



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

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**THE ARBITRATION COUNCIL**

**Case number and name: 66/11-In Han Sung (formerly Dai Young II)**

**Date of Award: 29 June 2011**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Chhiv Phyum**

Arbitrator chosen by the worker party: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Sok Mathoeung**

#### **DISPUTANT PARTIES**

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

Name: **Ing Han Sung Garment Co., Ltd (formerly Dai Young II) (the employer)**

Address: Angkeo Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 011 975 427

Fax: N/A

Representatives:

1. Mr Han Dihy Director
2. Mr Seoung Savon Head of Administration
3. Mr Chab Peng Interpreter

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

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

##### **Local Union of CLUF**

Address: No. 30C, St. 371, Teok Tla Commune, Sen Sok District, Phnom Penh

Telephone: 017 616 598

Fax: N/A

Representatives:

1. Mr Seng Menghong Officer of CLUF
2. Mr Teur Ty President of the Local Union of CLUF
3. Mr Som Samroeung Vice-President of the Local Union of CLUF

4. Mr Ou Chandyna                      Assistant to the President of the Local Union of CLUF

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer provide an accommodation and transportation allowance of US\$ 10 per month to each worker. The employer refuses to accommodate the demand, asserting that it has rented cars to transport home workers who work overtime after 10:00 p.m., in compliance with *Prakas* No. 80 SKBY dated 1 March 1999.
2. The workers demand that the employer allow workers with over six months of service to use annual leave. The employer states that it will follow the Labour Law.
3. The workers demand that the employer provide them with an additional two hours per week if they have not achieved the production target. The employer refuses to accommodate 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. 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. 580 KB/RK/VK dated 6 June 2011 was submitted to the Secretariat of the Arbitration Council on 7 June 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 Quarter, Tuol Kork  
District, Phnom Penh

**Date of hearing:**        21 June 2011 at 8:30 a.m.

#### **Procedural issues:**

On 27 April 2011 the Department of Labour Disputes received a complaint from CLUF, No. 3203/11 dated 27 April 2011, outlining the workers' demands for the employer to 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 26 May 2011. Nine of the 12 issues were conciliated. The three non-conciliated issues were referred to the Secretariat of the Arbitration Council on 7 June 2011 via non-conciliation report No. 580 KB/RK/VK dated 6 June 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 21 June 2011 at 8:30 a.m.

Both parties were present at the hearing. The Arbitration Council attempted to conciliate the three issues, resulting in issues 2 and 3 being resolved.

The Arbitration Council will consider the remaining issue in dispute based on evidence and reasoning as follows.

## **EVIDENCE**

**Witnesses and Experts:** N/A

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

### **A. Provided by the employer party:**

1. Certificate of commercial registration, No. 5676 dated 16 December 2010.
2. Patent certificate, No. 031660/2010 dated 22 December 2010.

### **B. Provided by the worker party:**

1. Certificate of registration of the Local Union of CLUF, No. 2144 dated 19 May 2011.
2. Letter confirming registration of the Local Union of CLUF, No. 123 dated 19 May 2011.

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

1. Report on collective labour dispute resolution at Ing Han Sung Garment Co., Ltd, No. 580 MKBV/KP dated 6 June 2011.
2. Record of collective labour dispute resolution at Ing Han Sung Garment Co., Ltd, dated 26 May 2011.

### **D. Provided by the Secretariat of the Arbitration Council:**

1. Notice to attend the hearing addressed to the employer, No. 385 KB/AK/VK/LKA dated 14 June 2011.
2. Notice to attend the hearing addressed to the workers, No. 386 KB/AK/VK/LKA dated 14 June 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:**

- Ing Han Sung Garment Co., Ltd employs a total of 430 workers.
- The Local Union of CLUF, the claimant in this case, represents 110 workers and does not hold a certificate of most representative status (MRS). The union receives contribution fees from the wages of only 30 workers.
- The employer acknowledges that the Local Union of CLUF at Dai Young II is a union of workers at its factory. It states that the employer's name has changed from Dai Young II to Ing Han Sung Garment Co., Ltd through certificate of commercial registration No. 5676 dated 16 December 2010, issued by the Ministry of Commerce.

**Issue 1: The workers demand that the employer provide an accommodation and transportation allowance of US\$ 10 per month to each worker.**

- The employer does not have a policy of providing an accommodation and transportation allowance of US\$ 10 per month to each worker. Furthermore, it does not have an agreement or collective agreement concerning this issue.
- The workers make this demand because they live far away from the factory, in locations such as Takeo and Kompong Speu, etc. Given this circumstance, they must either take taxis to the factory or rent houses near the factory, causing them to spend US\$ 12 per month on transportation or US\$ 7 on accommodation, including electricity and water bills.
- The employer states that it cannot afford to accommodate the workers' demand as it is a small factory and operates as a subcontractor.

**REASONS FOR DECISION**

**Issue 1: The workers demand that the employer provide an accommodation and transportation allowance of US\$ 10 per month to each worker.**

According to the facts, the workers demand that the employer provide an accommodation and transportation allowance of US\$ 10 per month to each worker. The Arbitration Council considers that the workers' demand has no basis in the terms of an agreement, collective agreement, or the Labour Law, thus making it an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the disputant 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 AAs 81/04-Evergreen, Reasons for Decision, Issue 4; 09/05-Kin Tai, Reasons for Decision, Issue 2; 84/07-Yung Wah 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, Issue 3; 42/09-River Rich, Reasons for Decision, Issue 2).

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.

The Arbitration Council agrees with the abovementioned interpretation. The Arbitration Council finds that the Local Union of CLUF does not have the requisite certification of MRS under Article 277 of the Labour Law.

The Arbitration Council considers that the Local Union of CLUF does not have legal standing to bring an interests dispute before the Council for consideration unless it joins with other unions to represent more than 50% of the total workers in the factory. Otherwise, only an MRS union has legal standing.

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

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

**DECISION AND ORDER**

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

**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 time period.

**SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Sok Mathoeung**

Signature: .....