



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 32/12-Global Apparels

Date of award: 14 March 2012

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

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

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

DISPUTANT PARTIES

Employer party:

Name: **Global Apparels Limited (the employer)**

Address: Trapang Tuol Village, Kambol Commune, Angsnuol District, Kandal Province

Telephone: 012 950 954

Fax: N/A

Representatives:

- | | |
|-------------------|--|
| 1. Mr Ry Vanlo | Head of Human Resources |
| 2. Mr Suong Phorn | Labour Dispute Resolution Officer |
| 3. Mr Kim Samang | Assistant to the Head of Human Resources |

Worker party:

Name: **Workers' Union Federation (WUF)**

Local Union of WUF

Address: Trapang Tuol Village, Kambol Commune, Angsnuol District, Kandal Province

Telephone: 012 995 523

Fax: N/A

Representatives:

- | | |
|--------------------|----------------|
| 1. Mr Tem Tun | Officer of WUF |
| 2. Ms Khiev Bunsen | Officer of WUF |

ISSUES IN DISPUTE

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

1. The workers demand that the employer transfer Y Chhayong from the shipping section. The employer refuses to transfer him.
2. The workers demand that the employer provide a meal allowance and an overtime payment for overtime work. The employer will discuss the issue with the director first.

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. 136 dated 7 June 2011 (Ninth 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. 180 KB/RK/VK dated 15 February 2012 was submitted to the Secretariat of the Arbitration Council on 17 February 2012.

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: 1 March 2012 at 2:00 p.m.

Procedural issues:

On 13 February 2012, the Department of Labour Disputes of Kandal Province received a complaint from WUF outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the Department of Labour Disputes of Kandal Province assigned an expert officer to conciliate the dispute and the last conciliation session was held on 13 February 2012. Two of the four issues were resolved. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 17 February 2012 via non-conciliation report No. 180 KB/RK/VK dated 15 February 2012.

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 1 March 2012 at 2:00 p.m. Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the two issues, but neither was resolved.

As both parties are signatories to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU) dated 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. In accordance with the MoU, both parties have agreed to binding arbitration of rights disputes. However, this does not apply to interests disputes. The parties are able to choose non-binding arbitration of interests disputes and can object to an arbitral award on such disputes. Such an objection will not affect the parties' obligation to implement an award on rights disputes in accordance with the MoU. In this case, the two parties chose binding arbitration of both disputes.

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:

- Global Apparels Limited employs 2,570 workers.
- The Local Union of WUF is the claimant in this case.

Issue 1: The workers demand that the employer transfer Y Chhayong from the shipping section.

- At the hearing, the workers admitted that they have already brought the same issue with the same facts before the Arbitration Council. The issue was resolved by Arbitral Award 175/11-Global Apparels.
- In Arbitral Award 175/11-Global Apparels dated 24 January 2012, the Arbitration Council rejected the workers' demand that the employer transfer Y Chhayong from the shipping section.

Issue 2: The workers demand that the employer provide a meal allowance and an overtime payment for overtime work.

- The workers state that the 13 claimant workers in the shipping section have resigned from their positions. Thus, there are no claimant workers remaining in this case.

REASONS FOR DECISION

Before considering the issues in dispute, the Arbitration Council considers whether they give rise to rights disputes.

In previous arbitral awards, the Arbitration Council has held that “a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement” (see *Arbitral Awards 05/11-M & V (Branch 1), reasons for decision, issues 1 & 5; 13/11-Gold Kamvimex, reasons for decision, issues 1 & 2; 14/11-GHG, reasons for decision, issue 4; and 37/11-ASD, reasons for decision, issue 1*).

The Arbitration Council applies the abovementioned ruling in this case. The Arbitration Council considers issues 1 and 2 in this case to be rights disputes as they concern entitlements in the Labour Law.

Issue 1: The workers demand that the employer transfer Y Chhayong from the shipping section.

The issue in question has been resolved by Arbitral Award 175/11 on 24 January 2012. Thus, the Arbitration Council will determine whether it has to consider this issue again.

“*Res judicata*” is a legal principle which prevents a case being brought by the same disputant parties regarding the same issues in dispute to the same forum for adjudication where the legal authority has already issued a ruling on the dispute.

There are no provisions in any applicable law that impose the principle of *res judicata* on the arbitral process. Thus, when the Arbitration Council rules on a dispute, it has discretion to consider whether or not to bring the issue for further discussion (see *Arbitral Awards 45/07–Wilson, reasons for decision, issue 1; 14/08–Quicksew, reasons for decision, issue 1; 64/09–Sinomax (Branch 2); and 95/09–Tack Fat, reasons for decision, issue 3*).

Based on the principle of *res judicata*, the Arbitration Council will reject a demand by workers if it fulfils the below three conditions:

- (1) the identical disputant parties were involved in the previous dispute;
- (2) the same issue has already been brought to the Arbitration Council; and
- (3) the Arbitration Council has ruled on the facts.

The purpose of the *res judicata* rule is to avoid conflicting results to the same issue and to conclude the dispute with a final resolution at first instance (see *Arbitral Award 42/07–South Bay, reasons for decision, issue 1*).

The Arbitration Council considers in this case that the purpose of a refusal to reconsider the same issue is to avoid inconsistent decisions on the same issue and to resolve the issue with a final decision.

The Arbitration Council applies the said interpretation in this case. The Arbitration Council considers that the claimant workers in this case are the same party as in Arbitral Award 175/11-Global Apparels, in which the Council has ruled on the merits of the issue.

Based on this principle, in order to be consistent with the previous ruling, the Arbitration Council declines to consider the workers' demand that the employer transfer Y Chhayong from the shipping section.

Issue 2: The workers demand that the employer provide a meal allowance and an overtime payment for overtime work.

At the hearing, the workers stated that the 13 claimant workers in the shipping section had resigned from their positions. Thus, there are no remaining claimant workers in this case.

Therefore, the Arbitration Council rejects the workers' demand that the employer provide a meal allowance and an overtime payment for overtime work.

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

DECISION AND ORDER

Issue 3: Decline to consider the workers' demand that the employer transfer Y Chhayong from the shipping section.

Issue 6: Reject the workers' demand that the employer provide a meal allowance and an overtime payment for overtime work.

Type of award: binding award

This award of the Arbitration Council will be final and is immediately enforceable by the parties as they chose binding arbitration on 1 March 2012.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: