



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 50/11-Talent Garment

Date of Award: 26 May 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): **Ang Eng Thong**

DISPUTANT PARTIES

Employer party:

Name: **Talent Garment Industry (Cambodia) Co., Ltd (the employer)**

Address: Prey Tea Village, Choam Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 899 980 Fax: N/A

Representative:

1. Ms Dy Chivbee Head of Administration

Worker party:

Name: **Khmer Youth Trade Union Federation (KYFTU)**

Local Union of KYFTU

Address: Prey Tea Village, Choam Chao Commune, Dangkor District, Phnom Penh

Telephone: 017 676 198 Fax: N/A

Representatives:

1. Mr Sim Phally Officer of KYFTU
2. Mr Sun Phan Officer of KYFTU
3. Ms Pum Chanthoeun President of the Local Union of KYFTU
4. Ms Keo Vannak Vice-President of the Local Union of KYFTU
5. Ms Chen Synat Secretary of the Local Union of KYFTU

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ISSUES IN DISPUTE

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

1. The workers demand that the employer provide pregnant workers with three months' wage, including perquisites, at 50% of the full rate prior to their taking maternity leave. The employer is complying with the Labour Law.
2. The workers demand that the employer deduct union contribution fees for the Local Union of KYFTU from the wages of members who have submitted their membership cards and photographs to the employer. The employer refuses to deduct the fees unless it has confirmed with the union members that they agree to the deduction.

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. 133 dated 9 June 2010 (Eighth 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. 442 KB/RK/VK dated 26 April 2011 was submitted to the Secretariat of the Arbitration Council on 27 April 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: 6 May 2011 at 8:30 a.m.

Procedural issues:

On 2 March 2011, the Department of Labour Disputes received a complaint from the KYFTU outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 31 March 2011. As a result, four of the six issues were conciliated. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 27 April 2011 via non-conciliation report No. 442 KB/RK/VK dated 26 April 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 two non-conciliated issues,

held on 6 May 2011 at 8:30 a.m. Both parties were present at the hearing. The Arbitration Council further conciliated the two issues and issue 2 was resolved.

As both parties are signatories to Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU), dated 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. As the remaining issue in this case gives rise to a rights dispute, the Council will only deal with the former. In accordance with the MoU, both parties have agreed in writing to binding arbitration of the rights dispute.

The Arbitration Council will consider the remaining issue in dispute [issue one] based on the evidence and reasons below.

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party:

1. Authorisation letter from the Director of the employer for Dy Chivbee, dated 6 May 2011.
2. Letter from the Council for the Development of Cambodia to the Director of the employer regarding investment in the company, No. 162/06 KVK dated 13 April 2006.
3. Internal Work Rules of the employer, No. 082 KKBV/RK/RTK dated 2 August 2006.
4. Statute of Talent Garment Industry (Cambodia) Co., Ltd, dated 8 April 2008.

B. Provided by the worker party:

1. Certificate of union registration, dated 9 October 2006.
2. Letter from the head of the Department of Labour Disputes to the president of the Local Union of KYFTU regarding the union's request for recognition of its leaders in the second term, No. 100 KB/RK/VK dated 25 January 2011.
3. Record of collective labour dispute conciliation at Talent Garment Industry (Cambodia) Co., Ltd, dated 27 April 2007.
4. Statute of the union, No. 1036 KKBV/VK dated 9 October 2006.

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

1. Report on collective labour dispute resolution at Talent Garment Industry (Cambodia) Co., Ltd, No. 442 KB/RK/VK, dated 26 April 2011.
2. Record of collective labour dispute resolution at Talent Garment Industry (Cambodia) Co., Ltd, dated 31 March 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer party, No. 293 KB/AK/VK/LKA dated 29 April 2011.

2. Notice to attend the hearing addressed to the worker party, No. 294 KB/AK/VK/LKA dated 29 April 2011.
3. Agreement on a binding award on rights disputes, dated 6 May 2011.

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:

- Talent Garment Industry (Cambodia) Co., Ltd (Talent Garment) employs a total of 482 workers, 471 of whom are female.
- The Local Union of KYFTU represents 200 workers.

Issue 1: The workers demand that the employer provide pregnant workers with three months' wage, including perquisites, at 50% of the full rate prior to their taking maternity leave.

- On average, from 10 to 11 workers commence maternity leave each month.
- The employer's practice is to pay workers on maternity leave 90 days worth of wages including perquisites at the rate of 50%. However, it makes the payments monthly, on the usual day of wage payment.
- Pregnant workers can authorise their relatives to obtain their payments.
- The workers assert that the employer must pay the full amount to workers prior to their taking maternity leave, because the workers have a right to the payments.
- The employer asserts that the Labour Law does not require it to pay all wages and perquisites to the workers prior to their departure on leave, but failed to cite any article of the Labour Law to substantiate its claim.

REASONS FOR DECISION

Issue 1: The workers demand that the employer provide pregnant workers with three months' wage, including perquisites, at 50% of the full rate prior to their taking maternity leave

Before turning to this issue, the Arbitration Council will determine whether the demand gives rise to a rights dispute.

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

The Arbitration Council considers that the demand in this case gives rise to a rights dispute because it relates to entitlements in the Labour Law, that is, wages and perquisites for female workers taking maternity leave. Thus, the Arbitration Council considers the demand as follows.

Article 182, paragraph one of the Labour Law provides that “[i]n all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”

Article 183, paragraph one of the Labour Law provides that “[d]uring the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.”

According to the facts, the employer does provide the workers with 90 days’ wage including perquisites at 50% of the full rate, but it does not offer to pay in full before the workers commence leave. Rather, it pays the workers each month on the day of the monthly wage payment. Given these facts, the Arbitration Council will consider whether the employer is required to pay the workers in full prior to their commencing maternity leave.

Article 115, paragraph 3 of the Labour Law states that “[p]ayment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”

In previous arbitral awards, the Arbitration Council has determined that the 90 days worth of wages including perquisites at 50% of the full rate should be paid to workers prior to the commencement of their leave (see AAs 57/06-*Evergreen*, reasons for decision, issue 6; 97/06-*New Max*, reasons for decision, issue 1; and 08/08-*Hytex Garment*, reasons for decision, issue 2).

In conclusion, the Arbitration Council orders the employer to pay its workers 90 days’ wage including perquisites at 50% of the full rate prior to the commencement of their maternity leave.

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

DECISION AND ORDER

Issue 1: Order the employer to pay its workers 90 days’ wages including perquisites at 50% of the full rate prior to the commencement of their maternity leave.

Type of award: binding award

This award of the Arbitration Council is final and is enforceable by the parties in accordance with the MoU dated 28 September 2010.

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: **Ang Eng Thong**

Signature: