



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 26/09-Kimsheng Garment**

**Date of award: 13 March 2009**

### **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): **Pen Bunchhea**

#### **DISPUTANT PARTIES**

##### **Employer party:**

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

Address: Samrong Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 881 988

Fax: N/A

Representative:

1. Mr Ouy Nat

Administrator

##### **Worker party:**

Name: **Khmer Youth Trade Union Federation (KYFTU)**

**Local Union of KYFTU**

Address: N/A

Telephone: 012 906 811

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 reinstate Keo Vy, who was dismissed on 19 January 2009. The workers allege that the dismissal was discriminatory because Keo Vy had joined the union. The employer does not agree to the demand.

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2. The workers demand that the employer not discriminate against workers who join the Local Union of KYFTU. The employer does not agree to the demand.
3. The workers demand that the employer make it easier to obtain permission for leave for personal commitments and sick leave with a proper medical certificate. The employer does not agree to the demand.
4. The workers demand that the employer provide a doctor during working hours and sufficient medical supplies. The employer does not agree to the demand.
5. The workers demand that the employer announce the piece rate one week in advance. The employer does not agree to the demand.
6. The workers demand that the employer build a canteen and provide tables for them to eat their meals. The employer does not agree to the demand.
7. The workers demand that the employer advise the Chinese group leaders to use proper language toward workers. The employer does not agree to the demand.
8. The workers demand that the employer advise the staff in the security section to behave appropriately toward workers, as the security guards always use improper language. The employer does not agree to the demand.
9. The workers demand that the employer reinstate Sorn Sukkhim, ID 1019, because the worker was not dismissed in accordance with the legal procedure. 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. special KB/KN, dated 18 February 2009 was submitted to the Secretariat of the Arbitration Council on 24 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:** 3 March 2009 at 2:00 p.m. (the worker party was absent).

**Procedural issues:**

On 17 February 2009, an expert officer assigned by the Department of Labour Disputes of Kandal Province conducted a conciliation session, leaving nine issues unresolved. The nine non-conciliated issues were referred to the Arbitration Council on 24 February 2009 via non-conciliation report No. special KB/KN, dated 18 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 nine non-conciliated issues, held on 3 March 2009 at 2:00 p.m. At 1:20 p.m. an officer of the Secretariat of the Arbitration Council telephoned to remind the parties to attend the hearing on time. However, the worker party responded that it would not attend the hearing, nor would it attend a further hearing. The worker party did not give any reasons for its refusal to attend. The employer, on the other hand, appeared at the hearing as summoned by the Arbitration Council and requested that the Arbitration Council follow the law. 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**

In this case, the worker party received a notice to attend the hearing from the Secretariat of the Arbitration Council but decided not to attend. Moreover, on the hearing date of 3 March 2009 at 1:20 p.m. an officer of the Secretariat of the Arbitration Council telephoned to remind the parties to attend the hearing on time. However, the worker party responded that it would not attend the hearing, nor would it attend a further hearing. Thus, the Arbitration Council will consider the case as follows:

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.

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, 27/07-M & V (Branch 3), 95/08-Yung Wah, 132/08-GHG, 138/08-Malin, and 151/08-Wilson Garment, 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.”

In this case, the Arbitration Council agrees with the interpretation made in previous cases. Thus, the Arbitration Council will consider whether the three conditions are met in this case.

**First condition: the party is properly notified**

Based on the documents provided by the Secretariat of the Arbitration Council, the Arbitration Council finds that the Secretariat dispatched a notice to attend the hearing to the worker party. Moreover, prior to the hearing the Secretariat of the Arbitration Council telephoned the worker party to remind it to attend the hearing on time. However, the worker party responded that it would not attend the hearing nor any future hearing, even though it had been properly notified of the date, time, and venue of the hearing in accordance with Rule 4.7 in the Annex to the *Prakas* on the Arbitration Council. Therefore, the Arbitration Council considers that the worker party was properly notified of the date, time, and venue of the hearing by the Secretariat of the Arbitration Council. **Thus, the first condition is met.**

**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 the party: (1) is present at the hearing, and (2) participates in the whole process.

The arbitral process comprises four steps 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 participate in any of the four above steps in this case, the Arbitration Council concludes that it did not appear at the hearing in compliance with the second condition of the said *Prakas*. **Thus, the second condition is met.**

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

In this case, the Arbitration Council finds that the worker party did not provide any reasons for its failure to attend the hearing. On the hearing date of 3 March 2009 at 1:20 p.m., 40 minutes before the hearing, the Secretariat of the Arbitration Council telephoned the parties to remind them of the hearing. The worker party responded that it would not attend the hearing. The employer attended the hearing as summoned and requested that the Arbitration Council follow the law. Hence, the Arbitration Council considers that **the worker party did not provide proper reasons for its lack of appearance at the hearing.** Thus, **the third condition is also met.**

In conclusion, the three stipulated conditions are fulfilled.

Based on Rule 4.7, *Prakas* No. 099, and the above interpretation, the Arbitration Council considers that although the worker party did not participate in the arbitral process, the Arbitration Council still has the authority to issue an award.

In addition, the Arbitration Council has provided ample opportunity to the claimant union, the Local Union of KYFTU, to argue its claim in accordance with the Labour Law; however, it 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 refusal to bring the dispute before the Arbitration Council demonstrates a lack of good will in resolving the labour dispute.

Therefore, the Arbitration Council decides to close case 29/09-Kimsheng Garment.

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

**DECISION AND ORDER**

Close Case 29/09-Kimsheng Garment.

**SIGNATURES OF THE 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: **Pen Bunchhea**

Signature: .....