



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 239/13-Meridian Industrial Garment (Cambodia)

Date of award: 16 December 2013

Dissented Opinion: Arbitrator Ing Sothy

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): **Pen Bunchhea**

DISPUTANT PARTIES

Employer party:

Name: **Meridian Industrial Garment (Cambodia) Limited**

Address: Kompong Pring Village, Setbo Commune, Sa Ang District, Kandal Province

Telephone: 012 700 299

Fax: N/A

Representatives attending the prehearing: Absent

Representatives attending the hearing:

- | | |
|----------------------|---------------------------|
| 1. Mr Noun Prosnith | Consultant to the company |
| 2. Mr Ping Meng Sros | Administrator |
| 3. Mr Tom Kimsoeun | Assistant |

Worker party:

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

- **Local Union of C.CAWDU (the union)**

Address: House no. 2.3G, Street no. 26BT, Tnot Chum Village, Sangkat Boeung Tumpun,
Khan Meanchey, Phnom Penh

Telephone: 012 504 154

Fax: N/A

Representatives attending the prehearing:

- | | |
|-----------------|--------------------|
| 1. Mr Seang Yot | Officer of C.CAWDU |
|-----------------|--------------------|

THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.

- | | |
|-------------------|---|
| 2. Mr Keo Boeun | member of fast reaction team of C.CAWDU |
| 3. Mr Lou Sak | candidate in election of the union |
| 4. Ms Nut Jot | candidate in election of the union |
| 5. Ms Po Sreyneat | worker |
| 6. Ms Im Buntim | worker |

Representatives attending at the hearing:

- | | |
|------------------|------------------------------------|
| 1. Ms Meas Vanny | Officer of C.CAWDU |
| 2. Ms Seang Yot | Officer of C.CAWDU |
| 3. Ms Lou Sak | candidate in election of the union |
| 4. Ms Nut Jot | candidate in election of the union |

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate leaders of the local union of C.CAWDU: No Sak-ID: C.01113, Nuth Chot-ID: C. 0013, Thon Channy-ID: C.0035, Pov Navorn-ID: C. 0084, and Horn Maly-ID C.0109 and provide back pay from the date of dismissal to the date of reinstatement.
2. The workers demand that the employer take actions against trainer who use improper words with the workers.
3. The workers demand that the employer pay meal allowance every Saturday on a weekly basis.
4. The workers demand that the employer provide workers with sufficient tools.
5. The workers demand that the employer provide a US\$5 bonus to workers working 26 days.
6. The workers demand that the employer provide wages and benefits during strike and that it refrain from bearing grudge against workers who stage strike.
7. The workers demand that the employer refrain from acting discriminately against the local union of C.CAWDU and fully recognise union's rights and freedom.
8. The workers demand that the employer refrain from deducting union contribution fee from their wages without their authorisation.
9. The workers demand that the employer pay back the union contribution fee deducted from their wages without their authorisation.
10. The workers demand that the employer implement the basis of voluntary work.
11. The workers demand that the employer pay their wages during working hours or before 4 p.m.

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. No. 155 dated 17 June 2013 (Tenth 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. 928 dated 1 November 2013 was submitted to the Secretariat of the Arbitration Council on 1 November 2013.

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 7 November 2013 (at 10 a.m.)

Prehearing

Date of hearing: - 12 November 2013 (at 8:30 a.m.)

- 21 November 2013 (at 2 p.m.)

Procedural issues:

On 31 October 2013, the Department of Labour Disputes (the department) received a complaint from C.CAWDU, outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 31 October 2013, none of the issues were resolved. The eleven non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 1 November 2013.

Upon receipt of the case, the Arbitration Panel was formed on 4 November 2013. The Arbitration Council issued an arbitral order on 4 November 2013 ordering the workers to immediately put on hold the strike staged at Meridian Industrial Garment (Cambodia) Limited until the arbitration process has been completely gone through in accordance with legal procedures and all strikers shall return to work from 5 November 2013. The SAC decided to summon the workers and employer to a prehearing held on 7 November 2013 at 10 a.m. The Arbitration Council decided to summon the employer and the workers to a hearing held on 12 November 2013. The employer requested to defer the date of the hearing. Therefore, the Arbitration Council decided to defer hearing to 21 November 2013 at 2 p.m. The parties were present at the hearing.

At the hearing, the Arbitration Council inquired for more facts and conducted a further conciliation of the eleven non-conciliated issues, resulting in eight issues including Issues 2, 3, 4, 5, 8, 9, 10, and 11 being resolved. The workers decided to withdraw Issue 6. Therefore, the Arbitration Council will consider the remaining two issues, Issues 1 and 7. The workers merged Issues 1 and 7 into one issue.

C.CAWDU and Meridian Industrial Garment (Cambodia) Limited are signatories to Memorandum of Understanding dated 3 October 2013 (MoU); however, as the union is not yet a professional organisation because it does not receive certificate of union registration. Therefore, the fact that C.CAWDU agrees to represent the workers in this case cannot be interpreted as the parties in this case are signatories to the MoU dated 3 October 2012. Therefore, the arbitral award in this is non-binding.

The parties agree to defer the date of arbitral award issuance from 27 November 2013 to 16 December 2013.

Therefore, the Arbitration Council will consider 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:

- Meridian Industrial Garment (Cambodia) Limited (hereafter referred to as “Meridian”) is a weaving factory. The company opened its business in 2 February 2013. It employs 500 workers.
- C.CAWDU does not have a lawful, local union at Meridian. The union held an election for leaders on 26 October 2013.
- C.CAWDU is the claimant in this case as it received an authorisation letter dated 29 October 2013 from 220 workers to represent in the dispute resolution. At the hearing, there are two workers, Mr Nut Jot and Mr No Sak as well as two officers from the federation, Ms Meas Vanny and Mr Seang Yot.

Issue 1 & 7: The workers demand that the employer reinstate union leaders: Mr No Sak-ID: C.0113 and Nuth Jot-ID: C. 0013 and provide back pay from the date of dismissal to the date of reinstatement as well as refrain from acting discriminately against the union.

(1) Mr No Sak:

- The workers claim:
 - o Mr No Sak-ID: C. 0113 commenced his work on 11 May 2013 as a Mechanist on a contract with three-month probation which expired on 10 August 2013.
 - o Upon the conclusion the aforementioned contract, he became a permanent worker on a three-month contract. His employment contract expired on 1 November 2013. The employer dismissed him on 28 October 2013 at 3:09 p.m.
- The employer claims:
 - o *“Mr No Sak was lazy, wasteful, and inattentive.”*
 - o He had previously been given verbal warnings by the Section Head.
 - o His fixed duration contract of employment was about to expire, so the employer decided not to renew it; the employer paid his worker termination compensation, including outstanding wages.

(2) Ms Nuth Jot:

- The workers claim:
 - o Ms Nuth Jot-ID: C.0013 commenced her job on 1 March 2013 as a sewing worker on a three-month contract which is a probationary period.
 - o Upon conclusion of the aforementioned contract, the workers become permanent workers on a three-month contract. Her contract expired on 1 November 2013. The employer dismissed her on 28 October 2013 at 3:09 p.m.
- The employer claims:
 - o Ms Nuth Jot caused *“chaos in the factory”*; therefore, the employer will not reinstate her.
 - o She had previously been given verbal warnings, but not a written warning.

The parties' claim:

- The workers claim the dismissal of Mr No Sak and Ms Nuth Jot was an act of union discrimination because the two workers had not committed misconduct. They also claim that the employer should have provided prior notice before termination of the contracts or the fixed duration contracts expired.

- The employer contends that it did not act discriminately against the union because Ms Sok La, Ms Mong Sreydech, and Ms Horn Maly were still working for the company.
- The workers respond that the employer dismissed Ms Horn Maly on 8 November 2013.
- The workers claim that several days before the dismissal of the two workers, the Head of Administration Department talked to Mr No Sak nearby the bathroom and said that: *“Are you serious Mr. Mechanist?”* The workers claimed the Head of the Administration Department’s question referred to Mr. No Sak’s participation and membership of C.CAWDU.
- The employer agrees with that said claim, but it did not mention the name of any union.

Information in relation to union formation

- The workers claim that before the election of the union, the workers had notified the employers about the union formation via a Letter no. 305 dated 17 October 2013 in which there were 5 candidates running in the election: (1) Ms Nuth Jot, (2) Ms Horn Maly, (3) Mr No Sak, (4) Ms Sok La, and (5) Ms Mong Sreydech. As the employer did not accept the notification letter, the workers notified the employer through the post on 19 October 2013.
- The workers claimed that they held an election on 26 October 2013. As a result, Mr No Sak was elected President of the union, Mr Chea Sophea-Vice-President, and Mr On Sokphon-Secretary.
- The workers claim that the union notified the employer about the elected leaders on 27 October 2013; however, the employer did not accept the notification letter. Therefore, the union notified the employer through the post on 4 November 2013.
- On 12 November 2013, the workers submitted evidence to the Arbitration Council, including:
 - o C.CAWDU sent a Notification Letter no. 305/13 dated 17 October 2013 on the election and formation of the union via EMS (Express Mail Service) and reached the employer on 18 October 2013; it was marked with *“already delivered”* as well as the signature of recipient, Mr Sok Saroeun. The notification letter said:
 Re: Notification of union election and formation ... candidates’ names attached to the notification are:

▪ Ms Nuth Jot	ID: C.0013
▪ Ms Horn Maly	ID: C.0109
▪ Mr No Sak	ID: C. 0113
▪ Ms Sok La	ID: C. 0130

- Ms Mong Sreypech ID : C.0140
- C.CAWDU notified the employer of elected union leaders via EMS on 30 October 2013. The notification letter was received by Pov Youra on 4 November 2013 at 10 a.m. The letter from C.CAWDU no. 353/13 dated 26 October 2013 was sent to the Director of the Meridian Industrial Garment (Cambodia) and said:
 - ...the three elected union leaders are listed as below:
 1. Mr No Sak-ID:113, President
 2. Mr Chea Sophea-ID: 35, Vice-President
 3. Mr On Sokphon-ID: 33, Secretary
 - ...
- The Arbitration Council concludes that the workers did notify the employer about the union election and the formation through Express Mail Service (EMS) on 18 October 2013 and the employer received the letter on 19 October 2013.
- The employer contends that it did not employ Mr Sok Saroeun and Mr Pov Youra. The employer claims that it outsourced security guards from another company and six security guards were transferred every half a month. The employer explained the process of receiving letters and that letters or documents from external sources shall be put in contact with the administrator before their receipts.

REASONS FOR DECISION

Issue 1 & 7: The workers demand that the employer reinstate union leaders, Mr No Sak-ID: C.0113 and Nuth Jot-ID: C. 0013 and provide back pay from the date of dismissal to the date of reinstatement as well as refrain from acting discriminately against the union.

The Arbitration Council will consider as follows:

A) Whether or not the employer is under an obligation to reinstate Mr No Sak and Ms Nuth Jot, who are elected union leaders.

Article 293 of the Labour Law states that *“The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector...”*

This article is also applicable to unions as stated in Clause 3 of Prakas 305 dated 22 November 2001 of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation that *“...All workers who are candidates for election as union leader shall also receive protection from work dismissal like worker delegates...”*

According to the foregoing laws and prakas, candidates in the election of union leaders shall receive protection from dismissal.

However, the aforementioned Prakas no. 305 also states that “...*This protection lasts 45 days prior to the election and ends 45 days after the election if these candidates are not selected...*”

According to Case no. 104/12-Hai Yon, Reasons for Decision, Issue 3, the Arbitration Council finds that the term “*election*” refers to a union election and formation, not just the preparation for election. Also, the date for the election shall be specifically set for accuracy in counting the 45 days of protection provided to candidates in the election as well as unelected candidates.

The Arbitration Panel in this case also agrees with the interpretation made in the previous case.

According to the evidence in Notification Letter no. 305/13 dated 17 October 2013, the letter was sent to the employer through EMS on 19 October 2013 and noted “*already delivered.*” The letter had the signature of the recipient, Mr Sok Saoreun.

The Notification Letter no. 305/13 notified the employer of the election in which Mr No Sak and Ms Nuth Jot were candidates. On 26 October 2013, the union held an election and the union notified the employer about the results of the election on 4 November 2013. Therefore, the Arbitration Council finds that the employer was not aware that Mr No Sak was elected Union President and Ms Nuth Jot was not elected after the dismissal of the two workers on 28 October 2013.

In conclusion, the Arbitration Council finds that Mr No Sak and Noth Jot are not entitled to special protection as stated in Article 293 of the Labour Law and Prakas no. 305 dated 22 November 2001 above.

B) Whether or not the dismissal of the two workers is an act of union discrimination.

Article 12 of the Labour Law states that “...*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: ... discipline or termination of employment contract...*”

Article 279 of the Labour Law states that:

Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.

In previous cases, the Arbitration Council ordered the employer to reinstate workers because their dismissal was made based on union discrimination violating Article 12 and 293 of the Labour Law which prohibits the employer from taking union affiliation or participation in union activities as the basis for taking disciplinary measures, such as termination of contracts of employment, against the worker (*see Arbitral Award no. 123/07-E-Garment, Reasons for Decision, Issue 1*).

In this case, the Arbitration Panel also agrees with the interpretation made in previous cases that the employer shall reinstate workers if their dismissals were made based on union discrimination, violating Article 12 and 293 of the Labour Law.

In previous awards, the Arbitration Council held that *“In general, the Arbitration Council determines that the party making allegations bear the burden of proof before the Arbitration Council.”* (see *Arbitral Award no. 148/07-Pay Her, 34/11-Lim Line International, Reasons for Decision, Issue 7, and 155/11-Ying Dong Shoes, Issue 1*)

Concerning evidence proving union discriminations, in general, the Arbitration Council considers oral evidence provided at the hearing and verifies the evidence to determine whether or not union discrimination took place (see *Arbitral Award no. 148/07-Pay Her and 35/13-Nex-t Apparel*).

The Arbitration Panel in this case also agrees with the interpretation made in the previous cases with relation to the burden of proof and methods determining union discrimination. According to the findings of facts, several days after notifying the employer of union formation on 19 October 2013, the Head of the Administration Department talked to Mr No Sak: *“Are you serious, Mr. Mechanist?”* The workers claimed the Head of the Administration Department’s question referred to Mr No Sak’ participation as a member of C.CAWDU.

The employer agreed with the claim, but it did not mention the name of any union. The Arbitration Council finds that according to the aforementioned wording, the Head of the Administration Department did not want Mr No Sak to form the union and, as a result, the employer dismissed Mr No Sak and Ms Nuth Jot on 28 October 2013 at 3:09 p.m. The employer claims that the dismissal of Mr No Sak and Ms Nuth Jot was not made based on union discrimination and contended that (1) *“Mr No Sak was lazy, wasteful, and inattentive”* and he had received verbal warnings from the Section Head and (2) *“Ms Nuth Jot caused chaos in the factory”* and she had also received a verbal warning. The Arbitration Council finds that the employer did not submit any convincing evidence to support its claim on the dismissal of the two workers. Therefore, in this case, the Arbitration Panel finds that the workers prove union discrimination and the event of the dismissal after the workers’ preparation for union formation; however, the employer did not submit any evidence to counter the allegation of union discrimination.

In conclusion, the Arbitration Council decides to order the employer to reinstate Mr No Sak-ID: C.0113 and Nuth Jot-ID: C. 0013 and provide back pay from the date of dismissal to the date of reinstatement as well as refrain from acting discriminately against the union.

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 & 7: Order the employer to reinstate Mr No Sak-ID: C.0113 and Nuth Jot-ID: C. 0013 and provide back pay from the date of dismissal to the date of reinstatement as well as refrain from acting discriminately against the union.

Type of award: 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: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

Annex to Arbitral Award 239/13-Meridian Industry Garment

Dissenting Opinion

Clause 37 of *Prakas* No. 099 SKBY, dated 21 April 2004, issued by the Ministry of Labour and Vocational Training states:

The arbitral panel shall record its decisions in an award which shall be signed by all three arbitrators. If one of the arbitrators does not agree with the decision of the majority, the dissenting arbitrator may record his dissent as an annex to the award.

Based on this clause, I, Arbitrator **Ing Sothy**, would like to record my dissent Issue 1 & 7 of the Arbitral Award **239/13 – Meridian Industry Garment** ordering the employer to reinstate Mr No Sak, ID: C.0113 and Ms Nuth Jot, ID: C.0013 and provide back pay from the date of dismissal to the date of reinstatement as well as refrain from acting discriminately against the union. I would like to explain the reasons for my dissent:

- Notification of candidates running in the union election was made through Express Mail Service (EMS).
- Notification of elected union leaders was also made through EMS.

Concerning the foregoing, the employer objected that the person signed to receive the letter from EMS was its worker.

Therefore, the burden of proof providing that the employer received the notification about union formation is on the workers.

If the employer did not receive the notifications above, the non-renewal of contracts of employment is the parties' right.

Phnom Penh, 16 December 2013

Signature

Ing Sothy