



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអង្គជំនុំជម្រះ

THE ARBITRATION COUNCIL

Case number and name: 68/11-B & N Garment

Date of Award: 24 June 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

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

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

DISPUTANT PARTIES

Employer party:

Name: **B & N Garment (Cambodia) Co., Ltd (the employer)**

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

Telephone: 012 541 851 Fax: N/A

Representative:

1. Mr Mao Leng Head of Administration

Worker party:

Name: **Workers' representatives**

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

Telephone: 097 289 8483 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 chairs and tables and set up a canteen.
2. The workers demand that the employer install a proper door for the restroom.

3. The workers demand that the employer implement a system to reduce heat in the Cutting Section and other heat-affected sections.
4. The workers demand that the employer block sunlight in the infirmary.
5. The workers demand that the employer provide an additional US\$ 10 to each scissor chief and US\$ 5 to each scissor apprentice.
6. The workers demand that the employer provide 50% of wages and perquisites to women workers when they take maternity leave.
7. The workers demand that the employer establish a proper and hygienic place to drink water.

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. 614 KB/RK/VK dated 9 June 2011 was submitted to the Secretariat of the Arbitration Council on 10 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: 23 June 2011 at 8:30 a.m.

Procedural issues:

On 19 May 2011, the Department of Labour Disputes received a complaint from the Rights and Profit Workers Federation of Trade Unions 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 conciliate the labour dispute at the factory on 7 June 2011. None of the issues were resolved. The seven non-conciliated issues were referred to the Secretariat of the Arbitration Council on 10 June 2011 via non-conciliation report No. 614 KB/RK/VK, dated 9 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 seven issues, held on 23 June 2011 at 8:30 a.m. The workers did not attend the hearing. The employer, on other hand, did attend. The Arbitration Council considers and decides on the issue below.

EVIDENCE

Witnesses & Experts: N/A

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

A. Provided by the employer party:

1. Authorisation letter from the employer for Mao Leng, dated 23 June 2011.

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 B & N Garment (Cambodia) Co., Ltd, No. 614 KB/RK/VK, dated 9 June 2011.
2. Record of collective labour dispute resolution at B & N Garment (Cambodia) Co., Ltd, dated 7 June 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 389 KB/AK/VK/LKA, dated 14 June 2011.
2. Notice to attend the hearing addressed to the workers, No. 390 KB/AK/VK/LKA, dated 14 June 2011.

FACTS

N/A

REASONS FOR DECISION

The worker party in this case did not attend the hearing at the Arbitration Council and failed to specify proper reasons for its absence. Therefore, the Arbitration Council considers the issue as follows.

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

If 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.

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

In 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.

In Arbitral Awards 16/07-Lotus and 27/07-M & V 3, the Arbitration Council interpreted this clause 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 this lack of appearance.

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

First condition: the party is properly notified

The officials of the Secretariat sent the workers a notice to attend the hearing, No. 390 KB/AK/VK/LKA dated 14 June 2011. The Arbitration Council finds that the worker party was properly notified by the Secretariat to attend the hearing. 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 stages as follows:

- A. Introduction and disclosure of any conflict of interest by arbitrators;
- B. Explanation of the arbitration process and confirmation of the issue(s) in dispute;
- C. Conciliation, if the parties agree; and
- D. Arbitration.

In this case, the worker party did not attend any of the four stages above. Thus, the Arbitration Council considers that the worker party did not appear at the hearing, in accordance with the second condition in the *Prakas*. Hence, the second condition is fulfilled.

Third condition: the party does not provide a proper reason for its non-appearance

In this case, the worker party failed to provide any reasons for its non-appearance and left the issue to be addressed by the Council. The employer attended the hearing as invited. Thus, the Arbitration Council considers that **the worker party did not provide a proper reason for non-appearance.** Hence, the third condition is also fulfilled.

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

In addition, the Arbitration Council has provided ample opportunity to the claimants, the workers' representatives, to argue their claim in accordance with the Labour Law; however, the claimant opted for non-appearance. The Arbitration Council is of the view that the worker party does not intend to engage in the dispute resolution process required by law.

Generally, the claimant is obliged to argue its claim by submitting reasons and evidence to the Arbitration Council; however, in this case, the worker party has not fulfilled its obligation to do so. In this case, the claimants did not attend the hearing and have lost the opportunity to provide reasons and evidence to argue their claim. The Arbitration Council considers that the worker party has dropped its claim. The worker party's decision reflects its unwillingness to bring the labour dispute to the Council for resolution.

Thus, the Arbitration Council decides to close case 68/11-B & N Garment.

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

DECISION AND ORDER

Close case 68/11-B & N Garment.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: