



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 11/11-June Textile

Date of award: 28 January 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: **Ven Pov**

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

DISPUTANT PARTIES

Employer party:

Name: **June Textile Co., Ltd (the employer)**

Address: Russian Federation Boulevard, Teouk Thla Commune, Sen Sok District,
Phnom Penh

Telephone: 012 541 851

Fax: N/A

Representative:

1. Mr Meng Kri

Administrator

Worker party:

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

Local Union of FTUWKC

Address: Russian Federation Boulevard, Teouk Thla Commune, Sen Sok District,
Phnom Penh

Telephone: 088 833 5555

Fax: N/A

Representative: Absent

ISSUES IN DISPUTE

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

1. The workers in Group 2 demand that the employer increase the piece rate; if not, the employer should change the purchase order for them. The employer states that it cannot provide as the workers demand and it will follow its existing practice.

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. 133 dated 9 June 2010 (Eighth 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. 051 KB/RK/VK dated 17 January 2011 was submitted to the Secretariat of the Arbitration Council on 17 January 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: 20 January 2011 at 2:00 p.m.

Procedural issues:

On 13 January 2011, the Department of Labour Disputes received a complaint from the FTUWKC by telephone, outlining the demand by the workers in Group 2 that the employer increase the piece rate. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute at the factory, but the issue remained unresolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 17 January 2011 via non-conciliation report No. 051 KB/RK/VK, dated 17 January 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 issue, held on 20 January 2011 at 2:00 p.m. However, the workers did not attend the hearing and did not specify any reason nor request to postpone the hearing. The employer, on other hand, attended the hearing.

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

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party: N/A

B. Provided by the worker party: N/A

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

1. Report on collective labour dispute resolution at June Textile Co., Ltd, No. 051 KB/RK/VK dated 17 January 2011.
2. Minutes of collective labour dispute resolution at June Textile Co., Ltd dated 14 January 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter from the Secretariat of the Arbitration Council to the President of the Local Union of FTUKWC regarding the selection of arbitrators, No. 053 KB/RK/VK/LKR dated 18 January 2011.
2. Minutes on the selection of arbitrators from the employee list, dated 18 January 2011.
3. Notice to attend the hearing addressed to the employer, No. 057 KB/AK/VK/LKA, dated 19 January 2011.
4. Notice to attend the hearing addressed to the workers, No. 058 KB/AK/VK/LKA dated 19 January 2011.

FACTS

N/A

REASONS FOR DECISION

In this case, the worker party did not attend the hearing at the Arbitration Council. The workers stated that they would not attend even though they were reminded of the hearing via a telephone call from the Secretariat. Therefore, the Arbitration Council considers the case as follows:

Rule 4.7 of the Arbitration Council's Procedural Rules, Annex to *Prakas* No. 099 dated 21 April 2004, states that "[i]f a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award."

Clause 21 of *Prakas* No. 099 on the Arbitration Council dated 21 April 2004 states that "[i]n the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award."

In Arbitral Awards 16/07-Lotus and 27/07-M & V (Branch 3), the Arbitration Council interpreted this clause to mean that three conditions must be fulfilled for the Council to close a case: “The first condition [is] that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for this lack of appearance.”

The Arbitration Council agrees with the interpretation above. Thus, the Council will consider whether the three conditions are fulfilled in this case.

First condition: the party is properly notified

The officers of the Secretariat contacted the workers and informed them of the arbitral hearing; however, the workers responded that they would not attend the hearing. The Arbitration Council finds that the workers were properly notified by the Secretariat to attend the hearing. **Hence, the first condition is fulfilled.**

Second condition: the party does not appear before the Council

The Arbitration Council considers the phrase “appear before the arbitration panel” in the said *Prakas* to mean that parties have to (1) be present in the hearing and (2) participate in the whole process.

The arbitration process comprises four stages as follows:

- A. Introduction and disclosure of conflict of interest by arbitrators;
- B. Explanation of the arbitration process and confirmation of the issue in dispute;
- C. Conciliation, if parties agree; and
- D. Arbitration.

In this case, the worker party did not attend any of the four stages mentioned above. Thus, the Arbitration Council considers that the worker party did not appear at the hearing in accordance with the second condition in the said *Prakas*. **Hence, the second condition is fulfilled.**

Third condition: party does not provide a proper reason for non-appearance

In this case, the worker party did not provide any reason for its non-appearance. In fact, on 20 January 2011 at 2:00 p.m., the hearing date, the Secretariat of the Arbitration Council reminded the worker party of the arbitral hearing via a telephone call; the worker party responded that it would not attend the hearing and decided to leave the issue to be addressed by the Council. The employer attended the hearing as summoned. Thus, the Arbitration Council considers that **the worker party did not provide a proper reason for non-appearance.** Hence, the third condition is also fulfilled.

In conclusion, the three conditions stipulated in the aforementioned clause are fulfilled.

Based on the foregoing, the Arbitration Council considers that even though the worker party did not attend the hearing, the Arbitration Council is empowered to issue an award.

In addition, the Arbitration Council has provided ample opportunity to the Local Union of FTUWKC, the claimant, to argue the workers' claim in accordance with the Labour Law; however, the worker party opted for non-appearance and passed up the opportunity to present evidence to support its claim. Generally, the claimant is obliged to argue its claim by providing reasons and evidence before the Arbitration Council; in this case, the worker party has not fulfilled its obligation to do so. The claimant did not attend the hearing and has lost the opportunity to provide reasons and evidence to argue its claim. The Arbitration Council considers that the worker party has dropped its claim. The worker party's decision reflects its unwillingness to bring its labour dispute to the Council for resolution.

Thus, the Arbitration Council decides to close the case 11/11-June Textile.

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

DECISION AND ORDER

Close case 11/11-June Textile.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: