



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 82/11-Yakjin**

**Date of award: 27 July 2011**

### **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: **Liv Sovanna**

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

#### **DISPUTANT PARTIES**

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

Name: **Yakjin (Cambodia) Inc. (the employer)**

Address: Take Village, Kambol Commune, Dankor District, Phnom Penh

Telephone: 012 872 161

Fax: N/A

Representatives in the hearing:

1. Mr Ouk Chanthou                      Advisor to the employer
2. Mr Long Heang                      Officer from the Garment Manufacturer  
Associations in Cambodia

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

Name: **Khmer Workers Power Federation Union (KWPFU)**

##### **The Local Union of KWPFU**

Address: National Road 4, # 2G, Borei Kamakor Village, Bekchan Commune, Sa'ang District,  
Province Province

Telephone: 012 529 404

Fax: N/A

Representatives in the hearing:

1. Mr Chey Sovann                      President of KWPFU
2. Mr Lor Sopheak                      General secretary of KWPFU
3. Mr Mom Bunna                      President of the Local Union of KWPFU

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4. Ms Prum Sarith Vice-President of the Local Union of KWPFU
5. Mr Ti Chengly Secretary of the Local Union of KWPFU

#### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer allow them to leave factory without requiring written permission during lunch breaks. The employer argues that it is implementing its existing practice which requires the workers to obtain written permission from the administration office. The employer states that it arranges lunch for them during their lunch breaks.

#### **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. 733 KB/RK/VK dated 4 July 2011 was submitted to the Secretariat of the Arbitration Council on 5 July 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 Commune, Tuol Kork District, Phnom Penh

**Date of hearing:** 18 July 2011 at 2:00 p.m.

**Procedural issues:**

On 2 June 2011, the Department of Labour and Vocational Training of Kandall Province received complaint No. 0063/11 SSRKX dated 28 May 2011 outlining the workers' demand for the improvement of working conditions. After receiving this complaint, the department assigned an expert officer to resolve this dispute and the last conciliation was held on 21 June 2011, resulting in four issues of the five issues being resolved. The one non-conciliated issue was referred to the Arbitration Council on 5 June 2011 via non-conciliation report No. 733 KB/RK/VK dated 4 July 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation on the one non-conciliated issue, held on 18 July 2011 at 8:30 a.m. However, it remained unresolved.

The Arbitration Council will consider the issues 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:**

- Yakjin (Cambodia) Inc. operates a garment factory and employs a total of 3,600 workers.
- The employer holds a collective agreement, No. 285 KB/RK/VK dated 29 March 2011, with Workers Trade Union.
- The Local Union of KWPFU is the claimant in this case and represents 40 workers.

#### **Issue 1: The workers demand that the employer allow them to leave factory during their lunch breaks without written permission.**

- Section 5 Clause 3 of the Internal Work Rules states that, "Work hours are eight hours per day or 48 hours per week."
- Clause 5 of the collective agreement states: "...daily work hours are divided into two shifts: 7:00 to 11:00 a.m. (The period from 11:00 a.m. to 12:00 p.m. is lunch break). The employer will provide a free lunch worth 1,250 riel. Another shift is from 12:00 to 4:00 p.m.
- Clause 20 of the collective agreement states that, "...all workers will not be allowed to leave the premises of the factory during lunch break unless they notify their supervisors. The purpose of this notification is to determine the number of workers for a free lunch and to ensure security."

- The employer provides a free lunch to the workers and requires them to have the lunch on the premises of the factory. If they do not want to have lunch and wish to leave the factory, they need to inform the line leader of group 6.
- The workers need to leave their ID cards and fill in their names, ID numbers, section, position, reason for leaving, and leaving time in a notification form. Further, they need to submit the completed notification form and supply it to their heads of section for signature. Then, they need to submit the signed form to the administration office for stamping.
- The employer allows them to leave the factory during their lunch breaks only if they inform the employer through a written notification. The employer states that the notification allows it to determine the number of workers for lunch.
- The workers state that they want to inform only the staff of the administration office, located near the exit gate, without the signature of the head of sections, and fill in only their ID numbers and line numbers. Also, they do not want to leave their ID cards with the administration staff.
- The workers make this demand on the basis of Article 138 of the Labour Law and Clauses 6 and 20 of the collective agreement. They argue that it is a worker's right to leave the factory during their lunch break. Therefore, the employer should not require them to fulfil certain conditions.
- At the hearing, the employer stated that it would facilitate a notification process as follows:
  - The employer will accommodate the workers' request for lunch time leave if they inform the employer of their lunchtime leave through a written notification.
  - The workers must fill in the existing notification form and supply it to the group leader of line 6 for signature or alternatively for the signature of the assistant to the group leader. Then, the form must be submitted to the administration office for stamping.
  - The group leader of line 6 will have one workstation.
  - If a worker is illiterate, the employer will arrange someone to help them fill in the notification form.

### **REASONS FOR DECISION**

**Issue 1: The workers demand that the employer allow them to leave the factory without written permission during their lunch breaks.**

The Arbitration Council considers this issue as follows:

According to the facts, the employer allows the workers to take a break of one hour (11:00 a.m. to 12:00 p.m.) for lunch. The employer provides a free lunch to them. If they want to have lunch outside the factory, they have to inform the employer by filling in a notification form signed by the group leader of line 6. The Arbitration Council determines that lunch breaks are not subject to the management rights of the employer. Thus, the workers have the right to have lunch inside or outside the factory without informing the employer.

However, since the workers and the employer have a collective agreement on the provision of a free lunch, the Arbitration Council considers that it is reasonable and lawful to require the workers to gain written permission and the signature of the group leader from line 6 from the workers before they can leave the factory. The employer needs to know the number of workers who will not eat the free lunch so that it is easy for the employer to make a payment to the lunch organiser. In relation to the requirement that workers obtain the signature of the line group leader, the Arbitration Council finds that it is the employer's strategy to prevent any cheating. Thus, the Arbitration Council considers that the workers should cooperate with the employer by informing it when they want to leave the factory during their lunch break in order to avoid any doubt.

The Arbitration Council acknowledges that the process of completing the notification form is in fact complicated for workers as they are required to state a reason for leaving, and to secure the signature of the group leader of line 6. Some workers find it is even more difficult as they are illiterate.

At the hearing, the workers claimed that they did not want to state their reason for leaving work during lunch hours due to their privacy. Further, it was not within work hours.

Clause 20 of the collective agreement states:

...all workers will be allowed to leave the premises of the factory during lunch break unless they notify their supervisors. The purpose of this notification is to determine the number of workers for a free lunch and to ensure security.

Based on this collective agreement, the Arbitration Council rules that the workers are not required to state a reason for leaving during the lunch period as the employer just needs to know the number of workers available for a free lunch in order to make payment to the lunch organiser.

In addition, at the hearing, the employer stated that it would simplify the notification process as follows:

- The employer will accommodate the workers' request for lunch time leave if they inform the employer through a written notification.
- The workers must fill in the existing notification form and supply it to the group leader of line 6 for signature by the group leader or his or her assistant. Then, the form must be submitted to the administration office for stamping.
- The group leader of line 6 will have a proper work station.
- If the workers are illiterate, the employer will arrange someone to help them fill in the notification form.

In conclusion, the Arbitration Council rejects the workers' demand that the employer allow them to only notify the administration office, located near the exit gate, if they wish to have lunch outside the factory.

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

**DECISION AND ORDER**

**Issue:**

- Reject the workers' demand that the employer allow them to only notify the administration office, located near the exit gate, if they wish to have lunch outside the factory.
- The employer must simplify the notification process in accordance with the four points it outlined at the hearing. The workers do not have to state a reason for leaving in the notification form.

**Type of award: non-binding award**

This award will become binding after eight days of the date of notification unless one of the parties lodges a written opposition to 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: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....