



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 51/11-Nugget Textile

Date of award: 31 May 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTANT PARTIES

Employer party:

Name: **Nugget Textile (Pte) Ltd.**

Address: Trea Village, Stung Meanchey Commune, Meanchey District, Phnom Penh

Telephone: 012 689 896 Fax: N/A

Representative:

1. Ms Dok Socheata Head of Administration

Worker party:

Name: **Cambodian Worker Economic Federation Union (CWEFU)**

Local Union of CWEFU

Address: Building E, Street 21, Takmao Village, Takmao District, Kandal Province

Telephone: 012 636 766 Fax: N/A

Representatives:

1. Mr Sat Chheanghour President of CWEFU
2. Mr Sreang Narith President of the Local Union of CWEFU
3. Mr Ket Sorphorn Vice-President of the Local Union of CWEFU
4. Ms Khem Sorphorn Secretary of the Local Union of CWEFU

ISSUES IN DISPUTE

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

1. The workers demand that the employer allow them to use all their annual leave or provide them with a payment in lieu of annual leave at the end of each year. The employer states that it will allow the workers to use their annual leave freely. If the workers do not use up their annual leave, the employer promises to provide payment in lieu of annual leave with the twelfth monthly wages.
2. The workers demand that the employer maintain their wages and benefits and not give them warnings when they are less than 30 minutes late to work each month. The employer states that it will follow its existing practice. The employer maintains that workers are allowed to be up to five minutes late each day or 15 minutes each month.
3. The leaders of the Local Union of CWEFU demand that the employer arrange a separate room for the worker delegates to hold a meeting for two working hours each week. The leaders also demand that the employer maintain their wages and benefits. The employer states that it only allows the worker delegates to meet in the office of administration outside working hours because the delegates hold important positions.
4. The workers demand that the employer give them prior notice [of contract termination] and, in accordance with Article 79 of the Labour Law, grant them two days off each week with their wages and benefits maintained to allow them to find new jobs. The employer states that it is unable to obey the Article 79 of the Labour Law.
5. The workers demand that the employer provide a severance payment equal to 20% of the workers' wages when terminating fixed duration contracts. The employer states that it will provide a payment equal to only 5% of wages in accordance with Article 73 of the Labour Law.

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. 455 KB/RK/VK dated 17 April 2011 was submitted to the Secretariat of the Arbitration Council on 27 April 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: 18 May 2011 at 2:00 p.m.

Procedural issues:

On 4 March 2011 the Department of Labour Disputes received a complaint from the CWFU, No. 006/2011 SSSK dated 2 March 2011, outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 22 April 2011. As a result, two of the seven issues were resolved. The five non-conciliated issues were referred to the Secretariat of the Arbitration Council on 27 April 2011 via non-conciliation report No. 455 KB/RK/VK dated 27 April 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 five non-conciliated issues, held on 18 May 2011 at 2:00 p.m. Both parties were present at the hearing as summoned by the Arbitration Council. The Arbitration Council conducted a further conciliation of the five non-conciliated issues, resulting in issues 1, 2, 3, and 4 being resolved.

The Arbitration Council will consider the remaining issue in dispute based on the evidence and reasons below.

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party: N/A

B. Provided by the worker party:

1. Certificate of registration of the Local Union of CWFU, dated 28 March 2011.
2. Letter confirming registration of the Local Union of CWFU, dated 28 March 2011.

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

1. Report on collective labour dispute resolution at Nugget Textile (Pte) Ltd., No. 455 KB/RK/VK, dated 27 April 2011.
2. Minutes of collective labour dispute resolution at Nugget Textile (Pte) Ltd., dated 22 April 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 297 KB/AK/VK/LKA dated 3 May 2011.

2. Notice to attend the hearing addressed to the workers, No. 298 KB/AK/VK/LKA dated 3 May 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:

- Nugget Textile (Pte) Ltd. commenced operation on 27 September 2007 and employs a total of 550 workers.
- There are three unions at the factory: the Khmer Youth Union, the Voice of Khmer Youth Union, and the Local Union of CWEFU.
- The Local Union of CWEFU is the claimant in this case. The union represents approximately 117 workers and does not hold most representative status (MRS).

Issue 5: The workers demand that the employer provide severance payments equal to 20% of the workers' wages when it terminates their fixed duration contracts.

- The workers demand that the employer increase the severance payment from 5% to 20% of their wages regardless of whether the employer renews their fixed duration contracts.
- The employer's practice is to offer either fixed or undetermined duration contracts to the workers. Fixed duration contracts last from three to six months. Among the 550 workers, approximately 80 hold undetermined duration contracts and another 120 hold six-month fixed duration contracts. The remaining workers hold three-month fixed duration contracts. When fixed duration contracts are terminated, the employer provides a severance payment equal to 5% of wages regardless of whether the parties elect to extend the employment relationship.
- The workers base their demand on the contention that the price of consumer goods has increased whilst their wages have remained low. Moreover, if the employer increases the severance payment to 20%, they can use the money to run businesses or they can save the money.
- The employer maintains that it cannot not provide what the workers demand because it fears that the practice may set a precedent for other factories operated by members

of the Garment Manufacturers' Association in Cambodia. Furthermore, the employer has increased wages in accordance with the law.

- The workers acknowledge that their demand is not subject to provisions in the law or an agreement, but the increase would motivate them to work hard. The workers state further that they make this demand on behalf of all workers at the factory, but they do not have authorisation letters from non-members of the Local Union of CWFU.

REASONS FOR DECISION

Issue 5: The workers demand that the employer provide severance payments equal to 20% of the workers' wages when it terminates their fixed duration contracts.

In this case, the employer provides severance payments equal to 5% of the workers' wages regardless of whether or not it renews their fixed duration contracts. However, the workers demand that the employer increase the percentage from 5% to 20% due to the increase in the price of consumer goods. The workers have not made any agreement with the employer regarding this demand. Thus, they demand the provision of a severance payment which is more than the law provides. Therefore, the Arbitration Council is of the view that the demand gives rise to an interests dispute.

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

The Arbitration Council considers that holding MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and legal standing to bring an interests dispute to the Arbitration Council for resolution.

In this case, the Arbitration Council agrees with the interpretation above; it will decline to consider an interests dispute if the union bringing the dispute does not hold MRS.

The Arbitration Council finds that the Local Union of CWFU does not have a certificate of MRS in accordance with Article 277 of the Labour Law. Therefore, the union does not have legal standing to bring an interests dispute to the Arbitration Council for resolution.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer increase the severance payment from 5% to 20% of their wages regardless of whether or not the employer renews their fixed duration contracts.

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

DECISION AND ORDER

Issue 7: Decline to consider the workers' demand that the employer increase the severance payment from 5% to 20% of their wages.

Type of award: non-binding award

This award 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 MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: