



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 31/09-Mary Juice

Date of award: 25 March 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

DISPUTANT PARTIES

Employer party:

Name: **Mary Juice (the employer)**

Address: National Road 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

Telephone: 012 340 332

Fax: 024 985 118

Representatives:

- | | |
|-----------------|------------------------|
| 1. Ms Chin Savy | Director of Mary Juice |
| 2. Ms Chin Mom | Head of Administration |

Worker party:

Name: **Cambodian Union Federation (CUF)**

Local Union of CUF

Address: National Road 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

Telephone: 012 658 129

Fax: N/A

Representatives:

- | | |
|--------------------|--|
| 1. Mr Mom Thorn | Dispute Resolution Officer of CUF |
| 2. Mr Sok Sarom | President of the Local Union of CUF |
| 3. Mr Nan Chenda | Vice-President of the Local Union of CUF |
| 4. Mr Duong Uthdom | Secretary the Local Union of CUF |

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide a seniority bonus because workers in the garment, textile, and footwear manufacturing industry are entitled to this benefit and they work in the same field. The employer refuses to provide a seniority bonus as demanded because there is no law that requires a manufacturing enterprise to provide such benefits to its workers.
2. The workers demand that the employer provide a living allowance because workers in the garment, textile, and footwear manufacturing industry are entitled to this benefit and they work in the same field. The employer states that it cannot provide a living allowance as demanded because there is no law that requires a manufacturing enterprise to provide such benefits to its 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. 153 KB/AK/VK dated 2 March 2009 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: 11 March 2009 at 8:30 a.m.

Procedural issues:

On 13 January 2009, the Department of Labour Disputes received a complaint from CUF outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the complaint, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 13 February 2009. Neither of the two issues in dispute was resolved at the session. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 3 March 2009 via non-conciliation report No. 153 KB/AK/VK dated 2 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 two non-conciliated issues, held on 11 March 2009 at 8:30 a.m.

Both parties were present as summoned by the Arbitration Council. The Arbitration Council sought additional relevant information and conducted a further conciliation of the two non-conciliated issues, but neither was resolved.

The Arbitration Council will consider the issues 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:

- Mary Juice is a manufacturing enterprise established in 2003. It currently employs a total of 50 workers.
- There is only one union at the enterprise; the Local Union of CUF, the claimant in this case.
- Both parties acknowledge that 19 of the 50 workers are members of the local union.
- The local union does not hold most representative status (MRS).

Issue 1: The workers demand that the employer provide a seniority bonus because workers in the garment, textile, and footwear manufacturing industry are entitled to this benefit and they work in the same field.

- The workers demand that the employer provide those workers who have been working at the enterprise for a certain length of time (the workers have four to seven years of service), with a seniority bonus as received by workers in the garment, textile, and footwear manufacturing industry.
- The workers state that the *Prakas* issued by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation provides garment workers who perform

light work with a seniority bonus and living allowance. Therefore, those who perform heavy work should receive the same benefits.

- The workers seek the Arbitration Council's ruling as to whether or not they have the right to receive a seniority bonus.
- At the hearing, the employer claimed to employ 50 workers, divided into three sections: 19 workers in the production section, six workers in the warehouse section, and 25 workers in the marketing section. They receive different wages and benefits. The workers in the production and warehouse sections are paid a main wage of US\$ 50 per month plus other bonuses including a 20,000 riel living allowance and a 20,000 riel attendance bonus if they attend work for the whole month. The workers in the marketing section are divided into two groups, one of which uses their own transportation (motorbike or car) and the other uses transportation provided by the employer. The employer does not provide them with additional bonuses because they earn commission on sales, whereas the workers in the production and warehouse sections do not. The amount of commission earned by workers in the marketing section differs from worker to worker depending on the quantity of juice sold. The more juice they sell, the more commission they earn.
- The employer states that it is not able to meet the workers' demands because no provisions in the Labour Law or other regulations require it to provide a seniority bonus or other bonuses to the workers. Further, the employer has provided superior benefits to the workers. The employer does not believe the union's claim that the demand was made by the workers, rather it is the union itself making the demands.
- The workers insist that the Arbitration Council consider which kind of work entitles workers to a seniority bonus and living allowance, since lifting and carrying the juice is hard work.
- At the hearing, the employer insisted that it cannot provide a seniority bonus and living allowance because the Labour Law does not require manufacturers to do so.

Issue 2: The workers demand that the employer provide a living allowance because workers in the garment, textile, and footwear manufacturing industry are entitled to this benefit and they work in the same field.

- The workers and the employer agree that issue 2 differs from issue 1 because in issue 1 the workers demand a seniority bonus, but in issue 2 the demand is for a living allowance.
- The facts in issue 2 are the same as those in issue 1.

REASONS FOR DECISION

The Local Union of CUF, the representative of the workers, makes the demand in this case on behalf of the workers at Mary Juice. Therefore, the Arbitration Council will consider whether the workers are entitled to a seniority bonus and living allowance.

Article 268 of the Labour Law states:

In order for their professional organisation to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labour for registration...

If the Ministry in Charge of Labour does not reply within two months after receipt of the registration form, the professional organisation is considered to be already registered.

The Arbitration Council finds that, based on Article 268, a professional organisation is entitled to the rights and benefits recognised by the Labour Law when it is registered with the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.

Moreover, Clause 5, paragraph 1 of *Prakas* No. 305 SKBY dated 22 November 2001 provides that “[a]ny union established at an enterprise or establishment in compliance with Article 268 of the Labour Law has the right to represent the interests of its members in accordance with the conditions contained in the Labour Law.”

In this case, the Arbitration Council finds that the Local Union of CUF was registered by the Ministry of Labour and Vocational Training on 1 October 2007. Therefore, the union has rights and interests recognised by Labour Law, including the right to represent its members in accordance with Article 268 of the Labour Law and Clause 5, paragraph 1 of *Prakas* No. 305.

Therefore, the Arbitration Council will consider this case only for those workers who are members of the Local Union of CUF.

Issue 1: The workers demand that the employer provide a seniority bonus because workers in the garment, textile, and footwear manufacturing industry are entitled to this benefit and they work in the same field.

In this case, the workers demand that the employer provide a seniority bonus to workers who have been working for more than one year equal to US\$ 2 per month plus an additional US\$ 1 per month for each following year up until the fourth year, when they will receive US\$ 5 per month. This is because they work in the same field as those workers in the garment, textile, and footwear manufacturing industry. Therefore, the Arbitration Council will consider whether the workers at Mary Juice are entitled to a seniority bonus.

Point 5 of Notification No. 017 SKBY of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, dated 18 July 2000, states:

Workers who work at any factory or enterprise for more than one year shall get the following rewards for their service:

- 5.1. For seniority of more than one year, the worker shall receive a reward of US\$ 2 per month.
- 5.2. For seniority of more than two years, the worker shall receive a reward of US\$ 3 per month, i.e. US\$ 2 for the first year plus US\$ 1 for the second year.
- 5.3. For seniority of more than three years, the worker shall receive a reward of US\$ 4 per month, i.e. US\$ 2 for the first year plus US\$ 1 for the second year, plus US\$ 1 for the third year.
- 5.4. For seniority of more than four years, the worker shall receive a reward of US\$ 5 per month, i.e. US\$ 2 for the first year plus US\$ 1 for the second year, plus US\$ 1 for the third year plus US\$ 1 for the fourth year.

The above notification only applies to workers in the garment, textile, and footwear manufacturing industry.

This means that a seniority bonus is mandated for workers who perform services in the field of garment, textile, and footwear manufacturing, but not for workers in other fields such as [other areas of] manufacturing. The Arbitration Council finds that it is the Ministry of Labour and Vocational Training that issued the *Prakas* determining which workers are entitled to a seniority bonus. Furthermore, the Arbitration Council finds that there are no provisions in the Labour Law, a labour contract, the internal work rules, or a collective bargaining agreement which stipulate that manufacturing workers are entitled to a seniority bonus. The Arbitration Council cannot find any legal basis for this demand as it is beyond what is provided by the law. Therefore, the Arbitration Council considers that the workers' demand gives rise to an interests dispute (*see Arbitral Award 134/08-Chevron, issue 3*).

In previous cases where interests disputes have arisen, the Arbitration Council has always considered whether the claimant union holds MRS. The Arbitration Council considers that holding MRS gives a union the capacity to negotiate a collective bargaining agreement with an employer and gives it legal standing to bring an interests dispute before the Arbitration Council for resolution. To obtain MRS, a union must be registered and meet the other criteria stated in Article 277 of the Labour Law (1997).

Furthermore, Clause 43 of *Prakas* No. 099 SKBY, dated 21 April 2004 states:

An arbitral award which settles an interests dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the

date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

If a union does not hold MRS, it does not have the capacity to make a collective bargaining agreement on behalf of all workers at an enterprise (see Article 96(2)(b) of the Labour Law and Clause 9(1) of *Prakas* No. 305). This right is restricted to registered unions which have the majority of workers at an enterprise as members and meet the other criteria stipulated in Article 277 of the Labour Law.

Generally, the Arbitration Council will decline to consider an interests dispute if the union bringing the dispute before the Council does not hold MRS (see *Arbitral Award 101/08-GDM, issue 3*).

Based on the findings of fact and evidence, the union is registered and has 19 members among the 50 workers. Therefore, the union does not hold MRS.

According to the above interpretation, if the Arbitration Council issues an arbitral award on an interests dispute, the parties lose the right to take industrial action in relation to that issue or bring it before the Arbitration Council again for a one year period.

Based on the above interpretation, the Arbitration Council considers that the Local Union of CUF does not have legal standing to bring an interests dispute before it. Therefore, the Arbitration Council declines to consider the demand.

Issue 2: The workers demand that the employer provide a living allowance because workers in the garment, textile, and footwear manufacturing industry are entitled to this benefit and they work in the same field.

Point 1 of Notification No. 032/08/SCN dated 17 April 2008 stipulates that employers must:

provide an additional living allowance to support workers, apprentices, casual or floating workers, probationary workers and full-right workers who are working in garment and footwear manufacturing factories, enterprises, and establishments in the amount of US\$ 6 (six US Dollars) per month. This allowance is not included as a part of the actual wage (main wage).

The Arbitration Council considers that the above notification clearly states that only workers in the garment and footwear manufacturing industry are entitled to the living allowance. It does not apply to other fields of manufacturing. There are no provisions in the labour contract between the workers and the employer or the internal work rules which provide for a living allowance. The parties do not have a collective bargaining agreement. Therefore, the Arbitration Council considers that there is no legal basis for the workers'

demand in this case. As in issue 1, the demand is beyond the provisions of the law and is therefore an interests dispute.

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

DECISION AND ORDER

Issue 1: Decline to consider the workers' demand that the employer provide a seniority bonus.

Issue 2: Decline to consider the workers' demand that the employer provide a living allowance.

Type of award: binding award

The award is immediately binding upon the parties upon its notification as the parties chose binding arbitration on 11 March 2009.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: