



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 07/11-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: **Suong Sophal**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTANT PARTIES

Employer party:

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

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

Telephone: 012 541 851

Fax: N/A

Representatives:

1. Mr Meng Kri Administration
2. Mr Tang Kisay Administration

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 demand that the employer increase the piece rate as follows:
 - Piece number 1 (seam sewing) from US\$ 0.03 to US\$ 0.04.
 - Piece number 6 (cloth hat overlocking and linking) from US\$ 0.10 to US\$ 0.12.
 - Piece number 13 (placket sketching) from US\$ 0.03 to US\$ 0.04.
 - Piece number 17 (sleeve insertion) from US\$ 0.10 to US\$ 0.12.
 - Piece number 32 (cloth hat linking) from US\$ 0.12 to US\$ 0.14.
 - Piece number 33 (collar overlocking) from US\$ 0.06 to US\$ 0.07.
 - Piece number 37 (collar linking) from US\$ 0.11 to US\$ 0.12.

The employer states that it cannot provide as demanded by the workers, 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. 039 KB/RK/VK dated 12 January 2011 was submitted to the Secretariat of the Arbitration Council on 12 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 prehearing meeting: 17 January 2011 at 2:00 p.m.

Date of hearing: 19 January 2011 at 2:00 p.m.

Procedural issues:

On 11 January 2011, the Department of Labour Disputes received a complaint from FTUWKC via telephone, outlining the workers' demand that the employer increase the piece rate. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer

to conciliate the dispute, resulting in the issue remaining unresolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 12 January 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council was informed that the workers in Group 8, the claimant workers, were conducting a strike at their workstation. Once the Arbitral Panel was formed it issued an interim order, No. 001/11 KBR dated 13 January 2011, that the workers cease striking during the arbitral process. However, the workers did not obey the order. Thus, on 14 January 2011 the Arbitration Council, through the Secretariat, invited the employer and the workers to attend a pre-hearing session on the strike, held on 17 January 2011 at 2:00 p.m. The employer was present at the session, but the worker party was absent. The Secretariat contacted the worker party to remind it of the session, but the worker party stated that the workers in Group 8 had returned to work.

Upon receipt of this information regarding the return to work of the workers in Group 8 the Arbitration Council, through the Secretariat, summoned the employer and the workers to attend a hearing and conciliation of the non-conciliated issue, to be held on 19 January 2011 at 2:00 p.m. However, the worker party did not attend the hearing, nor did it specify a reason for its absence or request to postpone the hearing. The employer, on other hand, attended the hearing as summoned by the Council.

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:

1. Letter from the head of the Department of Labour Disputes to the director of June Textile regarding the appointment of the employer's communication staff, No. 860 KB/RK/VK dated 8 August 2008.
2. Authorisation letter from the employer's head of administration for Meng Kri and Tang Kisay, dated 17 January 2011.
3. Certificate of commercial registration of June Textile Garment Co., Ltd., No. 3823 PN/CBP, dated 16 June 2008.
4. Internal Work Rules of the employer, No. 027 SKR/RK, dated 13 March 1998.
5. Company statute, dated 22 March 2004.
6. Documents in a foreign language.

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 Garment Co., Ltd., No. 039 KB/RK/VK dated 12 January 2011.
2. Minutes of collective labour dispute resolution at June Textile Garment Co., Ltd., dated 11 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. 037 KB/RK/VK/LKR, dated 12 January 2011.
2. Record of the selection of arbitrators from the employee list, dated 13 January 2011.
3. Interim order of the Arbitration Council, No. 001/11 KBR, dated 13 January 2011.
4. Notice to attend the information session addressed to the employer, No. 043 KB/RK/RK/VK/LKR, dated 14 January 2011.
5. Notice to attend the information session addressed to the workers, No. 044 KB/RK/VK/LKR, dated 14 January 2011.
6. Notice to attend the hearing addressed to the employer, No. 051 KB/AK/VK/LKA, dated 17 January 2011.
7. Notice to attend the hearing addressed to the workers, No. 052 KB/AK/VK/LKA, dated 17 January 2011.

FACTS

N/A

REASONS FOR DECISION

The worker party did not attend the hearing at the Arbitration Council in this case. It stated that it would not attend the hearing when contacted by the Secretariat via telephone. Therefore, the Arbitration Council considers the case as follows:

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

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 its 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 worker party and informed it of the arbitral hearing. However, the worker party responded that it would not attend. The Arbitration Council finds that the worker party was properly notified of the hearing by the Secretariat. **Hence, the first condition is fulfilled.**

Second condition: the party does not appear at the hearing

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

The arbitration process comprises four stages as follows:

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

As the worker party did not attend any of the above stages in this case, the Arbitration Council concludes that the worker party did not appear at the hearing in compliance with the second condition of the said *Prakas*. **Hence, the second condition is fulfilled.**

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

In this case, the worker party did not provide any reasons for its non-appearance. In fact, at 2:00 p.m. on the hearing date of 19 January 2011, when the Secretariat of the Arbitration Council telephoned the worker party to remind it of the hearing, the worker party responded that it would not attend and left the issue for the Council to determine. The employer attended the hearing as summoned. Thus, the Arbitration Council considers that **the workers did not provide proper reasons 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 case 07/11-June Textile.

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

DECISION AND ORDER

Close case 07/11-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: **Suong Sophal**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: