



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

**ក្រុមប្រឹក្សាអាជ្ញាធរ**

**THE ARBITRATION COUNCIL**

**Case number and name: 96/13-F.W.K.K.**

**Date of award: 5 June 2013**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Sin Kim Sean**

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

#### **DISPUTANT PARTIES**

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

Name: **F.W.K.K (Cambodia) Limited.**

Address: Chom Chao Village, Sangkat Chom Chao, Khan Po Sen Chey, Phnom Penh

Telephone: 012 625 434

Fax: N/A

Representatives:

- |                    |                                   |
|--------------------|-----------------------------------|
| 1. Mr Lothair Ling | Executive Director                |
| 2. Mr Phelim Hu    | Assistant to Factory Manager      |
| 3. Mr Deurn Sal    | Head of Administration Department |
| 4. Mr Chea Dara    | Head of Accounting Section        |

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

Name: - **Trade Union Federation Khmer Workers League (TUFKWL)**

- **The Local Union of TUFKWL (the union)**

Address: House no.27 C, Street 376, Sangkat Boeung Kengkong, Khan Chamkarmorn,  
Phnom Penh

Telephone: 012 837 768

Fax: N/A

Representatives:

- |                 |  |
|-----------------|--|
| 1. Mr Mom Saron | Vice-president of Cambodian Union<br>Confederation |
|-----------------|--|

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|----------------------|------------------------|
| 2. Mr San Tha        | Officer of TUFKWL      |
| 3. Mrs Ven Sreybol   | President of the union |
| 4. Mrs Pov Vannak    | worker                 |
| 5. Mrs Boun Thavatey | worker                 |

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer offer at least one-year employment contracts. The employer claims it will maintain the current practice.
2. The workers demand that the employer provide back pay of the percentages of wages docked in the past months. The employer claims it has never docked the workers' wages.

### **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. 121 dated 7 June 2012.

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 the non-conciliation report No. 524 dated 7 May 2013 was submitted to the Secretariat of the Arbitration Council on 7 May 2013.

### **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:** 17 May 2013 at 2:00 p.m.

**Procedural issues:**

On 8 April 2013, the Department of Labour Disputes (the department) received a complaint from TUFKWL, outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 2 May 2013, resulting in five of seven issues being resolved. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 7 May 2013.

Upon receipt of the case, the Arbitration Panel was formed on 8 May 2013. The Secretariat of the Arbitration Council summoned the employer and the workers to a hearing

and conciliation of the two non-conciliated issues, held on 17 May 2013. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the two non-conciliated issues, resulting in Issue 2 being resolved.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interests disputes. The parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU.

In this case, the parties choose non-binding arbitration for their interests dispute.

Therefore, the Arbitration Council considers the issues 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:**

- FWKK is a swimwear manufacturer. It employs a total of 670 workers.
- The union is the claimant in this case. It has 63 members. The union received a certificate of registration dated 6 January 2013.

#### **REASONS FOR DECISION**

##### **Issue 1: The workers demand that the employer offer at least one-year employment contracts.**

- The employer and the workers agree that the employer offers two-month probation contracts to the workers. At the conclusion of probation period, the employer then offers the workers six-month contracts.

- The workers claim that (1) The workers lose maternity leave in short-duration contracts and (2) there is no job security.
- The employer claims that it does not agree to the demand because (1) the contracts are made upon agreement, (2) on the first day of work commencement, the employer explains the company practices and the details of the employment contract, (3) the company manufactures swimwear, and therefore, the work varies depending on seasonal purchase orders.

**Issue 2: The workers demand that the employer provide back pay of the percentages of wages docked in the past months. The employer claims it has never docked the wages.**

At the hearing, issue 2 was conciliated. Therefore the Arbitration Council will not make a decision on this issue.

### **REASONS FOR DECISION**

Firstly, the Arbitration Council considers whether the demand gives rise to a rights dispute or an interest dispute.

In previous cases, the Arbitration Panel has found that *“A rights dispute is a dispute concerning entitlements in the law, an employment contract, or a collective agreement.”* (see *Arbitral Awards no. 5/11 M & V1, Issue 1 and 5, no. 13/11 Gold Kamvimex, Issue 1 and 2, 14/11 GHG, Issue 4*)

The Arbitration Panel in the present case agrees with the interpretation made in the previous cases.

The demand concerns the implementation of the one-year employment contracts stipulated in the Labour Law and Civil Code. Therefore, the Arbitration Council finds that the dispute is a rights dispute.

According to the fact finding, the employer offers two-month probationary contracts to the workers. At the conclusion of the probation period, the employer offers the workers six-month contracts.

Paragraph 1, Article 65 of the Labour Law states, *“A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.”*

Paragraph 1, Article 664 of the Civil Code continues to explain that, *“A contract of employment is formed by the promises of one party to perform services under employment, and another party to pay wages for such services.”*

Article 65 of the Labour Law and Article 664 of the Civil Code when read in conjunction explain that a labour contract is a promise by the worker to perform services for

the employer. Furthermore, Article 65 of the Labour Law states that an employment contract is also governed by the general rules of contract formation, set out by the Civil Code

Article 311 of the Civil Code states “*A contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation.*”

This article means that a contract may only be established or terminated with the mutual intention of both parties.

However, Article 336 of the Civil Code states precisely: “*A contract comes into effect when an offer and an acceptance thereto conform to each other.*”

Paragraph 1 and 3 of Article 337 of the Civil Code states:

An Offer is an invitation to enter into a contract based on the Offeror’s intention to be legally bound by the other party’s acceptance thereof. An Acceptance is the expression of an intention of a party to agree to an Offer received from another party.

Based on the above articles, the Arbitration Council finds that neither of the contracting parties can force the other party to sign a contract or to accept any conditions that would not otherwise be accepted by the other party. Such a contract would be voidable at law. In case no. 56/06-Boric, Issue 1, the Arbitration Council has ruled that:

A labour contract establishes working relations between the worker and the employer and can be made in a form that is agreed upon by the contracting parties so long as it complies with the conditions set out by the Labour Law. A labour contract is subject to ordinary law. Neither of the contracting parties can force the other party to sign a contract or to accept any conditions that would not be otherwise accepted by the other party. Any contracts made under duress may be voided by the law or by the other contracting party.

In this case, the Arbitration Panel agrees with the interpretation in the previous cases. At present, the workers demand that the employer offer at least one-year contracts to prevent the loss of maternity leave and enhance job security.

At first instance, the Arbitration Council finds that the workers’ demand for a one-year contract is not in contradiction to the Law because the workers have the right to make this proposal during the formation of their employment contract. However, the employer’s refusal to offer a one-year contract at the minimum is similarly not in contradiction to the Law because it is the employer’s right to reject the workers’ request if the employer so chooses. This means, in principle, neither of the contracting parties can force the other party to accept any conditions that it would not otherwise accept.

In this case, the workers cannot force the employer to offer one-year contracts according to their request and the employer cannot force the workers to accept short-duration contracts if there is no consensual agreement. However, if the workers and the employer reach an agreement stipulating the terms of a contract, this contract shall remain in force until expiration or until there is an agreement to modify any contractual terms or

conditions. Therefore, based on the interpretation above, the Arbitration Council rejects the workers' demand that the employer offer at least one-year employment contracts.

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 1:

Reject the workers' demand that the employer offer at least one-year employment contracts.

**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 3 October 2012.

**Part II. Interests dispute: N/A**

**SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....