



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 43/09-Hugo International

Date of award: 7 April 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

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

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

DISPUTANT PARTIES

Employer party:

Name: **Hugo International Investment Co., Ltd. (the employer)**

Address: Kbal Damrey Village, Kakab Commune, Dangkor District, Phnom Penh

Telephone: 012 860 715

Fax: N/A

Representatives:

- | | |
|--------------------|---------------------------|
| 1. Mr Un Dara | Head of Administration |
| 2. Mr Hort Sovandy | Accountant |
| 3. Ms Ou Miling | Assistant to the Director |

Worker party:

A. Name: **Khmer Youth Trade Union Federation (KYFTU)**

Address: No. 58, Street 265, Toek Laak 3 Commune, Tuol Kork District, Phnom Penh

Telephone: 017 370 363

Fax: N/A

Representatives:

- | | |
|------------------------|-------------------------------|
| 1. Mr Mai Vathana | Officer of KYFTU |
| 2. Mr Nhim Vichay | Head of Super Linking Section |
| 3. Ms Chhorn Sreyneang | Head of Sewing Section |
| 4. Ms Doun Sokreun | Head of Fray Trimming Section |
| 5. Ms Keo Sareun | Worker |

6. Ms Srey Teng Lida	Worker
7. Ms Soun Narin	Worker
8. Ms Nov Bonaroth	Worker
9. Ms Kang Channa	Worker
10. Ms Chheav Ratana	Worker
11. Mr Krouch Sarom	Worker

B. Name: Federation Union Development of Workers Rights (FUDWR)

Address: No. 263, Street 107, Boeung Pralit Commune, 7 Makara District, Phnom Penh

Telephone: 012 690 594

Fax: N/A

Representative:

- | | |
|-------------------|------------------|
| 1. Mr Sok Vicheth | Officer of FUDWR |
|-------------------|------------------|

ISSUES IN DISPUTE

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

1. The workers demand that the employer end the work suspension. If the factory stops operating, the employer should provide termination payments to the workers in accordance with the Labour Law. The employer states that the factory is still operating but as it currently has no purchase orders it needs to continue the suspension for a period of time and will provide US\$ 13 per month to the workers.

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. 222 KB/AK/VK dated 18 March 2009 was submitted to the Secretariat of the Arbitration Council on 19 March 2009.

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: 23 March 2009 at 8.30 a.m.

Procedural issues:

On 12 March 2009, the Department of Labour Disputes received a complaint from the workers demanding that the employer stop suspending workers and that in the event that it stops operating the factory, it pay a dismissal indemnity in accordance with the Labour Law. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 17 March 2009, at which the issue remained unresolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 19 March 2009.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a pre-hearing on 20 March 2009 and a hearing and conciliation of the issue on 23 March 2009. 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. Therefore, 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:

- Hugo International Investment Co., Ltd. previously employed approximately 550 workers, but at the hearing the employer confirmed that only 445 workers remained.
- The 418 claimant workers in this case have in an undated letter authorised KYFTU to represent them.
- The employer objected to the thumbprints of 16 workers submitted to the Arbitration Council.
- At the hearing, the workers objected that Sim Laicheng was not entitled to make a decision regarding the dispute. Therefore, his authorisation for Un Dara was not valid. The employer responded to this objection by submitting to the Arbitration Council a

letter from shareholders dated 30 March 2009 confirming that Sim Laicheng was entitled to supervise and direct the enterprise.

- The evidence submitted to the Arbitration Council confirms that Sim Laicheng is entitled to supervise and direct the enterprise.

Issue 1: The workers demand that the employer end the work suspension, and otherwise pay full wages.

- According to the statements of both parties, there has been a shortage of work since January 2009 and the employer suspended the workers from 1 January 2009 to 15 January 2009, providing 50% of their wages. The employer did not seek permission from the Labour Inspector to implement the suspension. The parties did not dispute these facts.
- According to the statements of both parties, from 15 January 2009 to 15 March 2009 the employer suspended the workers for a second time, providing the workers with a living allowance of US\$ 13 per month provided that they presented themselves at the factory twice a week. This suspension was permitted by the Labour Inspector.
- According to the employer, it still had no work for the workers in March 2009 but it did not intend to close the factory or terminate the workers' contracts. To resolve the problem, it held a discussion with eight worker delegates on 6 March and in an agreement of the same date it agreed to suspend the workers for a third time for two months from 16 March 2009 to 16 May 2009.
- The employer notified all workers of the third suspension on 11 March 2009. The third suspension was not authorised by the Labour Inspector.
- Based on the agreement, the Arbitration Council finds that the employer agreed to provide the workers with a monthly US\$ 13 living allowance. At the hearing, the employer confirmed that the workers still had to present themselves twice per week.
- The workers objected to the agreement and staged a protest in front of the factory until their complaint was submitted to the Arbitration Council, after the conciliation at the Department of Labour Disputes was not successful.
- At the hearing, the employer alleged that the protest in front of the factory was a strike and that the Arbitration Council could not begin the hearing that day.
- The workers claim that the worker delegates did not discuss with them the agreement dated 6 March 2009. Furthermore, the workers' protest in front of the factory was not a strike because the employer had no work for them to do.

- The employer claims not to know whether or not the worker delegates held a discussion with the workers. None of the worker delegates were present at the hearing.
- At the hearing, the workers' representatives demanded that the employer stop the suspension and provide workers with full wages because the suspension was not consistent with Article 71(11) of the Labour Law. There was no authorisation from the Labour Inspector, and moreover, the law enables the employer to suspend the workers only once.

REASONS FOR DECISION

Issue 1: The workers demand that the employer end the work suspension, and otherwise pay full wages.

As the employer claimed at the hearing that the workers' protest in front of the factory constituted a strike, the Arbitration Council was unable to hold a hearing to resolve the issue. The Arbitration Council will consider whether there was a strike as the employer claims.

1. Was the workers' protest in front of the factory a strike?

Article 318 of Labour Law (1997) states:

A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work.

Based on this article, the Arbitration Council finds that an action must fulfil three conditions to be considered a strike: (1) a strike is a concerted work stoppage by a group of workers; (2) that takes place within an enterprise or establishment; and (3) for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work. In this case, the Arbitration Council finds that the workers' protest outside the factory was not a strike because the employer had no work for the workers to do, therefore it was not a work stoppage. Therefore, the protest did not fulfil the first condition of Article 318 of the Labour Law.

In previous arbitral awards, the Arbitration Council has decided not to hear cases where there is a strike or lockout (*see Arbitral Awards 28/06-GDM; 34/06-Goldfame; 97/07-Suit Way; 126/07-Heng Yu; and 39/08-Zhong Yov*).

However, based on the above there was no strike in this case. Therefore, the Arbitration Council could hold the hearing as planned. Therefore, the Arbitration Council will consider the issue as follows:

2. Is the third work suspension lawful? Are the workers entitled to full wages?

Article 71(11) of the Labour Law provides that a labour contract can be suspended:

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.

The employer suspended the workers for a further two months, from 16 March 2009 to 16 May 2009, subject to an agreement made with the worker delegates on 6 March 2009. The Arbitration Council finds that the agreement is improper because, according to Article 71(11) of the Labour Law, a work suspension must be under the control of the Labour Inspector. Therefore, the Arbitration Council finds that a work suspension can only be implemented if there is permission from the Labour Inspector. In conclusion, the Arbitration Council finds that the work suspension subject to the agreement with the worker delegates was not lawful because there was no permission from the Labour Inspector (*see Arbitral Awards 22/05-Ocean; 46-05-Ocean; 49/05-Ocean, reasons for decision, issue 1; and 59/05-Tack Fat, reasons for decision, issue 2*). Therefore, the employer must stop the work suspension immediately.

Further, in previous arbitral awards the Arbitration Council has determined that if a work suspension is not lawful, the workers are entitled to full wages for the duration of the suspension (*see Arbitral Awards 21/03-Loyal, reasons for decision, issue 8; 01/04-New Point (Branch 3); and 60/04-United Arts, reasons for decision, issue 1*).

In conclusion, the workers must be provided with full wages for the duration of the two month unlawful work suspension.

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

DECISION AND ORDER

Issue 1: Order the employer to immediately cease the work suspension and provide the workers with full wages.

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: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: