



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 41/12-Magnate Footwear

Date of award: 10 April 2012

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Run Saray**

DISPUTANT PARTIES

Employer party:

Name: **Magnate Footwear Co., Ltd. (the employer)**

Address: Trapeang Krassaing Commune, Pursenchey District, Phnom Penh

Telephone: 017 887 688

Fax: N/A

Representatives:

- | | |
|-------------------------|------------------------|
| 1. Mr Tang David Minhao | General secretary |
| 2. Ms Chen Chin Pi | General manager |
| 3. Ms Sok Pheng | Head of administration |

Worker party:

Name: **Cambodian Labour Union Federation (CLUF)**

Local Union of CLUF (the union)

Address: #30C, Borey Solar, Str.371, Toek Thla Commune, Sen Sok District, Phnom Penh

Telephone: 016 657 556

Fax: N/A

Representatives:

- | | |
|--------------------|--------------------------------------|
| 1. Mr Khen Sokhon | General secretary of CLUF |
| 2. Mr Hour Pov | Assistant of CULF |
| 3. Ms Kean Kimsros | Assistant of CLUF |
| 4. Mr Meng Mon | President of the Local Union of CLUF |

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|------------------------|---|
| 5. Mr Sin Theam | Vice-president of the Local Union of CLUF |
| 6. Mr Sat Sopal | Secretary of the Local Union of CLUF |
| 7. Mr Chhean Bunthoeun | President of the Workers' Pride Union (WPU) |
| 8. Mr Van Vorn | Vice-president of WPU |
| 9. Ms Ry Mach | President of the Workers' Might Union (WMU) |
| 10. Ms Vin Khunthy | Secretary of WPU |
| 11. Ms Ngon Sorphorn | Vice-president of WMU |

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide a monthly US\$ 20 accommodation and transportation allowance. The employer claims that it cannot afford to accommodate this demand.
2. The workers demand that the employer allow the three union leaders to use a handheld transceiver to receive information from the employer. The employer refuses to accommodate this demand, citing potential allegations of union discrimination from other unions.
3. The workers demand that the employer allow them to have a half an hour dinner break, while maintaining their wages and benefits during overtime work performed between 4:00 p.m. and 9:00 p.m. The employer has stated that it will discuss this issue with management.

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. 198 KB/RK/VK dated 23 February 2012 was submitted to the Secretariat of the Arbitration Council on 23 February 2012.

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: 9 March 2012 at 8:30 a.m.

Procedural issues:

On 20 February 2012, the Department of Labour Disputes received a complaint from CLUF, outlining the workers' demands that the employer improve their working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert labour officer to resolve the labour dispute. The last conciliation session was held on 21 February 2012. The workers and the employer did not attend the conciliation session. However, the employer agreed to accommodate 13 issues demanded by the workers, with the exception of the three issues in question.

The three non-conciliated issues were referred to the Secretariat of the Arbitration Council on 22 February 2012 via non-conciliation report No. 198 KB/RK/VK dated 28 February 2012.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the three non-conciliated issues. The hearing was held on 9 March 2012 at 8:30 a.m. with both parties present. At the hearing, the workers made the additional demand that the five striking workers be reinstated. The Arbitration Council conducted a further conciliation of the four non-conciliated issues, but they remained unresolved. The Arbitration Council will consider whether or not the additional demand is a direct consequence of the issues in question.

As the parties are signatories to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU), dated 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. In accordance with the MoU, both parties have agreed to choose binding arbitration for rights disputes. However, this does not apply to interests disputes. The parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties chose non-binding arbitration for an interests dispute.

The Arbitration Council considers 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:

- Magnate Footwear Co., Ltd. is a shoe maker and employs a total of 3,000 workers.
- The Local Union of CLUF is the claimant in this case. This union has not been formally registered yet; it possesses only an acknowledgement receipt of its application for registration, dated 2 February 2012 and issued by the Department of Labour Disputes.
- The employer does not make an objection to the standing of the individual claimants in this case nor does it object to the acknowledgement receipt.

Issue 1: The workers demand that the employer provide a monthly US\$ 20 of accommodation and transportation allowance.

- The workers have clarified their demand. They now demand that the employer provide a monthly US\$ 10 transportation allowance and US\$ 7 accommodation allowance to each worker instead of US\$ 20.
- The workers make this demand due to the increased price of consumer goods. The workers claim that they each spend US\$ 10 on transportation per month. The workers further claim that other factories have provided these benefits, such as Berry and Nextoo. No legal basis has been presented to support this demand.
- The employer refuses to accommodate this demand, unless it is required to do so by the law.

Issue 2: The workers demand that the employer allow the three union leaders to use a handheld transceiver to receive information from the employer.

- The workers make this demand because it allows the union to communicate with local unions at other factories. Moreover, communication by a handheld transceiver is cheaper than that by mobile phone. The workers claim that other factories allow local unions to use a handheld transceiver during working hours.
- The employer prohibits the use of this device at the workplace during working hours because it will disturb other workers and union leaders will also not be able to concentrate on their job. In short, the employer believes it will affect the production line. The employer has issued two announcements in relation to this issue. The first announcement was made on 1 March 2011, which read, "...in order not to affect the

production, the employer prohibits the use of personal handheld transceiver during working hours.” The second announcement was issued on 1 January 2012, which read, “Workers are prohibited to use a handheld transceiver on the premises of the factory. Failure to comply with this rule will result in a written warning.”

- No legal basis has been presented to substantiate this demand.

Issue 3: The workers demand that the employer allow them to have a break of half an hour to have dinner while maintaining their wages and benefits earned during overtime work from 4:00 p.m. to 9:00 p.m.

- Work hours are between 7:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. The workers clarify their demand. They demand that the employer allow them to take a break of half an hour during overtime performed from 6:00 p.m. to 8:00 p.m. with their wages and benefits maintained.
- The workers make this demand because they are exhausted during this period and as they have worked continuously since 1:00 p.m. No legal basis has been presented to support this demand.
- The employer agrees to grant the workers a break of half an hour, but it will not agree to pay wages for the break. The employer requires the workers to perform make up work for the lost half an hour. Thus, the workers have to work until 8:30 p.m.

Additional demand: The workers demand that the employer reinstate the five workers who have refused the transfer to the new branch.

- On 1 February 2012, the leaders of the union sought assistance from Som Aun, the president of CLUF, in order to settle the 15 issues. No additional demand has been mentioned.
- On 10 February 2012, the employer disbanded one section (it is tasked with gluing shoes) and transferred 13 workers to its branch along national road no. 3 because there was not enough space at the factory to accommodate the section.
- The employer has provided a monetary incentive to the 13 workers.
- On 14 February 2012, the workers gave a strike notice to the employer without mentioning the additional demand.
- On 16 February 2012, Kan Kimsros, Rin Khunthy, Sin Theam, Meng Mon, and Sat Sophal refused to be transferred to the new location or to accept the monetary incentive.
- On 20 February 2012, a strike broke out.
- On 21 February 2012, the Department of Labour Dispute invited the workers and the employer to attend the conciliation session, but they were absent. The non-conciliation report reads:

the employer claims that the strike was due to the disbanding of one section (it is tasked with gluing shoes). The employer further claims that eight of the 13 workers have been provided with a termination payment in accordance with Articles 75, 89, 166, 167, and 116 of the Labour Law, and the other five workers (Kan Kimsros, Rin Khunthy, Sin Theam, Meng Mon, and Sat Sophal) refused to accept a termination payment...

REASONS FOR DECISION

Issue 1: The workers demand that the employer provide a monthly US\$ 20 accommodation and transportation allowance.

Before considering this issue, the Arbitration Council considers whether it gives rise to a rights or interests dispute.

The Arbitration Council finds that there is no provision in the Labour Law, a collective agreement, or an agreement between the parties that requires the employer to accommodate this demand. Therefore, the Council considers this issue to be an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the disputant union has most representative status (MRS). The Arbitration Council considers that having MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and gives it legal standing to bring an interests dispute before the Arbitration Council for resolution.

Clause 43 of *Prakas* No. 099 dated 21 April 2004 states:

An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

Based on this provision, an award regarding an interests dispute will become a collective agreement that applies to all workers in the factory. Non-members of the union will lose their right to strike in relation to future interests dispute. For this reason, the Arbitration Council is only able to consider this kind of dispute if the claimant unions hold MRS or the claimant unions represent more than half of the total workers in the factory (*see Arbitral Award 81/04-Ever Green, reasons for decision, issue 4; 98/04-Great Union, reasons for decision, issue 3*).

In Arbitral Award 169/11-Fortune Teo, reasons for decision, issue 5, the Arbitration Council declined to consider an interests dispute brought by a non-MRS union (see *Arbitral Award 02/11-Pou Yuen, reasons for decision, issue 2; 66/11-In Han Sung, reasons for decision, issue 1*).

In this case, the union has not received a certificate of registration. Therefore, the Arbitration Council rules that the union does not have legal standing to represent the workers to resolve a dispute in relation to benefits of all workers in the factory.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide a monthly US\$ 10 transportation allowance and US\$ 7 accommodation allowance to each worker.

Issue 2: The workers demand that the employer allow the three union leaders to use a handheld transceiver to receive information from the employer.

Before considering this issue, the Arbitration Council considers whether it gives rise to a rights or interests dispute.

In previous Arbitral Awards, the Arbitration Council has ruled that “a rights dispute is a dispute concerning entitlements in the law, an agreement or a collective agreement” (see *Arbitral Awards 05/11-M&V 1, reasons for decision, issue 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issue 1 and 2; 14/11-GHG, reasons for decision, issue 4*).

The Arbitration Council applies these rulings in this case.

In this case, the Arbitration Council considers this issue to be a rights dispute as it concerns the management prerogatives which has a basis in terms of the Labour Law.

The Arbitration Council considers whether the employer is obligated to allow the leaders of the union to use a handheld transceiver at the workplace during working hours.

Article 2 paragraph 2 of the Labour Law states:

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.

In previous arbitral awards, the Arbitration Council has ruled that the employer has the right to supervise and direct its company as long as it is done reasonably (see *Arbitral*

Awards 17/07-Charm Textile, reasons for decision, issue 3; 116/07-Grace Sun, reasons for decision, issue 2).

In this case, the workers make this demand because it allows the union to communicate with local unions at other factories. Moreover, communication by a handheld transceiver is cheaper than that by mobile phone. The workers claim that other factories allow local unions to use a handheld transceiver during working hours.

The employer prohibits the use of this device at the workplace during working hours because it will disturb other workers and prevent the leaders of the union from fully concentrating on their jobs. The employer claims it will affect the production line. The employer has issued two announcements in relation to this issue. The first announcement was made on 1 March 2011, which read, "...in order not to affect production, the employer prohibits the use of personal handheld transceivers during working hours." The second announcement was issued on 1 January 2012, which read, "Workers are prohibited from using a handheld transceiver on the factory premises. Failure to comply with this rule will result in a written warning."

The workers have not cited their legal entitlements in relation to this issue.

The Arbitration Council considers that the use of handheld transceivers is subject to the management prerogatives and the enforcement of this right is reasonable because the use of handheld transceivers will affect the production line during working hours. Thus, the employer has the right to prohibit the use of handheld transceivers in this case.

In conclusion, the Arbitration Council rejects the workers' demand that the employer allow them to use handheld transceivers at the workplace during working hours.

Issue 3: The workers demand that the employer allow them to have a break of half an hour to have dinner, with their wages and benefits maintained, during overtime work performed from 4:00 p.m. to 9:00 p.m.

Before considering this issue, the Arbitration Council considers whether it gives rise to a rights or an interests dispute.

In this case, the workers demand that the employer pay wages for a break of half an hour. The Arbitration Council considers this issue to be an interests dispute as there is no provision in the Labour Law, a collective agreement, or an agreement that requires the employer to accommodate this demand.

According to the facts, the employer is willing to grant the workers a break of half an hour during overtime work, but it will not maintain their wages and benefits. The employer will pay for that break if the workers make up the lost half an hour by working for that additional period. The Arbitration Council considers that the employer's decision is reasonable because the workers do not perform any service for the employer during the break, and therefore the employer is not obligated to pay them a wage during these times.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer grant them a break of half an hour during overtime work with their wages and benefits maintained.

Additional demand: The workers demand that the employer reinstate the five workers who refused to be transferred to the new branch.

Before considering this issue, the Arbitration Council considers whether it gives rise to a rights or an interests dispute.

In this case, the Arbitration Council considers this issue to be rights dispute as it concerns the reinstatement of workers, which has a basis in the Labour Law (see reasons for decision regarding issue 2).

At the hearing, the workers requested the Council consider their demand for reinstatement of five workers to their former positions.

The Arbitration Council considers whether this demand is a direct consequence of the issues in question.

Article 312 of the Labour Law states:

The 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, are the direct consequence of the current dispute.

According to the non-conciliation report, the strike was due to the disbanding of one section comprising 13 workers.

The Arbitration Council finds that disbanding that section was the cause of the strike. However, the Council finds that no demand in relation to the reinstatement of the five workers has been mentioned in the non-conciliation report.

The Arbitration Council finds that on 10 February 2012, the employer disbanded one section (the section is tasked with gluing shoes) and transferred 13 workers to one of its

other branches. On 14 February 2012, the workers gave a strike notice to the employer without mentioning an additional demand. On 16 February 2012, Kan Kimsros, Rin Khunthy, Sin Theam, Meng Mon, and Sat Sophal refused to be transferred to the new location. On 20 February 2012, a strike broke out. On 21 February 2012, the Department of Labour Dispute invited the workers and the employer to attend the conciliation session, but they were absent.

The Arbitration Council considers that the strike broke out because the workers were dissatisfied with the disbanding of their section and the employer's decision to transfer the five workers to a new location. However, according to the facts, the workers gave the employer a strike notice before the five workers refused to be transferred to a new location. Furthermore, the strike broke out before the conciliation session took place at the Department of Labour Disputes.

The Council also finds that the workers sought assistance from CLUF on 1 February 2012 to settle their demands. Thus, their demands were made before the employer disbanded the section in question.

The Arbitration Council rules that the demand that the five workers be reinstated does not arise out the non-conciliation report. Thus, it is not a direct consequence of the issues referred to the Council by the Ministry of Labour and Vocational Training. The Council considers it to be a separate issue from this case.

In conclusion, the Arbitration Council declines to consider this additional issue.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue 2: Reject the workers' demand that the employer allow them to use a handheld transceiver at the workplace during working hours.

Additional issue: Decline to consider this additional issue.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 28 September 2010.

Part II. Interests dispute:

Issue 1: Decline to consider the workers' demand that the employer provide a monthly US\$ 10 transportation allowance and US\$ 7 accommodation allowance to each worker.

Issue 3: Decline to consider the workers' demand that the employer grant them a break of half an hour during overtime work with their wages and benefits maintained.

Type of award: non-binding award

The award in Part II 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: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Run Saray**

Signature: