



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 138/13-Manhattan Textile and Garment Corp.

Date of award: 23 July 2013

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): **Men Nimmith**

DISPUTANT PARTIES

Employer party:

Name: **Manhattan Textile and Garment Corp.**

Address: Ampil Leur Village, Ampil Commune, Kampong Siem District, Kampong Cham
Province

Telephone: 012 871 222

Fax: N/A

Representatives:

- | | |
|---------------------|---------------------------------------|
| 1. Mr La Ryka | Director General |
| 2. Mr Yang Chhourny | Special Assistant to Director General |
| 3. Mr Sam Seyha | Head of Administration Department |

Worker party:

Name: - **Local Union of Free Trade Union of Workers of Kingdom of Cambodia (the union)**

Address: Ampil Leur Village, Ampil Commune, Kampong Siem District, Kampong Cham
Province

Telephone: 935 496

Fax: N/A

Representatives:

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- | | |
|---------------------|-----------------------------|
| 1. Mr Yein Sokheang | President of the union |
| 2. Mr Sorn Buntha | Vice-President of the union |
| 3. Mr San Rainsey | Secretary of the union |
| 4. Ms Much Phally | Worker Delegate |
| 5. Ms Nang Dany | Worker Delegate |

ISSUES IN DISPUTE

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

- The workers demand that the employer terminate contracts of employment of suspended workers in the M.Q section and elderly workers and provide them benefits in accordance to 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. 155 dated 17 June 2013 (Eleventh 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. 30/13 dated 28 June 2013 was submitted to the Secretariat of the Arbitration Council on 2 July 2013.

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 July 2013 at 2:00 p.m.

Procedural issues:

The address of Manhattan Textile and Garment Corp is at Ampil Leur Village, Ampil Commune, Kampong Siem District, Kampong Cham Province. The enterprise employs a total of 3,900 workers. There are two local unions at Manhattan: the Local Union of Free Trade Union of Workers of Kingdom of Cambodia (KTUWKC) and Local Union of Cambodian Labour Union Federation (CLUF).

Upon receipt of the claim from the union, the Department of Labour Disputes (the department) assigned an expert officer to resolve the labour dispute and the last conciliation session was held from 26-27 June 2013, resulting in two of three issues being resolved. The

unsuccessful conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 2 July 2013 in the unsuccessful conciliated report no.30/13 dated 28 June 2013.

Upon receipt of the case, the Arbitration Panel was formed on 3 July 2013. The SAC summoned the employer and the workers to a hearing and conciliation of the non-conciliated issue, held on 11 July 2013 at 2:00 p.m. Both parties were present. At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue, but it remains unresolved.

The Arbitration Council divided the issues into two types: rights disputes and interestss disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interests disputes. The parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU.

Therefore, the Arbitration Council will consider the issues in dispute in this case based on the evidence and reasons 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

- 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:

- Manhattan Textile and Garment Corp. is a garment factory. The factory employs a total of 3,900 workers.
- The union is the claimant. It has 210 members.

Issue: The workers demand that the employer terminate contracts of employment of suspended workers in the M.Q section and elderly workers and provide them the benefits in accordance to the Labour Law.

- The workers clarify their demand that the employer terminate the undetermined duration contracts of the suspended workers in the M.Q section and approximately 118 old age workers and provide them: 1) final minimum wage, 2) compensation in

lieu of prior notice, 3) payment in lieu of remaining annual leave, 4) severance pay, and 5) damages.

- A total of 118 workers make this demand. Over 100 workers working at the M.Q section have had their contracts of employment suspended by the employer from 13 August 2012. There are 18 old age workers between 55 and 74 years old and they work at the administration, M.Q and energy sections.
- The workers claim:
 - The employer suspends the workers contracts for over one year.
 - The workers receive 50 per cent of the minimum wage per month during the suspension. The 50 per cent minimum wage per month is not enough for the workers to buy food.
 - The contracts are suspended without complying with Article 71 of the Labour Law.
 - If the employer terminates the workers' contract, the workers have the opportunity to find new jobs.
- The employer claims that it does not agree to the demand because:
 - The employer does not have a policy to terminate the workers contracts.
 - There are no more buyers at the M.Q section. Therefore, the employer moves the workers to the sewing sections where there is more work but the workers do not agree [to be moved to the sewing section].
 - The employer maintains the workers seniority, minimum wage and other benefits once the workers move to the sewing section.
 - The workers claim that they don't agree moving to the sewing section because sewing is not their skillset. They argue that if the workers agree to move to the sewing section they may not do the work well and the team supervisor of the sewing section may blame them which may finally lead to the workers resigning.
 - The employer claims that it will ensure it provides training to the workers until they can do the work well [in the sewing section]. The employer states that if the workers make mistakes during the training, the employer will not blame them.
- The workers and the employer agree that:
 - 118 workers in this case have the undetermined duration contracts.
 - The employer maintains the workers' seniority, minimum wage and other benefits once the workers move to the sewing section.

REASONS FOR DECISION

Before turning to this issue, the Arbitration Council considers whether this issue gives rise to a rights or an interestss disputes.

Article 312, paragraph two of the Labour Laws states: *“The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes.”*

Clause 43 of *Prakas* no.099 on the Arbitration Council dated 21 April 2004 states:

“An arbitral award which settles an interests dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.”

Article 312, paragraph two of the Labour Laws and Clause 43 of *Prakas* no.099 on the Arbitration Council dated 21 April 2004 above mean that *“the Arbitration Council legally decides on dispute concerning the interpretation and enforcement of laws or regulation or of a collective agreement”*. The Council's decisions are in equity for all other disputes.

Therefore, the Arbitration Council consider s the disputes concerning the interpretation and enforcement of laws or regulation or a collective agreement the rights disputes and the Arbitration Council will resolve the rights disputes in accordance to the Labour Laws (*see the Arbitral Awards no.05/11-M & V1, Issue 1 and 5, 13/11-Gold Kamvimex, Issue 1 and 2, and 14/11-GHG Cambodia, Issue 4*). For the disputes that are not stated in the *laws or regulations or a collective agreement are interestss disputes and the Arbitration Council resolve the interestss disputes based on equity (see the Arbitral Awards no.31/11- Quint Major Industrial, Issue 4 and 62/11-Ocean, Issue 1)*.

Issue: The workers demand that the employer terminate the undetermined duration contracts of the suspended workers in the M.Q section as well as approximately 118 elderly workers and provide them with severance pay, damages, payment in lieu of remaining annual leave, outstanding wage and compensation in lieu of prior notice.

First, the Arbitration considers whether the issue gives rise to a rights or an interests dispute.

Since the issue is in relation to termination compensation of the labour contract stipulated in Article 77, 89, 91, 167 of the Labour Laws, therefore, the Arbitration Council finds that the dispute is a rights dispute.

At the hearing, the workers clarify their demand that the employer terminate labour contracts and provide them benefits in accordance with the Labour Law.

Arbitration Council jurisprudence considers that the employer should pay termination compensation to workers in the case that the employer unreasonably terminates the workers'

contract (see the *Arbitral Awards no. 154/09-Radio Free Asia, 150/11-SCF (Cambodia), Issue 11 (B), 36/12- Yung Wah 2, Issue 5*).

In this case, the employer claims that it cannot afford to meet the demand because it does not have a policy to terminate the workers' contracts.

In this case, the Arbitration Council considers:

Article 311 of the Civil Code states: "*A contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation.*"

Moreover, paragraph one of Article 65 of the Labour Law states: "*A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.*"

Based on Article 311 of the Civil Code and Paragraph 1, Article 65 of the Labour Law above, the Arbitration Council finds that the creation, changing or extinguishing of an obligation of a contract requires the matching of intentions held by the workers and the employer. Therefore, the party who has the right to terminate the contract obligation is both parties of the contract.

In this case, the workers who are party to the contract demand that the employer provide termination compensation. This means the workers demand that the employer terminate the contracts. Based on the facts, the employer claims that it does not have a policy to terminate the workers' contracts. Therefore, the Arbitration Council finds that the workers do not have the right to demand the employer terminate the contract of employment against the will of the employer.

Since the employer does not have the will and does not terminate the workers' contracts, the workers do not have the right to demand the employer provide termination compensation. Therefore, the Arbitration Council does not consider the provision of termination compensation.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer terminate the undetermined duration contracts of the suspended workers in the M.Q section as well as approximately 118 elderly workers and provide them with severance pay, damages, payment in lieu of remaining annual leave, outstanding wage and compensation in lieu of prior notice.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue: Reject the workers' demand that the employer terminate the undetermined duration contracts of the suspended workers in the M.Q section as well as approximately 118 elderly

workers and provide them with severance pay, damages, payment in lieu of remaining annual leave, outstanding wages, and compensation in lieu of prior notice.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 3 October 2012.

Part II. Interestss dispute: N/A

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: **Men Nimmith**

Signature: