



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 34/09-Suntex**

**Date of award: 6 April 2009**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

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

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

#### **DISPUTANT PARTIES**

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

Name: **Suntex Pte Ltd. (the employer)**

Address: Trapang Thloeng Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 827 755

Fax: N/A

Representatives:

1. Mr Sri Kimyou

Lawyer

2. Mr Vong Rotha

Administration staff

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

Name: **Workers of Suntex Pte Ltd.**

Address: N/A

Telephone: 012 782 978

Fax: N/A

Representatives:

1. Ms Heng Bong

Lawyer

2. Ms Sari Both Chariya

Lawyer

3. Mr Ngin Vannak

Worker representative

4. Mr Chea Sopheap

Worker representative

5. Ms Sek Sophea

Worker representative

6. Ms Sem Sopheang

Worker representative

7. Ms Pich Chanmonita	Worker representative
8. Mr Soy Phalla	Worker representative
9. Mr Bi Bunmab	Worker representative
10. Ms Thoa Sokem	Worker representative
11. Mr Svay Kimseng	Worker representative
12. Ms Doung Hengleang	Worker representative
13. Mr Kieng Pang	Worker representative

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer pay an additional indemnity for dismissal for night shift work in accordance with the Labour Law. The employer claims that the claimant workers have all resigned from their positions and have already received payments in accordance with their agreement.

### **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. 180 KB/AK/VK dated 6 March 2009 was submitted to the Secretariat of the Arbitration Council on 10 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:** 19 March 2009 at 8:00 a.m.

**Procedural issues:**

On 9 January 2009, the Department of Labour Disputes received a complaint from the workers at the Suntex factory outlining their demand that the employer pay an additional 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 26 February 2009. The issue remained unresolved. The

non-conciliated issue was referred to the Secretariat of the Arbitration Council on 10 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 19 March 2009 at 8:00 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 did not achieve a result. 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:**

- At the hearing, the lawyers representing the workers stated that there are 34 claimant workers in this case. 22 workers executed authorisation letters, all dated 9 January 2009, for 12 workers to represent them in settling the case. On 10 February 2009, the 12 workers executed authorisation letters for representation by their lawyers.
- At the hearing, the employer objected to the involvement of the additional 22 workers. The Arbitration Council found that, according to the minutes of the collective labour dispute conciliation, there are only 12 workers in this case.
- The lawyers representing the workers claim that the authorisation letters were executed when the complaint was first filed with the Ministry. However, they did not attach the authorisation letters to the complaint because they didn't think it was necessary given that they were only at the conciliation stage.

**Issue 1: The workers demand that the employer pay an additional indemnity for dismissal for night shift work in accordance with the Labour Law.**

- Suntex Pte Ltd. commenced operation nearly 10 years ago. Recently, the company has encountered difficulties because the number of buyers has decreased and the cost of production has increased. This situation has had a negative financial impact on the company, forcing it to cease its night shift operations. This change of shift was first implemented with respect to workers in the cutting, mechanic, linking, and warehouse sections, and subsequently in the sewing, packing, and finishing sections.
- In August 2008, the employer decided to reassign the workers from night to day shift, and submitted a request to the Labour Inspector. In response, the Labour Inspector sought discussions between the employer and worker parties, the worker delegates, and the union.
- The employer conducted a survey to determine the workers' opinions regarding the change of shift. After getting the results of the survey, the employer held a meeting with the worker representatives regarding the change of shift, presenting the following three choices for the workers' consideration:
  1. To workers who change from undetermined duration to fixed duration labour contracts, the employer will offer a termination indemnity in accordance with the worker's seniority, i.e. 15 days' wages for each year of service.
  2. For workers who do not renew their contracts and resign voluntarily, the employer will allow them to do so and will offer a termination indemnity as in case 1.
  3. For workers who choose to keep their contracts on foot, the employer will allow this but the workers will have to change to day shift.
- The employer claims that some workers chose the first option, some the second, and some the third.
- The claimant workers in this case chose options 1 and 2. The Arbitration Council finds that two workers chose option 1 but decided to leave their jobs voluntarily because they could not tolerate the workload. Another 32 workers chose option 2.
- The lawyers for the workers assert that the 34 workers demand additional benefits because they believe that the employer terminated their contracts illegally because it ceased the night shift operations, does not have enough work for workers to do during the day time, and suspended workers. Meanwhile, there was a change from undetermined duration contracts to fixed duration contracts as well as a decrease in the other benefits the workers used to receive for working the night shift. Further, the

employer unilaterally presented choices to the workers without their agreement. In short, the workers' resignation was prompted by inducements and the employer's bad faith, aimed at making it appear that the workers terminated the contracts themselves.

- The workers claim that the resignation letters prepared by the employer were written in English and the workers were made to sign them without understanding them. Their signing was induced by other people.
- The employer claims that although the documents were in English, the employer explained the contents to the workers before letting them sign.
- The workers demand that the employer offer other benefits such as compensation in lieu of notice, dismissal indemnity, compensation equal to the indemnity for dismissal, and compensation in lieu of annual leave because the employer violated Articles 75, 76, 89, 90, 91, 167, 13 and 390 of the Labour Law.
- The employer does not agree to the demand because, it argues, it did not terminate the labour contracts; it was an agreement between it and the workers. The workers chose an option offered without being forced.

#### **REASONS FOR DECISION**

According to the above facts, the employer asserts that there are only 12 workers involved in this issue. However, the lawyers representing the workers claim that there are 34 workers, 22 of whom executed authorisation letters for the other 12 workers, who sought help from the lawyers. The Arbitration Council will consider as follows:

Article 312 of the Labour Law states that “[t]he Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters which arise from events subsequent to the report, that are the direct consequence of the current dispute.”

According to this article, the Arbitration Council has no duty to examine issues other than those specified in the non-conciliation report. In this case, the issue specified in the non-conciliation report was the demand that the employer pay an additional dismissal indemnity for night shift work to the 12 workers. The 12 workers and their lawyers affixed their acknowledgements and signatures to the minutes of the collective labour dispute conciliation session. Therefore, the Arbitration Council finds that there are only 12 claimant workers in this case.

**Issue 1: The workers demand that the employer pay an additional indemnity for dismissal for night shift work in accordance with the Labour Law.**

According to the facts found by the Arbitration Council, those workers who were not satisfied with the change of shift chose to resign and receive the benefits offered by the employer. However, the workers now demand that the employer offer them additional benefits, claiming that the employer forcibly changed shifts, and by inducements and bad faith made it appear that the workers terminated their labour contracts voluntarily. Moreover, the resignation letters were written in English, which the workers were unable to understand. As a result, the workers raise additional demands for compensation in lieu of notice, indemnity for dismissal, and compensation equal to the indemnity for dismissal, as the employer infringed Articles 75, 76, 89, 90, 91, 167, 13 and 390 of the Labour Law. The employer disputes this claim because it did not dismiss the workers; it was an agreement between it and the workers. The Arbitration Council will consider as follows:

According to the facts, all the workers held contracts of undetermined duration.

Article 74, paragraph one of the Labour Law states that “[t]he labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.”

In this case, the Arbitration Council finds that labour contracts of unspecified duration can be terminated at will by one of the contracting parties.

Based on the above facts, the Arbitration Council finds that when the employer ceased its night shift operations and reassigned the workers to the day shift, it gave the workers three options to consider. The 34 workers chose the second option, to resign voluntarily and receive an indemnity in accordance with their seniority; i.e., 15 days for each year of service, plus their last wage. Workers who chose the second option had to sign resignation letters written in English.

In this case, the Arbitration Council finds that prior to an agreement between the workers and the employer, the employer conducted a survey to determine the workers' ideas on the change of shift. Then the employer composed a notification letter in Khmer, outlining the difficulties the employer was facing and its plans to cease the night shift operations by giving three options for the workers to consider and choose between freely. There was also a meeting between the employer and the worker delegates. Therefore, when the workers chose the second option, they understood and were ready to resign voluntarily and submit resignation forms or sign the resignation letters provided. The Arbitration Council also finds that the 12 workers signed the English letters prepared by the employer and received the benefits to which the parties had agreed. Therefore, the resignation letters demonstrate the

workers' willingness to choose the second option, meaning that they understood the option before they decided to sign the resignation letters.

Therefore, the Arbitration Council finds that the workers were willing to resign voluntarily.

Based on the above finding, the workers resigned voluntarily. Article 167 of the Labour Law states that "[i]f the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker."

According to this article, if a contract is terminated or expires before the worker has acquired the right to use their paid leave, the worker has a right to receive compensation in lieu of paid leave (*see Arbitral Award 153/08-Hytex Garment, reasons for decision, issue 4*).

Based on the above, the Arbitration Council finds that the 12 workers resigned voluntarily. Therefore, in accordance with Article 167 of the Labour Law, the employer must pay the 12 workers compensation in lieu of paid leave if those workers have not used it all.

Therefore, the Arbitration Council decides to reject the workers' demand that the employer pay compensation in lieu of notice, indemnity for dismissal, and compensation equal to the indemnity for dismissal. The Arbitration Council orders the employer to pay compensation in lieu of annual leave to the 12 workers.

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

#### **DECISION AND ORDER**

##### **Issue 1:**

- Reject the workers' demand that the employer pay compensation in lieu of notice, indemnity for dismissal, and compensation equal to the indemnity for dismissal.
- Order the employer to pay compensation in lieu of annual leave to the 12 workers if the workers had not exhausted their annual leave on the day they resigned.

##### **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: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....