



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាពន្ធដំណាច

THE ARBITRATION COUNCIL

Case number and name: 10/09-New Wide

Date of award: 19 February 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Ann Vireak**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTANT PARTIES

Employer party:

Name: **New Wide (Cambodia) Garment Co., Ltd. (the employer)**

Address: Toul Pong Ror Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 955 650

Fax: N/A

Representatives:

1. Mr Paul Zhou

Director

2. Ms Chuon Channa

Administration staff

Worker party:

Name: **Coalition of Cambodian Apparel Worker Democratic Unions (C.CAWDU)**

Local Union of C.CAWDU

Address: Toul Pong Ror Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 282 653

Fax: N/A

Representatives:

1. Mr Um Visal

Vice General Secretary of C.CAWDU

2. Mr Eoung Leab

President of the Local Union of C.CAWDU

3. Ms Oum Srey

Secretary of the Local Union of C.CAWDU

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate Eoung Leab and reimburse his wages from the date of his termination until the date of his reinstatement. The employer states that Eoung Leab did not follow management's direction, thus it cannot renew his employment contract.
2. The workers demand that the employer refrain from discriminating against the union and from restricting the workers' freedom to exercise their right to become union members. The employer denies the allegation of union discrimination.
3. The workers demand that the employer pay them 1000 riel per hour to buy food and that overtime work be voluntary. The employer argues that it cannot provide what the workers demand and that it will follow Notification No. 017 SKBY dated 18 July 2000.
4. The workers demand that the employer provide a truck for transporting workers who live far from the factory when they work overtime until 8:30 p.m. The employer argues that it does not have a truck for transporting workers and it has already given them an extra payment of US\$ 5 per month to cover accommodation and travelling costs.
5. The workers demand that the employer deduct from the US\$ 5 attendance bonus in proportion to the number of days that the workers are absent. The employer states that it still follows the old principle that if a worker is absent for one day out of 15, the employer will deduct US\$ 2.50 from the attendance bonus.
6. The workers demand that the employer more easily grant them leaves of absence based on actual facts. The employer states that it follows the Internal Work Rules, company regulations, and the Labour Law regarding leaves of absence.
7. The workers demand that the employer provide two separate sites for punching attendance cards or install a punching machine at each factory. The employer argues that it has enough sites for the workers to use.
8. The workers demand that the employer increase the wage of Oum Srey to US\$ 100 per month like other team leaders. The employer states that it cannot provide the increase because she doesn't have the ability or capacity of other team leaders.

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. 043 KB/AK/VK dated 23 January 2009 was submitted to the Secretariat of the Arbitration Council on 28 January 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 February 2009 at 9:00 a.m.

Procedural issues:

On 3 December 2008, the Department of Labour Disputes received a complaint from the Local Union of C.CAWDU dated 3 December 2008 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 5 January 2009. Two of the 10 issues were resolved, leaving eight non-conciliated issues. The non-conciliated issues were referred to the Secretariat of the Arbitration Council on 28 January 2009.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the eight non-conciliated issues, held on 3 February 2009 at 9:00 a.m. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issues, resulting in issue 7 being resolved and issues 4, 5, and 6 being withdrawn by the workers. Therefore, the Arbitration Council will consider issues 1 and 2 (which have been combined into one issue at the workers' request) along with issue 8 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:

- New Wide (Cambodia) Garment Co., Ltd., located in Toul Pong Ror Village, Chom Chao Commune, Dangkor District, Phnom Penh, employs around 1400 workers in total.
- The claimant in this case is the Local Union of C.CAWDU, but the union is not registered. According to the documents submitted by the workers, 108 workers have provided thumbprints to support this case.

Issues 1 and 2: The workers demand that the employer renew the labour contract of Eoung Leab on the basis that it has discriminated against the union.

- Eoung Leab held the position of warehouse supervisor and Chinese translator.
- He was employed on a six month fixed duration labour contract [when he was dismissed]. His first contract commenced on 29 August 2007 and ended on 31 May 2008. This contract was renewed and his subsequent contract commenced on 1 June 2008 and ended on 30 November 2008.
- The employer notified him of the termination of his contract on 24 November 2008 and Eoung Leab signed to accept the termination letter on 29 November 2008, which gave the reason that his contract had expired. At the hearing, Eoung Leab acknowledged that his second labour contract expired on 30 November 2008 and stated that he did not receive his final payment and severance pay equal to 5% of his wages upon termination of that contract. His severance pay under his first contract was provided upon termination of the first contract.
- Eoung Leab demands that the employer renew his employment contract on the basis that the reason it was not renewed was related to union discrimination. The employer denies that there is any discrimination against the union.
- Eoung Leab claims that he used to be a leader of the Local Union of the Cambodian Worker Democracy Union (registered on 26 May 2008). He resigned from his position on 5 November 2008, at the same time that he was elected a leader of the Local Union of C.CAWDU. The election commenced at 10:00 a.m. on that day.
- Eoung Leab claims that the union notified the employer of the result of the election on 5 November 2008 at 3:30 p.m., but the administration manager refused to accept the

notification on the basis that Eoung Leab was holding two union positions; he was the president of both the Local Union of C.CAWDU and the Local Union of the Cambodian Worker Democracy Union.

- At the hearing, Eoung Leab acknowledged that he did in fact hold two positions; he was the president of the Local Union of C.CAWDU and also the president of the local union of the Cambodian Worker Democracy Union. However, he submitted a letter resigning from his position with the Local Union of the Cambodian Worker Democracy Union and also notified the employer of his resignation from the union on 5 November 2008. The Arbitration Council asked him to confirm which notification came earlier; the notification to the employer of his resignation from the Local Union of the Cambodian Worker Democracy Union or the notification of the result of the election to establish the Local Union of C.CAWDU. According to the documents provided by the workers dated 5 November 2008, the election process started at 10:00 a.m. Eoung Leab replied that he did not remember.
- Eoung Leab asserts that he informed the Federation of the Cambodian Worker Democracy Union and the Department of Labour and Vocational Training of his resignation from the Local Union of the Cambodian Worker Democracy Union, but he did not provide any documents to prove this at the hearing. The union promised to provide such documents on 5 February 2009, but nothing was received by the Arbitration Council.
- Eoung Leab states that on 6 November 2008, the administration manager Teuk Tek threatened verbally to terminate his labour contract. Eoung Leab did not provide any evidence of this and the administration manager was absent from the hearing.
- According to a letter dated 18 November 2008 submitted to the Department of Labour Disputes, the Local Union of C.CAWDU notified the employer of the second election result on 7 November 2008, but the administration manager still rejected the notification letter. The union did not show the Arbitration Council the notification letter regarding the result of the second election on 7 November 2008.
- Eoung Leab states that after it terminated his labour contract, the employer renewed the labour contract of Lim Sarath and allocated him to Eoung Leab's post (according to Eoung Leab's statement, Lim Sarath's labour contract expired on 5 December 2008). It also renewed the contracts of many other sewing workers. In addition, the employer also terminated the labour contract of the vice-president of the union, Sem Chan. According to Eoung Leab, Sem Chan's labour contract expired on 13 December 2008.

- Eoung Leab states that the employer gave him one warning after he was absent without leave during Chinese New Year in 2008.
- In its statement summarising the dispute dated 5 February 2009, the employer claims that the reason it cannot renew Eoung Leab's contract is that he did not follow the internal rules and the agreement dated 13 August 2008 (in which Eoung Leab, a leader of the Local Union of the Cambodian Worker Democracy Union working in the warehouse section, agreed to a reassignment of duties to the sample room). The employer agreed to maintain his wages and other benefits and to pay his salary from January until July 2008. This payment was due on 23 August 2008. According to the employer's statement dated 5 February 2009, the employer has already paid him. The workers did not oppose this claim regarding salary payment in their statement in response dated 6 February 2009.
- According to the employer's statement dated 5 February 2009, on 23 August 2008 there was a meeting between the company director, Eoung Leab, and the administration manager but Eoung Leab maintained his refusal to work in the sample room.
- On 29 August 2008, the company director directed Eoung Leab to commence work in the sample room from 30 August 2008 at 7:00 a.m.
- On 1 November 2008, Eoung Leab threatened the foreman in the sample room (see the minutes dated 5 November 2008). The workers reject this accusation in their statement in response dated 6 February 2009, arguing that Eoung Leab did not threaten the foreman and the incident that occurred on 1 November 2008 was just the two of them joking with each other.
- The minutes dated 5 November 2008 by Lim Sarath and Ngoun Pov and the letter dated 3 November 2008 by Eoung Leab, submitted by the employer to the Arbitration Council, claim that the incident on 1 November 2008 was not a threat.
- On 17 November 2008, Eoung Leab submitted a letter to the company's management requesting to withdraw of 50% of the union contribution fees paid to the Local Union of the Cambodian Worker Democracy Union (see the letter dated 17 November 2008 by Eoung Leab).
- On 19 November 2008, the Local Union of C.CAWDU received a receipt acknowledging its [application for] registration.
- On 27 and 28 November 2008, the employer received letters of rejection from workers whose names and signatures were used without permission by anonymous

persons. Oum Srey, who is the union secretary, Chhoun Samon, Lay Chandarim, Chhoum Samuth, Un Bopha, Muy Sopheap, Sim Bonglay, and Hor Pros denied participating in the union election. However, the workers object to Oum Srey's letter of rejection and her certifying letter dated 10 February 2009; they argue that she is still the secretary of the Local Union of C.CAWDU.

- On 28 November 2008 the employer submitted a complaint to the Department of Labour Disputes regarding the election for the Local Union of C.CAWDU. Further, some workers wrote rejection letters on the basis that Eoung Leab held two union leadership positions and Sem Chan, the vice-president of the union, had been working for less than a year (Sem Chan started working on 14 March 2008).
- On 17 December 2008 the employer received a notification letter from Souy Khary Sy regarding the result of the election on 5 November 2008.
- On 24 December 2008 the Department of Labour Disputes sent a letter to Eoung Leab refusing to register the Local Union of C.CAWDU due to the rejection letter from Oum Srey, the union secretary, dated 27 November 2008.
- On 29 December 2008, the president of the Cambodian Worker Democracy Union notified the employer of the dismissal of Eoung Leab from the Cambodian Worker Democracy Union, with effect from 28 October 2008.

Issue 8: The workers demand that the employer increase Oum Srey's wage to US\$ 100 per month based on the minutes of collective bargaining dated 18 November 2008.

- Oum Srey holds the position of K2 group leader and receives US\$ 90 per month. She demands that the employer pay her US\$ 100 per month based on the minutes of collective bargaining dated 18 November 2008. Point 2 of the minutes states:

The employer sets a deadline of 1 December 2008 for the recruitment of a foreman to control the K2 group. Oum Srey, who is the group leader, must follow the assignments set by new foreman and must not order her subordinates not to cooperate with the new foreman. If, after the set period of time no foreman is assigned to supervise the K2 group, Oum Srey will be promoted automatically to senior group leader and will receive the same wage as other senior group leaders.

- According to the statements of both parties, senior group leaders receive US\$ 100 per month.
- At the hearing, Oum Srey claimed that from the time that the agreement was made until 11 December 2008, no foreman had been assigned to supervise the K2 group.

During the time without a foreman, the K2 group would usually receive a reward for their good working results. The employer did not oppose this claim at the hearing and replied that it would check its documents after the hearing and, if on 1 December 2008 no foreman had been assigned to supervise the K2 group, it would increase Oum Srey's wage.

- The employer submitted to the Arbitration Council the interview records of three foremen whose names appeared in the employer's statement on the labour dispute. However, the Arbitration Council declines to consider these documents as they are in Chinese [script].
- In its statement, the employer acknowledges the minutes of collective bargaining dated 18 November 2008, but argues that it cannot increase Oum Srey's wage because she does not get along with the new foreman Ju Hong Mei, who was assigned to work in the K2 group on 21 November 2008 along with two new foremen, Fan Xia Fang, recruited on 11 December 2008, and Cai Mu Fing, recruited on 20 January 2009.
- In their statement in response, the workers state that there was no foreman supervising the K2 group on 1 December 2008; it was only on 11 December 2008 that the new foreman commenced in the K2 group, i.e. 10 days after the deadline in the minutes of collective bargaining. Therefore, the employer must abide by the agreement and increase the wage of the worker in the K2 group [Oum Srey] to equal that of the other senior group leaders. However, in the workers' statement in response the Arbitration Council can find no specific objection to the employer's statement that a Chinese foreman named Ju Hong Mei commenced work in the K2 group on 21 November 2008.

REASONS FOR DECISION

Issues 1 and 2: The workers demand that the employer renew the labour contract of Eoung Leab on the basis that it has discriminated against the union.

In this case, the workers claim that the non-renewal of Eoung Leab's employment contract was partly due to union discrimination. However, the employer asserts that union discrimination was not the reason for the non-renewal; the reasons were that Eoung Leab violated the Internal Work Rules, he did not follow the employer's directions, and his labour contract had expired. Therefore, the Arbitration Council will consider this case as follows:

1. Was the decision not to renew Eoung Leab's labour contract based on discrimination against the union?

2. Did the employer properly notify him of the termination of his labour contract?

1. Was the decision not to renew Eoung Leab's labour contract based on discrimination against the union?

Article 12 of Labour Law stipulates:

...no employer shall consider on account of:..

- membership of workers' union or the exercise of union activities.

to be the invocation in order to make a decision on:...

- hiring,
- discipline or termination of [the] employment contract.

In previous cases concerning discrimination against unions, the Arbitration Council has ordered employers to reinstate workers if the termination of those workers was the result of discrimination against the union in violation of Articles 12 and 279 of the Labour Law, which prohibit the employer from considering union membership or union activities when making a decision on hiring, discipline, or termination of a worker's employment contract (see *Arbitral Awards 28/07-Dae Kwang, reasons for decision, issue 3 and 123/07-E Garment, reasons for decision, issue 1*).

Based on the above facts, the Arbitration Council finds that Eoung Leab was the president of the Local Union of the Cambodian Worker Democracy Union, (registered on 26 May 2008). His first employment contract was effective from 29 August 2007 until 31 May 2008 and was renewed by the employer for a duration of six months, starting on 1 June 2008 and ending on 30 November 2008.

Based on these facts, the Arbitration Council determines that the employer renewed Eoung Leab's labour contract whilst he was the president of the Local Union of the Cambodian Worker Democracy Union (registered on 26 May 2008). However, the employer decided not to renew his second contract.

The Arbitration Council finds that the workers have insufficient evidence proving that the decision not to renew his contract for a second time was based on his position as union leader and founder. He used to be the president of the Local Union of the Cambodian Worker Democracy Union and then founded a new union. Moreover, the Ministry of Labour refused the application for registration of this new union due to unusual practices after the election; for instance, Oum Srey refused the position of secretary. The Arbitration Council finds that, according to the employer's statement, the reason that Eoung Leab's contract was not renewed was that he did not follow the employer's direction transferring him to the

sample room in accordance with an agreement between him and the employer. The workers did not refute this argument by the employer.

In conclusion, the Arbitration Council considers that the non-renewal of Eoung Leab's labour contract was not due to union discrimination.

2. Did the employer properly notify him of the termination of his labour contract?

Article 67(2) of the Labour Law states that “[t]he labour contract signed with one’s consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years.”

In this case, the Arbitration Council considers that the total period Eoung Leab has worked is less than two years (counting the duration of both his first and second contracts).

Article 73 of the Labour Law stipulates that “[a] labour contract of a specific duration normally terminates at the specified ending date.”

In Arbitral Award 100/07-Hoyear Cambodia, the Arbitration Council interpreted this article as follows:

The Arbitration Council considers that a labour contract of fixed duration automatically terminates at the specified ending date. This means that the obligations of the employer and the worker are ended. Therefore, no party can compel the other party to renew the contract unless there is agreement.

(See Arbitral Award 100/07-Hoyear Cambodia, reasons for decision, issue 2).

In this case, the Arbitration Council agrees with its previous finding that contracts of fixed duration normally terminate at the specified ending date and the obligations of the employer and the worker are also terminated. Therefore, no party can compel the other party to renew the labour contract without an agreement.

However, Article 293 of the Labour Law stipulates that “[t]he dismissal of a shop steward or a candidate for a shop steward can take place only after authorisation from the Labour Inspector”.

Clause 3, paragraph three of *Prakas* No. 305 SKBY dated 22 November 2001 states:

All workers who are candidates for union leadership positions shall receive the same protection from work dismissal as worker delegates [i.e. shop stewards]. This protection begins 45 days prior to the election and ends 45 days after the election if the candidate is not elected. The union shall notify the employer of the worker’s candidacy through all reliable means. However, the employer shall only be required to comply with this provision once for each election of union leaders.

Furthermore, Clause 4, paragraph one of *Prakas* No. 305 SKBY dated 2 November 2001 states:

From the time that the application for registration is submitted, all workers who are founding members of a union, as well as those workers who voluntarily join the union during the application period, shall enjoy the same protection as worker delegates. This protection lasts for 30 days from the date of union registration.

In accordance with Clause 3, paragraph three and Clause 4, paragraph one of *Prakas* No. 305 SKBY dated 22 November 2001 set out above, the Arbitration Council considers that during the period of union registration all union leaders and founding members are protected from dismissal.

In this case, the employer gave a notification of the expiration and non-renewal of the labour contract of the workers claiming to be union leaders. The Arbitration Council is of the view that the purpose of the notification was to terminate the contract upon its expiration and to inform the worker of its non-renewal. This is distinct from dismissal because dismissal means that the employer terminates the worker's labour contract whilst the contract is still in force, prior to its expiration. Therefore, the Arbitration Council considers that Article 293 of the Labour Law does not apply in cases of contract expiry because that article clearly provides protection to union leaders against dismissal, which does not include contract expiry.

Article 73, paragraph five of the Labour Law provides that

If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.

The article above means that if a contract has a duration of more than six months, the worker must be informed of its expiration or non-renewal 10 days in advance. It can be inferred that if the contract's duration is less than six months, prior notice is not needed.

In this case, Eoung Leab's labour contract expired on 30 November 2008 and the employer notified him of the expiration and non-renewal of his contract on 24 November 2008. He received severance pay equal to 5% of his wage after his first contract expired.

Therefore, the Arbitration Council considers that the employer's notification of its decision not to renew Eoung Leab's contract was lawful and proper.

Therefore, the employer is not obliged to reinstate Eoung Leab. However, according to the facts, Eoung Leab has not yet received severance pay for his second contract equal to 5% of his wage. Thus the employer must provide Eoung Leab with severance pay equal to 5% of his wage in accordance with the law.

Issue 8: The workers demand that the employer increase Oum Srey's wage to US\$ 100 per month based on the minutes of collective bargaining dated 18 November 2008.

The workers demand that the employer increase to US\$ 100 per month the wage of Oum Srey, based on the minutes of collective bargaining dated 18 November 2008. However, the employer does not agree to the demand, asserting that Oum Srey had an argument with the new foreman. Therefore, the Arbitration Council will consider whether or not Oum Srey is entitled to a wage increase to US\$ 100 per month.

Point 2 of the minutes of collective bargaining states:

The employer sets a deadline of 1 December 2008 for the recruitment of a foreman to control the K2 group. Oum Srey, who is the group leader, must follow the assignments set by new foreman and must not order her subordinates not to cooperate with the new foreman. If, after the set period of time, no foreman is assigned to supervise the K2 group, Oum Srey will be promoted automatically to senior group leader and will receive the same wage as other senior group leaders.

The Arbitration Council considers that according to the agreement above, the worker named Oum Srey can be promoted to senior group leader only if she cooperates and follows the new foreman's assignments, and if there is no new foreman in the post by the deadline, Oum Srey will be promoted automatically.

Oum Srey certified that the deadline of 1 December 2008 passed without the recruitment of a new foreman, and that the new foreman commenced on 11 December 2008. Thus, she should be promoted to senior group leader. However, the employer asserts in its statement that when it recruited a new foreman to supervise the K2 group, Oum Srey did not follow the new foreman's directions and she even had an argument with him.

Based on the facts, the Arbitration Council considers that the employer did in fact recruit a new foreman before 1 December 2008; that is, on 21 November 2008, but Oum Srey did not cooperate with nor obey the new foreman's directions. Moreover, the workers' statement in response submitted on 10 February 2009 did not make any direct opposition to the employer's statement regarding the new foreman named Ju Hong Mei, who was

assigned to the K2 group on 21 November 2008, i.e. before 1 December 2008. It only mentioned the two foremen who were recruited after 1 December 2008. Thus, the Arbitration Council considers that the conditions agreed to in the minutes of collective bargaining dated 18 November 2008 (that no Chinese foreman be recruited to the K2 group by the deadline of 1 December 2008 and that Oum Srey must follow the new foreman's direction) were not met.

Therefore, the Arbitration Council considers that the employer did follow the minutes of collective bargaining dated 18 November 2008.

In conclusion, the Arbitration Council rejects the workers' demand that the employer increase the wage of Oum Srey to \$100 per month.

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

DECISION AND ORDER

Issues 1 and 2: Reject the workers' demand that the employer renew the labour contract of Eoung Leab.

Issue 8: Reject the workers' demand that the employer increase Oum Srey's wage to US\$ 100 per month.

Type of award: non-binding award

This award of the Arbitration Council 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 THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator:

Name: **Kong Phallack**

Signature: