



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគមន៍

THE ARBITRATION COUNCIL

Case number and name: 32/11-Pou Yuen

Date of Award: 25 March 2011

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: **Ven Pov**

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

DISPUTANT PARTIES

Employer party:

Name: **Pou Yuen (Cambodia) Enterprise Ltd (the employer)**

Address: Teouk Tla Commune, Sen Sok District, Phnom Penh

Telephone: 017 887 788

Fax: N/A

Representatives:

1. Ms Sok Peng Head of Administration
2. Ms Neang Leakhana Dispute Resolution Officer

Worker party:

Name: **Rights and Profit Workers Federation of Trade Unions (RPWFTU)**

Local Union of RPWFTU

Address: Teouk Tla Commune, Sen Sok District, Phnom Penh

Telephone: 017 430 312

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 allow pregnant workers to take one day off each month with their wages and benefits maintained to have their health checked.

The employer states that it will allow pregnant workers to take only half a day off each month with their wages and benefits maintained to have their health checked.

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. 253 KB/RK/VK dated 3 March 2011 was submitted to the Secretariat of the Arbitration Council on 4 March 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: 16 March 2011 at 2:00 p.m.

Procedural issues:

On 25 January 2011, the Department of Labour Disputes received a complaint from the RPWFTU consisting of the workers' demand for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute at the factory on 25 January 2011. The conciliation resulted in six of the seven issues being conciliated. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 4 March 2011 via non-conciliation report No. 253 KB/RK/VK, dated 3 March 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 issue, held on 16 March 2011 at 2:00 p.m. The employer attended the hearing; however, the workers did not 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 Sok Peng, dated 16 March 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 Pou Yuen (Cambodia) Enterprise Ltd, No. 253 KB/RK/VK, dated 3 March 2011.
2. Record of collective labour dispute resolution at Pou Yuen (Cambodia) Enterprise Ltd, dated 24 February 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 195 KB/AK/VK/LKA, dated 10 March 2011.
2. Notice to attend the hearing addressed to the workers, No. 196 KB/AK/VK/LKA, dated 10 March 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 provide 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. 195 KB/AK/VK/LKA. 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, apart from stating that the workers had prior arrangements and decided to leave 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 Local Union of RPWFTU, the claimant, to argue its claim in accordance with the Labour Law; however, the worker party opted for non-appearance at the hearing and passed up the opportunity to present evidence to support its claim. The Arbitration Council is of the view that the workers do not intend to resolve the dispute with the employer in accordance with the requisite legal procedure.

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 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 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 the case 32/11-Pou Yuen.

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

DECISION AND ORDER

Close case 32/11-Pou Yuen.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: