



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 30/09-Island Glory**

**Date of award: 27 March 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: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

#### **DISPUTANT PARTIES**

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

Name: **Island Glory Industrial Co., Ltd. (the employer)**

Address: Tuol Sangke Village, Tuol Sangke Commune, Russei Keo District, Phnom Penh

Telephone: 012 434 168

Fax: N/A

Representatives:

1. Mr Sok Chanta

Advisor to Island Glory Industrial Co., Ltd.

2. Mr Nov Bunkieng

Head of Administration

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

Name: **Textile & Garment Workers' Federation of Cambodia (TGaFe)**

Address: No. 72, Street 31BT, Boeung Tompun Commune, Meanchey District, Phnom Penh

Telephone: 092 604 041

Fax: N/A

Representatives:

1. Mr Rat Rotmony

Head of the Board of Directors of TGaFe

2. Ms Sok Nakry

President of TGaFe

3. Mr Soa Sophally

Secretary of the Local Union of TGaFe

## ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate Soa Sophally, the secretary of the Local Union of TGaFe, because his dismissal was an act of union discrimination. The employer denies discriminating against the Local Union of TGaFe, arguing that it simply did not renew Soa Sophally's expired fixed duration contract. Moreover, the employer is trying to reduce the number of staff it employs. The employer has provided termination payments to Soa Sophally.

## 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. 151 was submitted to the Secretariat of the Arbitration Council on 3 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:** 10 March 2009 at 9:00 a.m.

**Procedural issues:**

On 13 February 2009, the Department of Labour Disputes received a complaint from TGaFe following its demand that the employer reinstate Soa Sophally, secretary of the Local Union of TGaFe. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute on 24 February 2009, but the issue was not resolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 3 March 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 10 March 2009 at 9:00 a.m. 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 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:**

#### **Issue 1: The workers demand that the employer reinstate Soa Sophally.**

- TGaFe demands that the employer reinstate Soa Sophally, the secretary of the local union, because his dismissal was due to union discrimination.
- The employer denies the accusation of union discrimination, arguing that the dismissal was prompted by the expiry of Soa Sophally's fixed duration contract.
- Soa Sophally commenced employment on 19 August 2008 on a two month probationary contract, effective from 19 August to 19 October 2008.
- After the probationary period, Soa Sophally signed a three month contract, effective from 19 October 2008 to 19 January 2009.
- Soa Sophally, a mechanic, received US\$ 85 per month.
- In November 2008, female workers from other sections founded the Local Union of TGaFe, with Im Chintha as president, Dim Horn as vice-president, and Soa Sophally as secretary. The president and vice-president are still employed at the factory because they hold undetermined duration contracts. The two of them have worked for the employer since 2005.
- In late November 2008, Soa Sophally distributed union membership forms to groups of workers during working hours and persuaded the workers to join the union. Upon seeing this, the foreman gave Soa Sophally a verbal warning for bothering other workers. The employer told Soa Sophally to do this activity outside working hours or to place the forms in a particular place for the workers to collect by themselves.

- The union notified the employer of the election of its leaders via a security guard on 8 December 2008. However, there was no evidence confirming this notification. On the same day, the union submitted the same notification to the Ministry of Labour for registration, but the Ministry rejected the notification due to insufficient evidence of the election taking place.
- On 9 January 2009, the employer informed Soa Sophally of the termination of his labour contract, which was due to expire on 19 January 2009.
- On 9 January 2009 at 11:20 a.m., the employer gave Soa Sophally a notice of contract termination, which he initially refused to accept. However, at 4:10 p.m. he agreed to accept the notice.
- The union resubmitted its registration documents on 13 January 2009, along with an acceptance letter of the registration documents from the Ministry.
- At the end of February 2009, three mechanics were accepted as regular employees after completing the probationary period. Written evidence provided by the employer confirms that a mechanic named Po Sokunthy signed a three month fixed duration contract on 17 January 2009, after he had completed the probationary period.
- When Soa Sophally's fixed duration labour contract expired on 19 January 2009, he received an indemnity for contract termination amounting to US\$ 107.84. This was witnessed by Im Chenda, the president of the local union.
- The workers made the following claims to allege union discrimination:
  1. The employer continued posting advertisements for the recruitment of new workers.
  2. The employer held an informal meeting with the local union, asking "can you change the leader?"
  3. Soa Sophally, as a union leader for less than three months, successfully protected the rights of workers in four cases.
  4. There were rumours that Soa Sophally did not respect the foreman or supervisor.
  5. The employer displayed different attitudes towards the three unions. Other union representatives were invited to meetings, but the Local Union of TGaFe was not.
- The employer responded to the workers' claims as follows:
  1. The employer asked the security guard to remove the advertisement for new workers, but he failed to do so and it was posted until 6 March 2009.

2. The employer acknowledges discussing the issue of union leadership, but only suggested that the union not choose a worker on a fixed duration contract.
3. The employer acknowledges that most meetings were attended by representatives of different unions, but this was because the meetings were for worker delegates and the leaders of those unions are also worker delegates. Therefore, there has been a misunderstanding.
4. The recent promotion of Soa Sophally to a union leadership position was not confirmed by documents such as a notification and evidence of registration at the Ministry of Labour and Vocational Training.
5. The employer must reduce staff numbers because it is facing the economic crisis.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the employer reinstate Soa Sophally.**

In this case, the workers demand that the employer reinstate Soa Sophally on the basis that his contract was not renewed due to union discrimination. However, the employer argues that his contract was not renewed because it had expired and the employer needed to reduce staff numbers due to a shortage of work.

Therefore, the Arbitration Council will consider this case as follows:

#### **Was the non-renewal of Soa Sophally's contract due to union discrimination?**

Article 73 of Labour Law states that “[a] labour contract of specific duration normally terminates at the specified ending date.” In accordance with this article, a labour contract of fixed duration normally terminates at the specified ending date. This means that the employment relationship and obligations are terminated.

In this case, Soa Sophally's fixed duration contract expired on 19 January 2009, meaning that the employment relationship was terminated on that date. However, the workers allege that the non-renewal of Soa Sophally's contract was due to union discrimination.

Article 12 of the Labour Law states:

no employer shall consider on account of:

...

- membership of workers' union or the exercise of union activities.

to be the invocation in order to make a decision on:

- hiring,

...

- discipline or termination of [an] employment contract.

Article 279 of the Labour Law provides that: “[e]mployers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment... and dismissal”

In Arbitral Award 10/03-Jacqsintex, issue 2, the Arbitration Council found that:

both the decision not to renew a contract of fixed duration and the decision to dismiss a worker on an undetermined duration contract should be considered to fall within the category of decisions which an employer cannot make for reasons of union membership or participation in union activity.

In accordance with Articles 12 and 279 of the Labour Law and previous arbitral awards, the Arbitration Council finds that if a decision not to renew a fixed duration labour contract is based on union activities, that decision is contrary to the Labour Law and the rulings of the Arbitration Council.

In relation to allegations of union discrimination in previous cases, the Arbitration Council has held that the workers bear the burden of providing evidence confirming the discrimination (*see Arbitral Awards 90/06-Evergreen, issue 1; 112/06-River Rich, issue 1; 01/07-Supreme, issue 1; and 148/07-Pay Her, issue 1*).

Where union discrimination is alleged, generally the Arbitration Council will consider the answers given in the hearing and examine the evidence submitted in order to determine whether there is union discrimination in that case (*see Arbitral Awards 10/03-Jaqsintex, issue 4; 19/04-Kbal Koah, issue 1; 17/07-Charm Textile, issue 1; and 148/07-Pay Her, issue 1*).

The Arbitration Council finds that according to the facts, the employer renewed the contract of Po Sokunthy, a mechanic, after his probationary period expired. His contract commenced on 17 January 2009, two days before Soa Sophally's contract expired and eight days after the employer informed Soa Sophally that his contract would not be renewed. Moreover, the Arbitration Council finds that Soa Sophally was the only mechanic whose contract was not renewed. Further, the employer posted an advertisement seeking new workers until March 2009, although Soa Sophally's contract expired on 19 January 2009. At the hearing, the employer claimed that the advertisement was posted until March 2009 because the security guard failed to remove it. The Arbitration Council finds that the employer's statement is not convincing because the non-renewal of Soa Sophally's contract occurred on 19 January 2009, and the announcement remained until March 2009. Furthermore, the employer stated that it had recruited new workers in other sections, not the mechanic section. However, the Arbitration Council finds that there is no evidence or statement confirming that there was no need for the employer to recruit mechanics.

The employer submitted evidence relating to job redundancies to the Arbitration Council on 13 March 2009, but that evidence was unclear because it was titled “list of workers resigning”. The Arbitration Council finds that the word “resigning” is ambiguous; it could mean that the workers resigned voluntarily, or that the employer terminated their contracts, or that their contracts expired.

Consequently, the assertion that the employer did not renew Soa Sophally’s labour contract due to job redundancy is not plausible.

Moreover, the employer certainly knew that Soa Sophally was a leader of the union in November 2008, when he was recruiting members during working hours, even if it did not receive any letter notifying it of the election result.

Based on the evidence, the Arbitration Council finds that the non-renewal of Soa Sophally’s labour contract was an act of union discrimination. Moreover, the Arbitration Council notes that the employer did not provide sufficient evidence or reasons to confirm that there was no union discrimination. As a result, the Arbitration Council finds that the non-renewal of Soa Sophally’s labour contract was due to his union activities.

The Arbitration Council finds that although the labour contract was of fixed duration and had expired, the Labour Law and previous decisions of the Arbitration Council forbid the employer from considering membership of a workers’ union or the exercise of union activities when making a decision on hiring or the termination of an employment contract.

Furthermore, the workers and the employer agreed at the hearing that they would have another discussion regarding the type of labour contract that would be utilised should the Arbitration Council order the reinstatement of Soa Sophally.

Therefore, the Arbitration Council decides to order the employer to reinstate Soa Sophally.

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 reinstate Soa Sophally.

#### **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 Phyum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....