



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 162/11-Cambo Handsome (Branch 1)

Date of Award: 27 December 2011

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: **An Nan**

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

DISPUTANT PARTIES

Employer party:

Name: **Cambo Handsome Ltd (Branch 1) (the employer)**

Address: Prey Tea Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 249 633

Fax: N/A

Representatives:

- | | |
|--------------------|--|
| 1. Mr Do Sang Kyu | Assistant to the Corporate Social Responsibility Manager |
| 2. Mr Soo Hyung Jo | Corporate Social Responsibility Manager |
| 3. Mr Hom Phea | Lawyer |
| 4. Mr Chan Davuth | Head of Administration |
| 5. Mr Pon Borith | Legal staff |
| 6. Mr Suong Piseth | Legal staff |
| 7. Mr Huot Sok | Legal staff |

Worker party:

Name: **Worker Friendship Union Federation (WFUF)**

Cambodian Federation Labor Union (CFLU)

Local Union of WFUF

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Local Union of CFLU

Address: Prey Tea Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 736 270

Fax: N/A

Representatives:

1. Mr Sok Kruy Lawyer
2. Mr Sreang Sambath President of WFUF
3. Mr Din Samart President of CFLU
4. Mr Van Rin President of the Local Union of WFUF
5. Mr Yi Davy Vice-President of the Local Union of WFUF
6. Ms Tin Channak Secretary of the Local Union of WFUF
7. Mr Yi Davuth President of the Local Union of CFLU
8. Mr Sreang Narith Vice-President of the Cambodian Workers of Economic
Union Federation
9. Mr Oun Dara President of the Conscious Labour Independent
Federation Union
10. Mr Yum Thaisan General Secretary of the Cambodian Labour
Confederation

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate Van Rin and Yi Davy, President and Vice-President of the Local Union of WFUF, and Yi Davuth, President of the Local Union of CFLU.
2. The workers demand that the employer withdraw its complaint against Van Rin in the Phnom Penh Court of First Instance.
3. The workers demand that the employer change security guards.
4. The workers demand that the employer provide a US\$ 15 allowance for either accommodation or transportation.
5. The workers demand that the employer maintain the striking workers' wages and benefits.
6. The workers demand that the employer dismiss the head of administration.

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

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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. 1348 KB/RK/VK dated 2 December 2011 was submitted to the Secretariat of the Arbitration Council on 2 December 2011.

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 Quarter, Tuol Kork District, Phnom Penh

Date of hearing: 16 December 2011 at 2:00 p.m.

Procedural issues:

On 29 November 2011 WFUF led a strike of more than 400 workers, demanding that the employer improve working conditions and reinstate Van Rin and Yi Davy, President and Vice-President of the Local Union of WFUF, and Yi Davuth, President of the Local Union of CFLU. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the dispute but none of the six issues were resolved. The six non-conciliated issues were referred to the Secretariat of the Arbitration Council on 2 December 2011 via non-conciliation report No. 1348 KB/RK/VK dated 2 December 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the six non-conciliated issues, held on 16 December 2011 at 2:00 p.m. Both parties were present at the hearing. The Arbitration Council attempted a further conciliation of the dispute, resulting in issues 3, 4, and 6 being resolved. Issues 1, 2, and 5 remain unresolved.

The employer and the workers chose binding arbitration of the remaining issues.

The Arbitration Council considers and decides on the remaining issues in this case below.

EVIDENCE

Witnesses & Experts: N/A

Documents, Exhibits, and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Authorisation letter for the employer's lawyer Hom Phea, dated 15 December 2011.

2. Authorisation letter from the employer for Do Sang Kyu, dated 15 December 2011.
3. Digital Video Disc showing strike activity at the factory.
4. Facts relating to allegations that Van Rin stole shirts and Yi Davy and Yi Davuth made noise that disturbed other workers.
5. Certificate of commercial registration of the employer, dated 26 July 2011.
6. Company statute of the employer, dated 1 June 2006.
7. Internal Work Rules of the employer, dated 28 December 2007.
8. Minutes of a meeting relating to allegations that Van Rin stole shirts, dated 25 November 2011.
9. Note from Mom Samreach, a security guard, regarding Van Rin's act of stealing shirts, dated 25 November 2011.
10. Note from Oung An confirming Van Rin's absence, dated 5 December 2011.
11. Note from Hor Sangha about witnessing Van Rin in the parking lot at 11:15 a.m., dated 5 December 2011.
12. Note from Suon Sopheap about witnessing Van Rin leaving work early and being in the parking lot at 11:18 a.m., dated 5 December 2011.
13. Note from Srey Chrep about witnessing Yi Davy and Yi Davuth calling for work stoppages and insulting group leaders at 12:45 p.m. on 25 November 2011, dated 12 December 2011.
14. Note from Sim Khlei about witnessing Yi Davy and Yi Davuth calling for work stoppages at 12:40 p.m. on 25 November 2011, dated 12 December 2011.
15. Note from Chen Sokhorn about witnessing Yi Davy and Yi Davuth calling for work stoppages on 25 November 2011, dated 12 December 2011.
16. Note from Chamroeun Saron about witnessing Yi Davy and Yi Davuth calling for work stoppages at 12:30 p.m. on 25 November 2011, dated 13 December 2011.
17. Note from Sim Channa about witnessing Yi Davy and Yi Davuth calling for work stoppages at 12:40 p.m. on 25 November 2011, dated 12 December 2011.
18. Note from Hong Sarim about witnessing a large number of workers stop working until 4:00 p.m., dated 26 November 2011.
19. Note from Oy Chanthou about witnessing Yi Davy and Yi Davuth calling for work stoppages, dated 26 November 2011.
20. Note from Tum Savorn about witnessing Yi Davy and Yi Davuth calling for work stoppages in the sewing section at 12:40 p.m. on 25 November 2011, dated 13 December 2011.
21. Note from Sam Phal about witnessing Yi Davy and Yi Davuth calling for work stoppages in the sewing section from 12:20 to 4:00 p.m. on 25 November 2011, dated 12 December 2011.

22. Note from Sen Chanty about witnessing Yi Davy and Yi Davuth making noise, causing disturbance and confusion at the factory on 25 November 2011, dated 12 December 2012.
23. Note from Sam Siyun about witnessing Yi Davy and Yi Davuth calling for work stoppages in the sewing section from 12:40 to 4:00 p.m. on 25 November 2011, dated 12 December 2011.
24. Note from Kang Sokmean about witnessing Yi Davy and Yi Davuth calling for work stoppages in the sewing section from 12:40 to 4:00 p.m. on 25 November 2011, dated 12 December 2011.
25. Note from Pon Boret describing the situation at the factory after Van Rin was accused of stealing shirts on 25 November 2011, dated 25 November 2011.
26. Record of Deab Seyha, a security guard, witnessing Yi Davy and Yi Davuth calling for work stoppages on 25 November 2011, dated 25 November 2011.
27. Payroll for November 2011 for Line 12 (B), Line 14 (B), Line 13 (B), Line 15 (B), Line 16 (B), Line 17 (B), Line 20 (B), Line 21 (B), Line 22 (B), and Line 24 (B).
28. Record of interviews with Ngor Keat, Teang Phon, Cheurn Sokha, Met Pheakdey, Chin Sokhom, Yun Vuth, Meng Sreyneang, Von Samen, Hean Kimheang, and Nov Chenda regarding Chan Davuth's character, dated 14 December 2011.
29. Record of the enforcement of provisional relief ruling No. 16 "C" dated 29 November 2011 issued by the Phnom Penh Court of First Instance, dated 8 December 2011.
30. Provisional relief ruling No. 16 "C" dated 29 November 2011 issued by the Phnom Penh Court of First Instance.
31. Letter from the employer notifying the head of the Department of Labour Disputes of the work suspension of Van Rin, President of the Local Union of WFUF, dated 25 November 2011.
32. Letter from the employer notifying the head of the Department of Labour Disputes of the work suspensions of Yi Davy and Yi Davuth, Vice-President of the Local Union of WFUF and President of the Local Union of CFLU, dated 25 November 2011.
33. Letter from the employer to the head of the Department of Labour Disputes requesting authorisation to dismiss Van Rin, ID 5-1065, a worker in the ironing section and President of the Local Union of WFUF, dated 6 December 2011.
34. Letter from the employer to the head of the Department of Labour Disputes requesting authorisation to dismiss Yi Davy, ID 4858, a worker in the mechanic section and Vice-President of the Local Union of WFUF, dated 6 December 2011.
35. Letter from the employer to the head of the Department of Labour Disputes requesting authorisation to dismiss Yi Davuth, ID 6211, a worker in the mechanic section and President of the Local Union of CFLU, dated 6 December 2011.

B. Provided by the worker party:

1. Authorisation letter from Yi Davuth, Yi Davy, and Van Rin for lawyer Sok Kruey, dated 16 December 2011.
2. Certificate of registration of the Local Union of CFLU, dated 23 August 2011.
3. Letter from the Department of Labour Disputes to the president of the Local Union of WFUF regarding the union's request for recognition of its new leaders, No. 643 KB/RK/VK dated 17 June 2011.
4. Letter confirming that the Local Union of WFUF has been formally registered, No. 180 KB dated 1 September 2010.
5. Joint statement of the Cambodian National Confederation for Labourers' Protection, consisting of eight federations, the Cambodian National Labour Confederation, consisting of six federations, the National Labour Confederation of Cambodia, consisting of five federations, and six independent union federations, dated 26 November 2011.
6. Letter from the Cambodian National Confederation for Labourers' Protection,, consisting of eight federations, the Cambodian National Labour Confederation, consisting of six federations, the National Labour Confederation of Cambodia, consisting of five federations, and six independent union federations to the police commissioner of Dangkor District, requesting the release of Van Rin, President of the Local Union of WFUF, dated 26 November 2011.
7. Letter from workers at the factory requesting Hun Sen, Prime Minister of the Kingdom of Cambodia, to intervene in the case, which involves a union leader being sued in the court and three union leaders being suspended, dated 30 November 2011.
8. Letter from workers at the factory requesting the presidents of the Cambodian National Labour Confederation, the Cambodian National Confederation for Labourers' Protection, the Worker's Union Federation, the Coalition Union of Movement of Khmer Workers, and the Union Federation for Labourers' Protection to find a solution to the dispute with the employer, dated 1 December 2011.
9. Letter from the employer notifying the head of the Department of Labour Disputes of the work suspension of Van Rin, President of the Local Union of WFUF, dated 25 November 2011.
10. Letter from the employer notifying the head of the Department of Labour Disputes of the work suspensions of Yi Davy and Yi Davuth, Vice-President of the Local Union of WFUF and President of the Local Union of CFLU, dated 25 November 2011.
11. Letter from Van Rin, endorsed by 23 witnesses, denying allegations of theft.
12. Brief statement on the labour dispute by CFLU, dated 14 December 2011.
13. Statute of the Local Union of CFLU, dated 23 August 2011.

14. List of names of workers who participated in a strike to demand an improvement in working conditions, dated 26 November 2011.
15. Letter from WFUF requesting the employer to improve working conditions, No. 061/11 dated 26 November 2011.
16. Letter from workers at the factory requesting the president of WFUF to assist with their demand for the improvement of working conditions, dated 26 November 2011.

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at Cambo Handsome Ltd (Branch 1), No. 1348 KB/RK/VK, dated 2 December 2011.
2. Record of collective labour dispute resolution at Cambo Handsome Ltd (Branch 1), dated 30 November 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 886 KB/AK/VK/LKA dated 8 December 2011.
2. Notice to attend the hearing addressed to the workers, No. 887 KB/AK/VK/LKA dated 8 December 2011.

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:

- Cambo Handsome Ltd (Branch 1) employs a total of 2,000 workers.
- The Local Unions of WFUF and CFLU are the claimants in this case.

Issue 1: The workers demand that the employer reinstate Van Rin and Yi Davy, President and Vice-President of the Local Union of WFUF, and Yi Davuth, President of the Local Union of CFLU.

- The employer accuses Van Rin of stealing shirts from the factory and putting them under the seat of his motorbike on 25 November 2011. The employer suspended his employment contract on 25 November 2011.
- The employer alleges that Yi Davy, Vice-President of WFUF, and Yi Davuth, President of CFLU, caused a disturbance during working hours on 25 November 2011. The employer suspended their employment contracts on 25 November 2011.

- The employer submitted letters, dated 6 December 2011, to the Department of Labour Disputes requesting authorisation to dismiss the three workers.
- Van Rin denies the allegation of theft. Yi Davy and Yi Davuth also deny the employer's allegations.
- The workers demand that the work suspensions be lifted and that the three workers be reinstated.
- As at the date of award issuance, the Labour Inspector has not rendered a decision in relation to the employer's request. The one month period, within which the Labour Inspector is required to respond, has not elapsed.

Issue 2: The workers demand that the employer withdraw its complaint against Van Rin in the Phnom Penh Court of First Instance.

- The workers demand that the employer withdraw the complaint against Van Rin in the Phnom Penh Court of First Instance.
- The employer refuses to accommodate the workers' demand.

Issue 5: The workers demand that the employer maintain the wages and benefits of the striking workers.

- The workers demand that the employer maintain wages during the strike. The workers withdrew their demand for benefits as the employer had already paid them.
- The strike occurred from 26 to 30 November 2011.
- The workers contend that 1,000 workers participated in the strike. The employer does not object to the contention.
- The workers make this demand because the strike was a response to the employer's manipulation of the facts to accuse Van Rin of stealing its shirts.
- The employer refuses to accommodate the workers' demand, on the basis of the Labour Law. The employer asserts that the striking workers are not entitled to wages, regardless of whether the strike is lawful or unlawful.

REASONS FOR DECISION

Issue 1: The workers demand that the employer reinstate Van Rin and Yi Davy, President and Vice-President of the Local Union of WFUF, and Yi Davuth, President of the Local Union of CFLU.

The Arbitration Council considers whether the employer is obliged to reinstate the three union leaders before the Labour Inspector has made a decision in relation to the

employer's request for authorisation to dismiss them and before the time limit for rendering the decision has elapsed.

Article 293 of the Labour Law states:

The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector...

The Labour Inspector, who has been referred a request to authorise the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question...within one month at the latest upon receipt of the case.

On receipt of the decision, the employer, the worker in question, or the union organisation to which the worker belongs has a period of two months to appeal to the Minister in charge of Labour. The Minister in charge of Labour can cancel or reverse the decision of the Labour Inspector.

This article also applies to the dismissal of union leaders, as stipulated in Clause 4 of *Prakas* No. 305 dated 22 November 2004, which states that "this protection shall cover, under the conditions specified in Articles 282 and 293 of the Labour Law, the three union leaders..."

Pursuant to Article 293 of the Labour Law, the Labour Inspector has duties to consider, investigate, and to authorise or reject the employer's request for authorisation to dismiss the union leaders.

Given that the employer submitted requests for authorisation to dismiss Van Rin, Yi Davy, and Yi Davuth on 6 December 2011, the Labour Inspector has not yet made a decision, and the one month period in which to render the decision has not elapsed, the Arbitration Council considers that the dispute is still under the jurisdiction of the Labour Inspector, who must make a decision under Article 293 of the Labour Law. Based on the same article, upon receiving the Labour Inspector's decision, the employer and the workers in question have a period of two months to appeal to the Minister in charge of Labour. The Minister in charge of Labour can cancel or reverse the decision of the Labour Inspector.

As the dispute is ongoing in this case, the Arbitration Council is unable to consider the demand (*see AAs 79/06-Woo Su, reasons for decision, issue 1 and 16/11-Cambo Handsome, reasons for decision, issue 2*).

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer reinstate Van Rin, Yi Davy, and Yi Davuth pending the decision of the Labour Inspector.

Issue 2: The workers demand that the employer withdraw its complaint against Van Rin in the Phnom Penh Court of First Instance.

At the hearing, the workers demanded that the employer withdraw its complaint against Van Rin in the Phnom Penh Court of First Instance. The employer refuses to accommodate the demand.

In compliance with Chapter 12, Section 2 of the Labour Law, the Arbitration Council has jurisdiction to decide only on collective disputes (see AAs 99/04-AIA, reasons for decision, issue 6; 81/06-Hong Y, reasons for decision, issue 1; and 83/06-Roo Hsing, reasons for decision, issue 1).

Article 302 of the Labour Law states:

A collective labour dispute is any dispute that arises...over working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers...

Based on this article, the Arbitration Council considers that it is competent to resolve disputes over subject-matter including working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, etc. The Arbitration Council considers that the workers' demand does not fall within the aforesaid subject-matter. Therefore, the demand does not fall within the Council's jurisdiction.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer withdraw its complaint against Van Rin in the Phnom Penh Court of First Instance.

Issue 5: The workers demand that the employer maintain the wages and benefits of the striking workers.

The Arbitration Council considers whether the employer is obliged to pay workers during a strike.

Article 332 of the Labour Law stipulates that “[a] strike suspends the labour contract. During a strike, the allowance for work is not provided and the salary is not paid.”

In previous arbitral awards, the Arbitration Council has ruled to reject demands by workers that the employer maintain wages and benefits during a strike, on the basis that the Labour Law stipulates that employment contracts are suspended during a strike, the allowance for work is not provided and the salary is not paid (see AAs 04/03-Lida, reasons for decision, issue 1 and 63/07-Phnom Penh Garment, reasons for decision, issue 1).

The Arbitration Council will apply the abovementioned ruling in this case.

Article 334 of the Labour Law states:

During a strike, the employer is prohibited from recruiting new workers for a replacement for the strikers except to maintain minimum service provided for in Articles 326 and 328 if the workers who are required to provide such service do not appear for work. Any violation of this rule obligates the employer to pay the salaries of the striking workers for the duration of the strike.

Based on this article, the Arbitration Council can order the employer to pay the workers' wages if the workers can prove that the employer has recruited new workers to replace the striking workers. In this case, no facts have been presented regarding the recruitment of new workers to replace the striking workers.

In conclusion, the Arbitration Council rejects the workers' demand that the employer pay the workers' wages during the strike.

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 reinstate Van Rin, Yi Davy, and Yi Davuth pending the decision of the Labour Inspector.

Issue 2: Decline to consider the workers' demand that the employer withdraw its complaint against Van Rin in the Phnom Penh Court of First Instance.

Issue 5: Reject the workers' demand that the employer pay the workers' wages during the strike.

Type of award: binding award

The award will be final and enforceable by the parties as they chose binding arbitration on 16 December 2011.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

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Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: