



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 21/12-Global Apparel

Date of award: 6 March 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: **Liv Sovanna**

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

DISPUTANT PARTIES

Employer party:

Name: **Global Apparels Limited (the employer)**

Address: Trapang Krosang Village, Kambol Commune, Posenchey District, Phnom Penh

Telephone: 012 950 954

Fax: N/A

Representatives:

1. Mr Suong Phorn

Dispute resolution officer

2. Mr Kim Samang

Assistant of the head of human resources

Worker party:

1. Names: **Worker's Union Federation (WUF)**

Local Union of WUF (the union's)

Workers' Spirit Union (WSU)

Workers' Will Union (WWU)

Address: Trapang Krosang Village, Kambol Commune, Posenchey District, Phnom Penh

Telephone: 012 995 523

Fax: N/A

Representatives:

1. Mr Mai Sima

Officer of WUF

2. Mr Teb Ton

Officer of the Local Union of KYFTU

3. Ms Keo Neang

President of the union's

- | | |
|--------------------|-------------------------------|
| 4. Ms Ty Daveurn | Vice-president of the union's |
| 5. Ms Nhek Khangna | Secretary of the union's |
| 6. Ms Sy Mony | President of WSU |
| 7. Mr Van saravan | President of WWU |

2. Name: **Cambodia Workers Union (CWU)**

Address: Trapang Krosang Village, Kambol Commune, Posenchey District, Phnom Penh

Telephone: 097 277 2 657

Fax: N/A

Representatives:

- | | |
|-------------------|-----------------------|
| 1. Ms Sea Sokheng | President of CWU |
| 2. Ms Seng Chandy | Vice-president of CWU |

3. Name: **Worker Movement Union (WMU)**

Address: Trapang Krosang Village, Kambol Commune, Posenchey District, Phnom Penh

Telephone: 077 995 523

Fax: N/A

Representatives:

- | | |
|--------------------|----------|
| 1. Ms Mov Luon | Activist |
| 2. Ms Som Va | Activist |
| 3. Ms Sok Sreymoch | Activist |

4. Name: **Independent and Democratic Union (IDU)**

Address: Trapang Krosang Village, Kambol Commune, Posenchey District, Phnom Penh

Telephone: 097 767 0 482

Fax: N/A

Representatives: Absent

5. **Representatives of the workers**

Address: Trapang Krosang Village, Kambol Commune, Posenchey District, Phnom Penh

Telephone: N/A

Fax: N/A

Representatives:

- | | |
|---------------------|----------------|
| 1. Ms You Young | Female workers |
| 2. Ms Sam Pheakdey | Female workers |
| 3. Ms Hor Sineurn | Female workers |
| 4. Ms Yin Chenda | Female workers |
| 5. Ms Kim Sovatdy | Female workers |
| 6. Ms Por Mab | Female workers |
| 7. Ms Sim Sokheang | Female workers |
| 8. Ms Sou Chanthy | Female workers |
| 9. Ms Phan Nan | Female workers |
| 10. Ms Suong Sokhon | Female workers |

- | | |
|---------------------|----------------|
| 11. Ms Kong Channy | Female workers |
| 12. Mr Ouch Sopheak | Worker |

ISSUES IN DISPUTE

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

1. The workers demand that the employer dismiss Veurn Vannara, a staff member employed in the human resources section. The workers allege that he verbally abused and threatened them. The employer submits that it will follow the law.
2. The workers demand that the employer provide a monthly US\$ 10 accommodation allowance to each worker. The employer will discuss the demand with the management and the shareholders.
3. The workers demand that the employer replace five security guards. Keo Neang is the President of the Local Union of the WUF. The workers allege that the five security guards attempted to drag her by her hands. The employer submits that it will educate the five security guards as it is the first time that they have committed misconduct of this nature.
4. The workers demand that the employer allow the union leaders to use handheld transceivers in the factory. The employer states that it will allow the union leaders to use those devices if they obtain permission from the Ministry of interior.

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. 136 KB/RK/VK dated 8 February 2012 was submitted to the Secretariat of the Arbitration Council on 8 February 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: 13 February 2012 at 2:00 p.m.

Procedural issues:

On 6 February 2012, the Department of Labour Disputes received a complaint via a telephone call from the workers demanding that the employer improve working conditions in their factory. Upon receiving the claim, the Department of Labour Disputes assigned an expert labour officer to resolve the labour dispute. The last conciliation session was held on 18 May 2012, resulting in the resolution of three issues. The four non-conciliated issues were referred to the Secretariat of the Arbitration Council on 8 February 2012 via non-conciliation report No. 136 KB/RK/VK dated 8 February 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. The hearing was held on 13 February 2012 at 2:00 p.m. with both parties present. The Arbitration Council conducted a further conciliation of the four non-conciliated issues, but they remained unresolved.

In this case, while the employer is a signatory to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU), dated 28 September 2010, the workers are not. At the hearing, the employer and the workers agreed to choose binding arbitration for rights disputes. As such, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. In accordance with the MoU, the parties cannot make an objection to rights award. However, the parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award regarding such disputes.

Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU.

In this case, the parties chose non-binding arbitration of interests disputes.

The parties agreed to extend the due date of issuance of this award to 6 February 2012.

The Arbitration Council considers 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:

- Global Apparels Limited employs a total of 2,526 workers.
- The claimants in this case are: (1) the unions, (2) WSU, (3) WWU, (4) CWU, (5) WMU, (6) IDU, and (7) the representatives of the workers.

Issue 1: The workers demand that the employer dismiss Veurn Vannara, a staff member in the human resources section.

- The workers claim that Veurn Vannara is a worker delegate as well as a communication officer in the human resources section. He is also the president of Khmer Union.
- The workers make this demand because they allege Veurn Vannara verbally abused them, using expressions such as “You stupid idiot – Do not talk to me!” and that he threatened to report workers to the administration office if they returned late from toilets.
- The employer claims that the workers have not previously notified it of the allegations or requested that it handle the matter. The employer states that if there is no request, it cannot provide a solution. On 4 February 2012, the employer received the workers’ demand for the dismissal of Veurn Vannara. The employer claims that it asked Veurn Vannara about the matter, but he denied the allegations. The employer states that it will take disciplinary action against Veurn Vannara if it finds him having committed such misconduct as alleged. The employer states that it will not dismiss him.

Issue 2: The workers demand that the employer provide a monthly US\$ 10 accommodation allowance to each worker.

- The workers make this demand because rent and transportation costs have increased. The workers claim that in 2000, it cost US\$ 10 to rent a room but that that amount has recently increased to US\$ 30. The workers further claim that before 2005 the cost of transportation was only US\$ 8 per month but that it has lately increased to US\$ 15 per month.
- The workers claim that WUF has affiliates at 27 factories, 24 of which have provided their workers an accommodation allowance, including Sun Well Shoes, Hoyear, Next, BNO, Peace Glory, and New Hung Wah etc.
- The workers admit that there is no collective agreement or any other agreement in relation to such an accommodation allowance. The workers claim that they want to have the same benefits as are provided to workers in other factories.

Issue 3: The workers demand that the employer replace five security guards.

- At the hearing, a female worker Keo Neang stated that the workers demanded that the employer change four security guards.
- Keo Neang is the group leader of the sewing section and the union president.
- Keo Neang claims that on 3 February 2012 at 6:30 a.m. while she was walking into the factory, a female security guard at the front door immediately tried to seize her handheld transceivers and that another three security guards became involved in the struggle. The workers who witnessed this incident decided to intervene. Due to the intervention by the other workers, the security guards could not take her handheld transceivers and the struggle ceased.
- As a result of the incident, Keo Neang suffered a serious dislocation of her arms. Keo Neang's arm remained sore at the hearing.
- Keo Neang claims that three of the four security guards are hired by the employer and another one by MPA Security Company.
- The employer claims that there are 18 security guards in the factory and the four security guards involving in the incident with Keo Neang are (1) Sang Savat, (2) Srouy Savuth, (3) Say Neang, and (4) Yum Sreychan hired from MPA Security Company. The Arbitration Council orders the employer to submit the contract on security services between Global Apparels Limited and MPA Security Company by 17 February 2012. The employer did not submit the contract.
- Keo Neang claims that it is the employer who ordered the seizure of her handheld transceiver and that the employer did not inform the union leaders that use of those devices is prohibited on the factory premises.
- The employer disputes the workers' claim, arguing that on 3 February 2012 it told the security guards to bar the union leaders from bringing handheld transceivers along with them into the factory.
- Keo Neang makes this demand because the four security guards have committed an act of violence towards her.
- The employer admits that no disciplinary action has been taken against the four security guards. The employer refuses to replace them because it hires them from a security company, but it agrees to give them a warning.

Issue 4: The workers demand that the employer allow the union leaders to use handheld transceivers.

- The workers make this demand so that (1) when the workers have any problems, the union leaders can contact one another in order to solve those problems, (2) all staff

members in the administration office are entitled to use this kind of device, as are the union leaders, and (3) other union leaders are entitled to use those devices.

- The employer claims that it had not previously prohibited union leaders from using handheld transceivers, however, on 3 February 2012, union leaders were prohibited from using those devices during working hours.
- The workers claim that the employer has not informed the union leaders of the prohibition and that the employer instructs security guards to seize the handheld transceivers when union leaders use them.
- The employer claims that it prohibits the use of handheld transceivers because (1) it affects discipline and order in the factory, and (2) it wastes working hours as union leaders have to go outside to talk into the transceivers.
- The employer claims that it will allow the union leaders to use handheld transceivers if they obtain permission from the Ministry of Interior.

REASONS FOR DECISION

Before considering the issues in dispute, the Arbitration Council considers whether they give rise to rights disputes.

In previous Arbitral Awards, the Arbitration Council has ruled that “a rights dispute is a dispute concerning entitlements in the law, an agreement or a collective agreement” (see AA 05/11-M&V 1, *reasons for decision, issue 1 and 5*; 13/11-Gold Kamvimex, *reasons for decision, issue 1 and 2*; 14/11-GHG, *reasons for decision, issue 4*).

The Arbitration Council applies these ruling in this case.

In this case, the Arbitration Council considers issues 1 (concerning the demand of the dismissal of a human resources staff member), 3 (concerning the demand of the dismissal of the security guards), and 4 (concerning the employer’s management prerogative) to be rights disputes since they have a basis in the Civil Code and the Labour Law. Issue 2 does not qualify as a rights dispute as it has no basis in the terms of an employment contract or an agreement.

In this case the Arbitration Council agrees with the above interpretation; a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement.

Issue 1: The workers demand that the employer dismiss Veurn Vannara, a staff member in the human resources section.

The Arbitration Council considers whether the workers have the right to demand that the employer dismiss Veurn Vannara.

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.

Article 664 of the Civil Code adopted in 2007 states, “A contract of employment is formed by the promises of one party to perform services under employment, and another party to pay wages for it.”

Articles 65 of the Labour Law and 664 of the Civil Code, which define an employment contract, are complementary. For instance, Article 65 of the Labour Law stipulates that an employment contract is subject to ordinary law which refers to the current civil code.

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.”

Based on Article 65 of the Labour Law and Articles 664 and 311 of the Civil Codes, the Arbitration Council determines that an employment contract is created by intentions of two parties or more, that is, the employer and the workers; only the parties to the contract can terminate or modify the obligations under the contract. The third parties do not have the right to do so.

In previous arbitral awards, the Arbitration Council has ruled:

the employees do not have rights to demand the employer to dismiss any employees unless the employees can prove that the employee is a dangerous person who cannot be allowed in the company or factory, and that keeping the person can cause harm to the workplace (see Arbitral Awards 54/08-Zhong Yov, reasons for decision, issue 5; 124/10-June Textile).

According to the facts, the workers demand that the employer dismiss Veurn Vannara. In this case, the Arbitration Council finds that Veurn Vannara and the employer have a separate employment contract. As such, the claimant workers are a third party to the contract. The Arbitration Council rules that the workers are not entitled to terminate or modify the contract between Veurn Vannara and the employer unless the workers can prove that Veurn Vannara is a dangerous person who should not be in the factory or at any workstation.

In this case, the Arbitration Council goes on to consider whether Veurn Vannara, a staff member in the human resources section, is a dangerous person and whether maintaining his employment could cause specific harm to the workplace.

At the hearing, the workers claimed that Veurn Vannara verbally abused them with comments such as “You stupid idiot – Do not talk to me!” The workers, however, failed to present any facts proving that Veurn Vannara was a dangerous person who should not be in the factory.

The Arbitration Council considers that to manage workers’ performance, particularly in cases that involve misconduct, an employer can take disciplinary action under internal work rules, such as providing a verbal or written warning or by dismissing workers involved if they are found guilty of misconduct.

Apart from the workers’ claim, the Arbitration Council finds that no other facts have been presented to prove that Veurn Vannara is a dangerous person and that his retention would cause instability in the workplace.

In conclusion, the Arbitration Council rejects the workers’ demand that the employer dismiss Veurn Vannara.

Issue 2: The workers demand that the employer provide a monthly US\$ 10 accommodation allowance to each worker.

The workers maintain their demand in relation to the provision of a monthly US\$ 10 accommodation allowance. After having closely examined the internal work rules, the Arbitration Council finds that there is no stipulation concerning this issue. The Arbitration Council also finds that this demand has no basis in a collective agreement, the internal work rules or the law.

Normally, the Arbitration Council considers such an issue an interests dispute.

Clause 43 of Prakas No. 099 dated 21 April 2004 states:

An arbitral award which settles an interest 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.

Based on this provision, the Arbitration Council considers that if it issues an arbitral award to settle an interests dispute, the award will become a one-year collective agreement.

Generally, a collective agreement must be applicable to all workers at the enterprise and the right to strike cannot be exercised for the purposes of revising an unexpired collective agreement (see Article 96 and Article 321 paragraph 2 of the Labour Law).

With respect to interests disputes, the Arbitration Council considers whether the disputant union has most representative status (MRS). The Arbitration Council considers that having MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement. A union with MRS or in the absence of a union with MRS, multiple unions representing more than half of total workers in the factory can bring an interests dispute to the Arbitration Council for resolution.

In order to possess MRS, Article 277 of the Labour Law and Clause 6 of *Prakas* on the Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreements at that Level, require those multiple unions to represent at least half of the total workers in an enterprise, to be registered with the Ministry of Labour and Vocational Training, and to fulfil other requirements in the said article (see Arbitral Awards 84/07-Yung Wah 2, reasons for decision, issue 1; 108/07-8 Star Sportswear, reasons for decision, issue 3).

In this dispute, no claimant union possessed MRS. Clause 9 paragraph 2 of *Prakas* No. 305 states:

In any enterprise or establishment where there is no union holding the status as most representative, all the unions with members at the enterprise or establishment, or a number of them, may join together to submit a joint draft of a collective bargaining agreement...

In this case, the Arbitration Council finds that although there are many claimant unions, none has presented the number of its members. Thus, all the unions fail to fulfil the requirements of Clause 9 (see *Prakas* No. 305, Clause 9 paragraphs 1 and 2).

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-Ever Green, reasons for decision, issue 4; 09/05-Kin Tay, 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).

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide a US\$ 10 accommodation allowance.

Issue 3: The workers demand that the employer replace four security guards.

The Arbitration Council considers whether the workers are entitled to demand that the employer replace the security guards.

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.

Article 664 of the Civil Code which was adopted in 2007, states “A contract of employment is formed by the promises of one party to perform services under employment, and another party to pay wages for it.”

Articles 65 of the Labour Law and 664 of the Civil Code, which define an employment contract, are complementary. For instance, Article 65 of the Labour Law stipulates that an employment contract is subject to ordinary law, which references the current civil code.

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.”

Based on Article 65 of the Labour Law and Articles 664 and 311 of the Civil Codes, the Arbitration Council determines that an employment contract is created by the intentions of two parties or more, that is, the employer and the workers and that only the parties to a contract can terminate or modify the obligations under the contract. Third parties do not have the right to do so.

In previous arbitral awards, the Arbitration Council has ruled:

employees do not have the right to demand the employer dismiss any employees unless the employees can prove that the employee is a dangerous person who cannot be allowed in the company or factory, and that keeping the person can cause harm to the workplace (see Arbitral Awards 54/08-Zhong Yov, reasons for decision, issue 5; 124/10-June Textile).

At the hearing, the workers claimed that three of the four security guards were hired by the employer and another one by MPA Security Company. The employer disputed the workers' claim, arguing that four of them were hired by a security company. The Arbitration Council orders the employer to submit the contract on security services between Global Apparels Limited and MPA Security Company by 17 February 2012. The employer does not submit the contract.

The Arbitration Council finds that the four security guards and the employer have separate employment contracts. As such, the claimant workers are the third parties of their contracts. The Arbitration Council rules that the workers are not entitled to terminate or modify the contract between the four security guards and the employer unless the workers can prove that the four security guards are dangerous persons who cannot be kept in the factory or any workstations.

In this case, the Arbitration Council goes on to consider whether the four security guards are dangerous persons and whether retaining them could cause specific harm to the workplace.

At the hearing, the workers claim that on 3 February 2012 at 6:30 a.m. the four security guards immediately tried to take a handheld transceivers from Keo Neang. The workers who witnessed this incident decided to intervene. As a result of the incident, Keo Neang suffered a serious dislocation of her arms. As of the hearing date, her arms remained sore.

The Arbitration Council determines that it was not appropriate to use force to try and take the handheld transceiver from Keo Neang because it may cause her harm and create disharmony within the workplace. The security guards should have adopted a more appropriate approach. The employer must take measures to improve the security and safety of its workers. In this case, the employer has not taken any action against the four security guards since the incident. The Arbitration Council is of the view that the employer should have taken timely disciplinary action against the four workers after it became aware of the incident.

According to the facts, the Arbitration Council determines that keeping the four security guards may be harmful to the workplace. Therefore, the employer must replace the four security guards in order to avoid other incidents of workplace violence.

In conclusion, the Arbitration Council orders the employer to replace the four security guards, namely (1) Sang Savat, (2) Srouy Savuth, (3) Say Neang, and (4) Yum Sreychan.

Issue 4: The workers demand that the employer allow the union leaders to use handheld transceivers.

The Arbitration Council considers whether the employer is obligated to permit union leaders the use of handheld transceivers during working hours.

Article 2 paragraph 2 of the Labour Law states,

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in a factory, workshop, work site, etc., under the supervision and direction of the employer.

In previous arbitral awards, the Arbitration Council has interpreted this article to mean that the employer has the right to supervise and direct the enterprise as it sees fit as long as it is done lawfully and reasonably (see Arbitral Awards 17/07-Charm Textile, reasons for decision, issue 3; 116/07-Grace Sun, reasons for decision, issue 2).

In this case, on 3 February 2012 the employer prohibited the use of handheld transceivers because (1) it affected discipline and order in the factory and, (2) it wasted working hours as the union leaders had to go outside to talk through the transceivers. The workers make this demand because (1) when the workers have any problems, the union leaders can contact one another in order to solve those problems, (2) all staff members at the administration office are permitted to use this kind of device, and so the union leaders should also be permitted to, and (3) other union leaders are permitted to use those devices.

The Arbitration Council rules that the prohibition on the use of handheld transceivers is subject to management prerogative and that the employer has exercised its right reasonably because the use of handheld transceivers may affect working hours. The employer has the right to determine who can use handheld transceivers.

The workers do not cite any law or agreement from which they derive their rights.

The Arbitration Council rules that the workers' demand is legally unfounded.

In conclusion, the Arbitration Council rejects the workers' demand that the employer allow the union leaders to use handheld transceivers during working hours.

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 1:

Reject the workers' demand that the employer dismiss Veurn Vannara.

Issue 3:

Order the employer to replace the four security guards, namely (1) Sang Savat, (2) Srouy Savuth, (3) Say Neang, and (4) Yum Sreychan.

Issue 4:

Reject the workers' demand that the employer allow the union leaders to use handheld transceivers during working hours.

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 28 September 2010.

Part II. Interests dispute:

Issue 2:

Decline to consider the workers' demand that the employer provide a US\$ 10 accommodation allowance

Type of award: non-binding award

The award in Part II 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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

