



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 02/11-Pou Yuen

Date of award: 26 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: **An Nan**

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

DISPUTANT PARTIES

Employer party:

Name: **Pou Yuen (Cambodia) Enterprise Ltd. (the employer)**

Address: Teouk Thla Commune, Sen Sok District, Phnom Penh

Telephone: 097 999 0082

Fax: N/A

Representatives:

- | | |
|------------------|------------------------|
| 1. Mr Roger Shih | General Manager |
| 2. Mr Som Samart | Head of Administration |
| 3. Ms Sok Pheng | Administration |
| 4. Mr Gan Jian | Administration |

Worker party:

Name: **Worker's Union Federation (WUF)**

Local Union of WUF

Address: Teouk Thla Commune, Sen Sok District, Phnom Penh

Telephone: 092 676 755

Fax: N/A

Representatives:

- | | |
|-------------------|-------------------------------------|
| 1. Mr Lee Veng | President of WUF |
| 2. Mr Mai Sima | Official of WUF |
| 3. Mr Kol Chivoïn | President of the Local Union of WUF |

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| 4. Ms Chea Sarun | General Secretary of the Local Union of WUF |
| 5. Mr Nak Norm | Workers' representative |

ISSUES IN DISPUTE

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

1. The workers demand that the employer pay them a 1,500 riel meal allowance for overtime of two hours' duration and a 2,000 riel meal allowance for overtime of over two hours' duration. The employer says it cannot afford to accommodate the demand.
2. The workers demand that the employer increase the main wage by 10% for skilled workers. The employer says it will follow its existing practice.
3. The workers demand that the employer maintain their wages and other benefits when they take one day of sick leave certified by the doctor employed at the factory. The employer states that it will maintain wages and other benefits if the workers have a proper doctor's certificate issued by an external doctor.

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. 013 KB/RK/VK dated 31 December 2010 was submitted to the Secretariat of the Arbitration Council on 4 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: 11 January 2011 at 2:00 p.m.

Procedural issues:

On 15 December 2010, the Department of Labour Disputes received a complaint from WUF outlining its demands that the employer improve working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the dispute, and the last conciliation session was held on 15 December 2010. As a result of

the session, five of the eight issues were conciliated. The three non-conciliated issues were referred to the Secretariat of the Arbitration Council on 4 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 three non-conciliated issues, held on 11 January 2011 at 2:00 p.m. Both parties were present as summoned by the Arbitration Council. At the hearing, the Arbitration Council attempted to further conciliate the three non-conciliated issues. As a result, the parties agreed to withdraw the first issue.

Therefore, the Arbitration Council will consider only issues 2 and 3, based on the evidence and reasons below.

EVIDENCE

Witnesses and Experts: NA

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

A. Provided by the employer party:

1. Letter from the Department of Labour Disputes to the president of the Local Union of WUF, No. 931 KB/RK/VK dated 4 October 2010, regarding the union's request for recognition of its new leadership.
2. Letter from WUF to the director of Pou Yuen, No. 105 SSK dated 17 September 2010, regarding its request for union registration.
3. Certificate of union registration, dated 24 August 2010.
4. Leave form for Chum Sarat, dated 31 December 2010.
5. Medical certificate for Chum Sarat issued by Dr Sim Polo, dated 30 December 2010.
6. Leave form for Sun Sreydeth, dated 29 December 2010.
7. Medical certificate for Sun Sreydeth issued by Dr Mao Mengchreang, dated 29 December 2010.
8. Medical certificate for Sun Sreydeth issued by factory doctor, dated 30 December 2010.
9. Leave form for Phuong Sreymom, dated 29 December 2010.
10. Medical certificate for Phuong Sreymom issued by Dr Sim Polo, dated 29 December 2010.
11. Medical certificate for Phuong Sreymom issued by factory doctor, dated 30 December 2010.
12. Letter from the Department of Labour Inspection to the director of Pou Yuen, No. 908 KB/RK/RFK dated 21 December 2010, regarding its request for overtime work.
13. Payroll information on overtime payments.
14. Internal Work Rules of the employer, dated 4 August 2010.
15. Patent Certificate of 2010, dated 5 March 2010.

16. Certificate of Commercial Registration, dated 27 April 2010.
17. Statute of the Company, dated 23 September 2010.
18. Medical certificate for Sok Channy issued by factory doctor, dated 25 December 2010.
19. Medical prescription for Sok Channy issued by Preah Kossamak Hospital, dated 25 December 2010.
20. Leave form for Sok Channy, dated 25 December 2010.
21. Leave form for Nam Sreynin, dated 25 November 2010.
22. Medical certificate for U Bona issued by factory doctor, dated 28 December 2010.
23. Medical Prescription for U Bona issued by Preah Kossamak Hospital, dated 27 December 2010.
24. Leave form for U Bona, dated 27 December 2010.

B. Provided by the worker party:

1. Letter submitted to the Arbitration Council by all skilled workers regarding their demand to increase the main wage by 10%.

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

1. Report on collective labour dispute resolution at Pou Yuen (Cambodia) Enterprise Ltd., No. 013 KB/RK/VK, dated 31 December 2010.
2. Minutes of collective labour dispute resolution at Pou Yuen (Cambodia) Enterprise Ltd., dated 15 December 2010.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer party, No. 017 KB/AK/VK/LKA dated 6 January 2011.
2. Notice to attend the hearing addressed to the worker party, No. 018 KB/AK/VK/LKA dated 6 January 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:

- Pou Yuen (Cambodia) Enterprise Ltd. employs 2,500 workers.
- The Local Union of WUF, the claimant in this case, represents 400 workers. It does not hold most representative status (MRS).

- There are five unions at the factory: the Local Union of Khmer Youth Trade Union Federation; the Local Union of WUF; the Local Union of Rights and Profit Workers Federation of Trade Union; and the Local Union of Cambodian Federation of Independent Trade Unions. None of the local unions hold MRS.

Issue 2: The workers demand that the employer increase the main wage of skilled workers by 10%. The employer will follow its existing practice.

- The workers and the employer agree that the employer employs electrical mechanics, carpenters, mechanics, steelsmiths, builders, and plumbers on a main wage of US\$ 66. In addition to the main wage, they are also paid a monthly US\$ 8 attendance bonus, a US\$ 4 living allowance, and a US\$ 3-8 skill bonus. The employer does not provide unskilled workers, such as cleaners, with the skill bonus.
- The workers state that they are making this demand because skilled workers should be paid more than unskilled workers. Moreover, the workers' wages do not reflect the high-priced consumer goods that they produce.
- The employer states that it will not accommodate the workers' demand because the workers agreed on the main wage in their employment contracts. The employer argues that the workers should not have signed the contracts if they were dissatisfied with the wages.
- The workers and the employer agree that they have not made any agreement to increase the main wage of all skilled workers by 10%.
- The workers maintain their demand that the employer increase the main wage of all skilled workers by 10%.

Issue 3: The workers demand that the employer maintain their wages and other benefits when they take one day of sick leave certified by the factory doctor.

- The employer asserts that its practice is to deduct the daily wages of workers when they take a day of sick leave which is certified by the factory doctor and for which they do not provide an external doctor's certificate or a medical prescription from a specified pharmacy. The employer deducts only the workers' daily wages and not their attendance bonuses. The workers do not refute the employer's assertion.
- The employer states that the role of the factory doctor is to issue referrals to the workers for external medical treatment when they are seriously ill. There are doctors and nurses on standby at the factory.
- The workers and the employer agree that workers may receive a medical examination by the factory doctor when they fall ill during working hours. If their

illness persists and they wish to go home, the doctor must certify that the worker is, in fact, sick. After receiving the doctor's certification, the worker must ask a group leader and the head of section for permission to go home. Lastly, the worker must receive permission from the head of administration. The parties state that when the workers return to work, they must submit medical prescriptions or medication receipts issued by a specified pharmacy, otherwise the employer deducts their daily wages.

- The employer justifies its current practice by arguing that it needs to oversee the workers' illnesses and to issue medicine consistent with the external medical prescription or medication receipts.
- Clause 6 of the employer's Internal Work Rules dated 30 July 2010, regarding authorised and unauthorised leave, states that "if the workers become seriously ill or have urgent commitments, they can request to take leave by telephoning the worker delegates or the union. However, they must submit a leave form within two days from the date of leave commencement. In the case of leave taken due to illness, a leave form must be submitted with a formal doctor's certificate."

REASONS FOR DECISION

Issue 2: The workers demand that the employer increase the main wage of skilled workers by 10%. The employer will follow its existing practice.

In this case, the workers demand that the employer increase the main wage of skilled workers by 10%. The employer does not agree to the demand. Therefore, the Arbitration Council considers the case as follows:

As per the findings of fact, the workers and the employer agree that they do not have an agreement or contract increasing the main wages of skilled workers by 10%. Moreover, the Arbitration Council finds that there is no labour regulation or provision in the Labour Law which requires the employer to increase the main wage of skilled workers by 10%. Thus, the Arbitration Council finds that this demand lacks a legal or contractual basis. As a result, the Arbitration Council considers that the demand gives rise to an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the claimant union holds MRS. In previous arbitral awards, the Arbitration Council has declined to consider an interests dispute if the claimant union does not hold MRS (*see Arbitral Awards 81/04-Evergreen, issue 4; 09/05-Kin Tai, issue 2; 84/07-Yung Wah 2, issue 1; 108/07-8 Star Sportswear, issue 3; 135/07-Wilson Garment, issue 1; 14/08-Quicksew, issue 3; 101/08-GDM, issue 3; and 42/09-River Rich, issue 2*).

The Arbitration Council considered in these cases that having MRS gives a union the legal capacity to negotiate a collective bargaining agreement with an employer. Unions with

MRS also have standing to bring an interests dispute before the Arbitration Council for resolution. The Arbitration Council agrees with this interpretation in this case.

The Local Union of WUF does not have the requisite certification of MRS under Article 277 of the Labour Law. The Arbitration Council finds that the Local Union of WUF does not hold MRS. Therefore, the Arbitration Council finds that the Local Union of WUF does not have legal standing to bring an interests dispute before the Council for resolution.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer increase the main wage of all skilled workers by 10%.

Issue 3: The workers demand that the employer maintain their wages and other benefits when they take one day of sick leave certified by the factory doctor.

The workers demand in this case that the employer maintain their wages and benefits when they take a day of certified sick leave. The employer does not agree to the demand. The employer requires the workers to present medical prescriptions or medication receipts when they return to work, otherwise their daily wages are deducted. The employer does not deduct the attendance bonus; its current practice is to deduct the workers' daily wages only. The Arbitration Council considers whether the workers are entitled to receive full wages and benefits when they take one day off due to sickness with certification from the factory doctor.

Clause 6 of the employer's Internal Work Rules dated 30 July 2010, regarding authorised and unauthorised leave, states that "if the workers become seriously ill or have urgent commitments, they can request to take leave by telephoning the worker delegates or the union. However, they must submit a leave form within two days from the date of leave commencement. In the case of leave taken due to illness, a leave form must be submitted with a formal doctor's certificate."

Article 71(3) of the Labour Law provides that a labour contract shall be suspended by "[t]he absence of the worker for illness certified by a qualified doctor. This absence is limited to six months, but can, however, be extended until there is a replacement."

This means that the employer is able to suspend a worker's employment contract if a qualified doctor certifies the worker's illness.

In previous arbitral awards, the Arbitration Council has defined a qualified doctor as someone trained by a medical training school recognised by the Ministry of Health, who is awarded a proper training certificate, and is authorised by the Ministry of Health to work as a doctor (*see Arbitral Awards 102/07-Terratex, issue 2; 72/08-Yung Wah 2, issue 2; 39/09-Quint Major, issue 4; 45/10-Yung Wah 1, issue 2; and 115/10-G Foremost, issue 14*).

The Arbitration Council agrees in this case with the definition above; a qualified doctor is someone trained by a medical training school recognised by the Ministry of Health,

awarded a proper training certificate, and authorised by the Ministry of Health to work as a doctor.

As per the findings of fact, if a worker falls ill during working hours they are permitted to take the rest of the day off if they receive certification from the employer's doctor and permission from a group leader, the head of section and the head of administration.

The Arbitration Council considers that the factory doctor is trained by a medical training school recognised by the Ministry of Health, has been awarded a proper training certificate, and is authorised by the Ministry of Health to work as a doctor. The requirement that the workers submit medical prescriptions or medication receipts in order for the employer to maintain their wages and benefits is improper. Thus, the employer must maintain the workers' wages and benefits when they take one day off with certification from the employer's doctor.

In conclusion, the Arbitration Council orders the employer to maintain the wages and benefits of workers when they are sick and take one day off with certification from the factory doctor.

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

DECISION AND ORDER

Issue 2: Decline to consider the workers' demand that the employer increase the main wage of skilled workers by 10%.

Issue 3: Order the employer to maintain the wages and benefits of workers when they are sick and take one day off with certification from the factory doctor.

Type of award: non-binding award

This award will become binding eight days after 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 time period.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: