



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 08/12-Roo Hsing

Date of award: 9 February 2012

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): **Kong Phallack**

DISPUTANT PARTIES

Employer party:

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

Address: Toul Sanke Commune, Russei Keo District, Phnom Penh

Telephone: 012 830 901 Fax: N/A

Representative:

1. Mr Chou Chansak Head of Dispute Resolution Office

Worker party:

Name: **Khmer Workers Pride Federation Union (KWPFU)**

Address: Toul Sanke Commune, Russei Keo District, Phnom Penh

Telephone: 088 373 8000 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 provide a monthly US\$ 30 milk allowance. The employer refuses to accommodate the workers' demand on the basis of its existing practice.

2. The workers demand that the employer provide a 4,000 riel meal allowance for work on public holidays and Sundays. The employer refuses to accommodate the workers' demand.
3. The workers demand that the employer provide a monthly US\$ 15 accommodation allowance to each worker. The employer refuses to accommodate the workers' demand.
4. The workers demand that the employer refrain from transferring workers from one section to another. The employer refuses to accommodate the workers' demand on the basis of its production needs.

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 201 (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. 054 KB/RK/VK dated 16 January 2012 was submitted to the Secretariat of the Arbitration Council on 17 January 2012.

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: 30 January 2012 at 8:30 a.m.

Procedural issues:

On 13 December 2011, the Department of Labour Disputes received a complaint from KWPFU via telephone, 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 dispute, resulting in eight of the 12 issues remaining unresolved. The four non-conciliated issues were referred to the Secretariat of the Arbitration Council on 17 January 2012 via non-conciliation report No. 054 dated 16 January 2012.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the four non-conciliated issues, to

be held on 30 January 2012 at 8:30 a.m. KWPFU did not attend the hearing, nor did it specify a proper reason; it just said that the workers were unable to join the hearing. The employer, on other hand, attended the hearing as summoned by the Council.

The Arbitration Council considers and decides on the issue in this case 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: N/A

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

1. Report on collective labour dispute resolution at Roo Hsing Garment Co., Ltd., No. 054 KB/RK/VK dated 16 January 2012.
2. Minutes of collective labour dispute resolution at Roo Hsing Garment Co., Ltd., dated 11 January 2012.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 073 KB/RK/VK/LKR dated 24 January 2012.
2. Notice to attend the hearing addressed to the workers, No. 074 KB/RK/VK/LKR dated 24 January 2012.

FACTS

No facts were presented regarding the issues in the non-conciliation report referred to the Arbitration Council by the Ministry of Labour and Vocational Training due to the absence of the claimant union.

REASONS FOR DECISION

The Arbitration Council considers whether it will proceed with the arbitral process.

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

[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.

Rule 4.7 of the Procedural Rules of the Arbitration Council, Annex to *Prakas* No. 099, dated 21 April 2004, provides that:

[i]f a party fails to appear in person or to be represented at 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.

In Arbitral Awards 16/07-Lotus, 27/07-M & V (Branch 3), 138/08-Maxlin, and 11/11-June Textile, the Arbitration Council interpreted the said Clause 21 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.”

The Arbitration Council applies the abovementioned interpretation in this case. Thus, the Council will consider whether the three conditions are fulfilled in this case.

First condition: the party is properly notified

The officers of the Secretariat contacted KWPFU and informed it of the arbitral hearing. However, KWPFU responded that it would not attend. The Arbitration Council finds that KWPFU was properly notified of the hearing by the Secretariat. Hence, the first condition is fulfilled.

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 parties have to (1) be present at the hearing and (2) participate in the whole process.

The arbitration 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 KWPFU did not attend any of the 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*. Hence, the second condition is fulfilled.

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

In this case, the Secretariat of the Arbitration Council telephoned KWPFU to remind it of the hearing, KWPFU responded that it would not attend and left the issue for the Council to determine. The employer attended the hearing as summoned. Thus, the Arbitration

Council considers that KWPFU did not provide proper reasons for non-appearance. Hence, the third condition is also fulfilled.

In conclusion, the three conditions stipulated in the aforementioned clause are fulfilled.

Based on the foregoing, the Arbitration Council considers that even though the claimant union did not attend the hearing, the Arbitration Council is empowered to issue an award.

In addition, the Arbitration Council has provided ample opportunity to the claimant union 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, KWPFU 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 KWPFU has dropped its claim.

In conclusion, the Arbitration Council decides to close case 08/12-Roo Hsing.

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

DECISION AND ORDER

Close case 08/12-Roo Hsing.

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: **Kong Phallack**

Signature: