was submitted to the Secretariat of the Arbitration Council on 1 April 2008.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Tonle Bassac Commune, Chamkarmorn District, Phnom Penh

Date of hearing: 9 April 2009 at 8:00 a.m.

Procedural issues:

On 31 March 2009, the Department of Labour and Vocational Training of Kandal Province conducted a conciliation of the issue in dispute regarding the work suspension at branches 1 and 2 of Yung Wah (Cambodia) Co., Ltd., with reference to letter No.133/09 KB/KN dated 30 March 2009. The issue was not resolved and the non-conciliated issue was referred to the Secretariat of the Arbitration Council on 1 April 2009.

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 9 April 2009 at 8:00am.

Both parties were present as summoned by the Arbitration Council. At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue but it was not resolved. The Arbitration Council will consider the issue 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:

- Yung Wah (Cambodia) Co., Ltd. (Yung Wah) was established in 1998 and currently employs approximately 5,000 workers, 2,972 of whom have had their employment suspended for the two month period from 1 April to 31 May 2009.
- There are seven unions at the enterprise, who are the claimants in this case: 1. the Local Union of KYFTU; 2. the Local Union of FTUWKC; 3. the Local Union of CLUF; 4. the Local Union of CUF; 5. the Local Union of TUWFPD; 6. the Local Union of C.CAWDU; and 7. the Local Union of FUKDW.
- The Local Union of C.CAWDU holds most representative status (MRS).

Issue 1: The workers demand that the employer pay their full wages for the duration of the two month work suspension from 1 April 2009 to 31 May 2009.

- On 17 March 2009, the employer made a request to the Department of Labour and Vocational Training of Kandal Province for inspection and evaluation at Yung Wah (Branch 1) in order to suspend the employment contracts of workers in some sections, specifically **792** workers, for a period of two months from 1 April 2009 to 31 May 2009.
- On 17 March 2009, the employer made a request to the Department of Labour and Vocational Training of Kandal Province for inspection and evaluation at Yung Wah (Branch 2), in order to suspend the employment contracts of workers in some

sections, specifically **2,180** workers, for a period of two months from 1 April 2009 to 31 May 2009.

- On 30 March 2009, the Department of Labour and Vocational Training of Kandal Province issued a letter responding to the request to suspend the employment contracts of 792 workers at Yung Wah (Branch 1) via letter No.131/09 KB/KN.
- On 30 March 2009, the Department of Labour and Vocational Training of Kandal Province issued a letter responding to the request to suspend the employment contracts of 2,180 workers at Yung Wah (Branch 2) via letter No.132/09 KB/KN.
- The employer stated at the hearing that it did not notify the workers when it made a request to the Department of Labour and Vocational Training of Kandal Province on 17 March 2009.
- On 25 March 2009, the Department of Labour inspected the factory. The employer states that it subsequently held a meeting with the workers but no resolution was reached and the meeting was postponed until 27 March 2009. The workers object to this statement and claim that they did not attend, nor were they aware of, the meeting.
- On 27 March 2009, the employer held another meeting but again no resolution was reached. The workers agree that they were aware of this meeting and that it was attended by some worker delegates.
- On 31 March 2009, the Department of Labour and Vocational Training of Kandal Province conducted a conciliation of the demand concerning the suspension of the employment contracts but it was not resolved because the workers insisted on their demand that the employer pay full wages for the duration of the suspension. The Department of Labour and Vocational Training of Kandal Province sent the non-conciliation report to the Arbitration Council on that same day.
- The workers state that [they believe that] the employer still has work for them to do because, from 31 March 2009 onward, it has transported materials out of the factory for other factories to produce. The employer denies this claim and states that from 1 April 2009 it has not transported materials from the factory. However, the employer acknowledges the possibility that it transported a small amount of material out because it still had some unfinished orders, but this is no longer the case. In relation to the material warehouse at Yung Wah (Branch 2), the employer has only transported material from the new buildings of Yung Wah (Branch 2) to the old buildings of Yung Wah (Branch 1).

- The workers demand full wages for the duration of the two month work suspension because:
 - The employer notified the Department of Labour and Vocational Training of Kandal Province but did not notify the workers.
 - The employer did not explain the reasons for the employment suspension to the workers and the suspension was sudden.
 - On 31 March 2009, the employer closed the factory and locked out the workers.
 - The Department of Labour and Vocational Training is distinct from the Labour Inspector and the letter issued by the Department of Labour and Vocational Training concerning the work suspension does not authorise the suspension as requested by the employer.
- The employer argues that it implemented the work suspension in accordance with Articles 71 and 72 of the Labour Law. Thus, it cannot provide full wages for the duration of the two month work suspension.

REASONS FOR DECISION

Issue 1: The workers demand that the employer pay their full wages for the duration of the two month work suspension from 1 April 2009 to 31 May 2009.

In relation to this demand, the Arbitration Council will consider whether the suspension of the employment contracts of 2,972 workers for a two month period from 1 April to 31 May 2009 was implemented in accordance with the Labour Law.

In this case, the work suspension must comply with the procedure stipulated in Article 71(11) of the Labour Law (1997):

When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and [shall] be under the control of the Labour Inspector.

Article 72(1) of the Labour Law stipulates:

The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

According to Article 71(11) the employer is required to notify the Labour Inspector of the work suspension so that the Labour Inspector can confirm the suspension. This means

that, the Labour Inspector has a duty to inspect the situation and provide advice as to whether the suspension is in fact justified by serious economic difficulty (*see Arbitral Award 27/08-Archid, reasons for decision, issue 6 and 136/08-Supertex, reasons for decision, issue 2*).

The Arbitration Council considers that although the Labour Law permits employers to suspend employment contracts, the employer is required to notify the Labour Inspector and explain the reasons for and duration of the suspension.

If the employer followed the proper procedure in accordance with the Labour Law, i.e., that the suspension be under the control of the Labour Inspector, it would not be obliged to pay the workers' wages (see Article 72(1) of the Labour Law). However, if it did not follow the procedure under the Labour Law, it would be obliged to provide full wages to the workers even if there is no work for the workers to do (*see Arbitral Awards 21/03-Loyal, issue 8; 01/04-New Point; 46/04-M & A, issue 1; 47/07-Global Apparels, issue 1; 28/08-FineGis, issue 1 and 2; 53/08-Yung Wah (Branch 1), issue 1; and 136/08-Supertex, issue 2*).

In this case, the Arbitration Council finds that on 17 March 2009, Yung Wah filed a request for inspection and evaluation with the Department of Labour and Vocational Training of Kandal Province, seeking to suspend the employment contracts of **792 workers** in some sections of Yung Wah (Branch 1), and **2,180 workers** at Yung Wah (Branch 2), for a period of two months from 1 April to 31 May 2009, since the employer had a shortage of purchase orders affecting the flow of production in the factory.

On 30 March 2009, the head of the Department of Labour and Vocational Training of Kandal Province issued a response to the employer's request to suspend the employment contracts of **792 workers** in some sections of Yung Wah (Branch 1), and **2,180 workers** at Yung Wah (Branch 2), for a period of two months from 1 April to 31 May 2009.

Therefore, in this case, the Arbitration Council considers that the employer has implemented the work suspension in accordance with the Labour Law.

Regarding the workers' claim that the employer did not notify them of the suspension, in case 46/05-Ocean Garment the Arbitration Council considered:

In the Labour Law (1997), there is no provision or requirement specifying an amount of prior notice. Therefore, the Arbitration Council finds that the obligation to give notice to the workers of the suspension of their labour contracts entails posting the letter authorising the suspension immediately or as soon as possible after it is received from the Ministry.

Further, the workers argue that the Department of Labour and Vocational Training of Kandal Province is distinct from the Labour Inspector and that the letter does not authorise the work suspension as per the employer's request.

Regarding the letter from the Department of Labour and Vocational Training of Kandal Province in response to the request by the director of Yung Wah (Branches 1 & 2) for authorisation to suspend the workers' employment contracts, the Arbitration Council finds that letters from provincial and municipal Departments of Labour and Vocational Training in previous cases have the same format and contents. That is, they do not specifically state that the Department has granted permission for the work suspension as per the employer's request.

Furthermore, in previous cases involving the issuance of letters authorising work suspension when an employer is facing serious economic difficulty, the Arbitration Council has noticed that, in general, if the enterprise is located in the provinces, the Department of Labour and Vocational Training of that province issues the letter and if the enterprise is based in Phnom Penh, the Department of Labour Inspection issues the letter.

In previous cases, the Arbitration Council has found:

the [requirement of] control by the Labour Inspector is to avoid any serious effects because work suspensions can seriously affect the national economy and workers' benefits. As a matter of past practice, when an employer requests permission to suspend workers' employment contracts, the Labour Inspector has always issued an authorisation letter if it approves the suspension.

(See Arbitral Awards 105/04-United Eternity, issue 1 and No. 28/08- FineGis, reasons for decision, dispute issue 1 and 2).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases. The letter from the Department of Labour and Vocational Training of Kandal Province in response to the request by the director of Yung Wah for authorisation for a work suspension acknowledged that the enterprise genuinely faced difficulty due to a decrease in purchase orders and thus authorised the suspension of the employment contracts of workers in some sections of Yung Wah (Branches 1 and 2).

The Arbitration Council considers that the employer has followed the Labour Law in implementing the work suspension in some sections of Yung Wah (Branches 1 and 2). Hence, it is not obliged to pay the workers for the duration of the suspension period.

Therefore, the Arbitration Council decides to reject the workers' demand that the employer provide full wages for the duration of the two month work suspension from 1 April to 31 May 2009.

Based on the above facts, legal principles, and evidence, the Arbitration Council decides as follows:

DECISION AND ORDER

Issue 1: Reject the workers' demand that the employer provide full wages for the duration of the two month work suspension from 1 April to 31 May 2009.

Type of award: non-binding award

This award of the Arbitration Council 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: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: