



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាព្រឹទ្ធសវ្យាគណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 28/09-Yakjin

Date of award: 19 March 2009

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: **Ven Pov**

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

DISPUTANT PARTIES

Employer party:

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

Address: Tasek Village, Kambol Commune, Angsnoul District, Kandal Province

Telephone: 012 970 289

Fax: N/A

Representatives:

1. Mr You Bora

Head of Administration

2. Ms Nou Phanda

Administrative Assistant

Worker party:

Name: **Local Union of the Khmer Youth Trade Union Federation (KYFTU)**

Address: Tasek Village, Kambol Commune, Angsnoul District, Kandal Province

Telephone: 012 907 902

Fax: N/A

Representative: Absent

ISSUES IN DISPUTE

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

1. The workers demand that overtime work be voluntary and free of coercion or any measure imposed against them. The employer does not agree to the demand.

2. The workers demand that the employer calculate their monthly wages accurately. The employer does not agree to the demand.
3. The workers demand that the employer increase the attendance bonus by US\$2 to make a total of US\$7 per month. The employer does not agree to the demand.
4. The workers demand that the employer provide payment in lieu of annual leave twice a year, during Khmer New Year and Pchum Ben. The employer does not agree to the demand.
5. The workers demand that the employer improve conditions in the day-care centre. The employer does not agree to the demand.
6. The workers demand that the employer grant pregnant workers one day off each month for medical checks with their wages and bonuses maintained. The employer does not agree to the demand.
7. The workers demand that the employer keep the toilets clean and provide sufficient clean and hygienic water for washing and drinking. The employer does not agree to the demand.
8. The workers demand that the employer instruct the group leaders and supervisors of all groups and sections to behave properly toward workers. The employer does not agree to the demand.
9. The workers demand that the employer increase the main wage of all workers in accordance with the principles implemented in the past. The employer does not agree to the demand.
10. The workers demand that the employer deduct union contribution fees of 1000 riel from the wage of each member of the Local Union of KYFTU. The employer does not agree to the demand.
11. The workers demand that the employer provide a monthly US\$ 5 allowance for accommodation or transportation. The employer does not agree to the demand.
12. The workers demand that the employer open the door of the production building at noon, half an hour earlier, as this was its past practice. The employer does not agree to the demand.
13. The workers demand that the employer provide the weekly bonus and attendance bonus weekly. The employer does not agree to the demand.

14. The workers demand that the employer provide seven days of special leave in addition to the 18 days of annual leave and maintain their wages, bonuses and perquisites. The employer does not agree to the demand.

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. 082/09 KB/AK/VK was submitted to the Secretariat of the Arbitration Council on 25 February 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: 6 March 2009 at 2:00 p.m.

Procedural issues:

On 10 February 2009, the Department of Labour and Vocational Training of Kandal Province received a complaint from KYFTU, dated 6 February 2009, outlining the workers' demands for the improvement of working conditions by the employer. Upon receipt of the case, the Department of Labour and Vocational Training of Kandal Province assigned an expert officer to conciliate the collective labour dispute and the last conciliation was held on 20 February 2009. None of the issues were resolved at the session. The 14 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 25 February 2009.

Upon receiving the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the 14 non-conciliated issues, held on 6 June 2009 at 2:00 p.m. Although the worker party was properly notified of the hearing, it did not attend. The employer was present at the hearing as summoned by the Arbitration Council. Therefore, the Arbitration Council will consider and decide on this case 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

The Arbitration Council could not make any findings of fact in relation to the issues in dispute because the worker party was absent from the hearing.

REASONS FOR DECISION

Clause 21 of *Prakas* No. 099 on the Arbitration Council, dated 21 April 2004, provides 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.”

Furthermore, Rule 4.7 of the Procedural Rules of the Arbitration Council, Annex to *Prakas* No. 099, dated 21 April 2004, states:

If a party fails to appear in person or to be represented at the arbitration proceedings, the Arbitration Panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.

In accordance with Clause 21 and Rule 4.7 above, in Arbitral Awards 30/05-Maurea, 16/07-Lotus, 27/07-M & V (Branch 3), 95/08-Yung Wah, 132/08-GHG, 138/08-Marlyn, 151/08-Wilson Garment, and 09/09-Nimbus Textile, 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 its lack of appearance.”

Thus, the Arbitration Council will consider whether the three conditions are fulfilled in this case.

First condition: the party is properly notified

As stated in Rule 4.7 above, the Arbitration Council may proceed with the arbitral process in the absence of a party or may terminate the arbitral proceedings by means of an award if one of the parties is absent or if there is no representation during arbitral proceedings if the parties in dispute have been properly notified of the date, time, and venue of the arbitral proceedings.

In this case, the Arbitration Council finds that the Secretariat of the Arbitration Council sent an official notification in writing to both parties. These letters were sent to the parties in compliance with the regular procedure of the Secretariat of the Arbitration Council. The Secretariat of the Arbitration Council communicated the date, time, and venue of the hearing

to the parties via written notifications as well as via telephone calls. Therefore, the Arbitration Council considers that the first condition is met.

Second condition: the party does not appear at the hearing

Clause 19 of the *Prakas* on the Arbitration Council No. 099 SKBY, dated 21 April 2004, states that “[a] party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorised in writing by that party.”

Moreover, Clause 20 of the *Prakas* on the Arbitration Council No. 099 SKBY, dated 21 April 2004, states that “[d]uring the arbitration process...The parties must attend all meetings to which the arbitration panel calls them.”

In this case, the worker party failed to attend the hearing and did not assign a representative (for example, from the union federation, the union, or a lawyer) to represent it at the hearing. Therefore, the Arbitration Council considers that the second condition is also met.

Third condition: the party does not provide proper reasons for its lack of appearance

As mentioned in Clause 21 of the abovementioned *Prakas*, the Arbitration Council can choose to either proceed with the arbitral process in the absence of the party or to terminate the arbitral process by means of an arbitral award in cases where the party was duly notified but fails to appear before the Arbitration Council without providing proper reasons. In this case, the Arbitration Council finds that the worker party was absent without providing proper reasons to the Secretariat of the Arbitration Council. Therefore, the Arbitration Council considers that the third condition is also met.

Therefore, the Arbitration Council decides to close case 28/09-Yakjin because the worker party was absent from the hearing.

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

DECISION AND ORDER

Close Case 28/09-Yakjin.

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: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: