

**KINGDOM OF CAMBODIA**  
**Nation King Religion**

Case number: 01/04  
Date of Award: 02-02-2004

**ARBITRATION COUNCIL**

**ARBITRAL AWARD**

Issued under Article 313 of the Labour Law

New Point Two Garment Industry

(the “Employer Party”)

**AND**

Members of the Coalition of Cambodian Apparel W.D.U.

(the “Worker Party”)

**Details of Employer Party:**

Address: #17, Street 68, Sangkat Sras Chork, Khann Daun Penh, Phnom Penh

Telephone: 012 776 133, 023 427 307 fax: 023 427 307

Representative: Mr. Chong Kok Chhor- company director and Mr. Son Samon- Company Administrator.

Address: #17, Street 68, Sangkat Sras Chork, Khann Daun Penh, Phnom Penh

Telephone: 012 776 133, 011 713 133, 023 427 307 fax: 023 427 307

**Details of Worker Party:**

Address: #237, Street 63, Sangkat Beng Keng Kang I, Khann Chamkar Morn, Phnom Penh

Telephone: 012 866682 fax: no e-mail: c.cawdu@forum.org.kh

Representative: Mr. Som Aun- President of Cambodia Labor Union Federation, Mr. Seang Sophy President of Union in New Point II Garment, Mr. Keun Sokunthea- Vice President of Union and Mr. Team Kimhour-Secretary of Union.

Address: #237, Street 63, Sangkat Beng Keng Kang I, Khann Chamkar Morn, Phnom Penh

Telephone: 012 866682 fax: no e-mail: c.cawdu@forum.org.kh

**ISSUES IN DISPUTE:**

This matter involves the complaint of the Worker Party that employees who are suspended by the Employer Party be paid 50% of their salary during the period of suspension.

## **Jurisdiction of the Arbitration Council:**

The Arbitration Council derives its power to make this Award from Section II B of chapter 12 of the Labour Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules which form an Annex to the same Prakas.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. That conciliation hearing was unsuccessful and the non-conciliation report of December 19, 2003 was submitted to the Secretariat of the Arbitration Council on January 08, 2004.

## **Composition of the Arbitration Panel:**

Arbitrator chosen by the Employer Party: Kao Thach

Arbitrator chosen by the Worker Party: Liv Sovanna

Chair arbitrator (chosen by the two arbitrators): Matthew Rendall

## **Hearing and Evidence:**

Date and place of hearing: January 21, 2004 at 14:00, Arbitration Council, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonle Basac, Phnom Penh.

Despite having been notified of the hearing, the Employer Party was not present at 2:00 pm on 21 January 2004, the scheduled time of the hearing. The Arbitration Panel postponed the start of the hearing until 2:30pm. At that time the hearing started without the Employer Party having appeared.

Evidence:

1. The conciliation report submitted by the Labour Inspection Department.
2. The report of the collective dispute conciliation.
3. The request to recognize the union's leaders.
4. The recognition of the union in New Point Garment's section.
5. Certificate of union registration.
6. Internal Rules of New Point World Trade (Cambodia) Co., Ltd.

## **Summary of the Case:**

1. The Worker Party stated that at the moment some 20 - 30 workers are suspended and that during this suspension they have received no salary at all. The Worker Party complained that, in accordance with industry standards, the workers wanted to receive 50% of their salary and other benefits during suspension.
2. During questioning by the Arbitration Panel, the Worker Party gave evidence of the following:
  - New Point Two Garment was started about one year ago by the owner of New Point One Garment. The factory of New Point Two Garment is adjacent to the factory of New Point One Garment.
  - The Employer Party has around 300 employees, some of whom were hired when the factory was started while others were hired later.
  - None of the workers present has received or signed any written employment contract.
  - None of the workers present has received a copy of the internal rules of the Employer Party nor are such rules on display in the factory.

- The workers present have been working at the factory on the basis of undetermined duration contracts, but were hired initially for a fixed period of six months during which period they could, according to the Employer Party, be terminated any day. The workers work full time, normal working hours being 7:00am to 12:00 and 13:00 to 16:00. The workers consider themselves as equal to the employees of New Point One Garment.
- Groups of usually some 20 to 30 workers are suspended by the Employer Party regularly for one or two weeks. As reason for the suspensions, the Employer Party always mentions that there is not enough work. In this connection the workers mention that the Employer Party functions as subcontractor for other garment factories.
- During suspensions, workers receive no salary. The Employer Party has said: there will be no pay during suspension and payment of 50% of salary during suspension only after two years of employment.
- Many other employers pay their workers 50% of their basic salary when suspended although this is not a legal requirement. This also applies to New Point One Garment which is owned by the same owner as the Employer Party.
- If workers of the Employer Party do not come to work for one day, they get a reduction of their salary and a warning; if they do not come to work for three days, they are terminated. During holidays, no salary is paid.

Notice was given to each of the parties on January 19, 2004 informing them of the hearing date of January 21, 2004. On that date the Arbitration Council sent the parties a request to provide the Internal Rules of the Employer Party and sample employment contracts. Neither party complied with these requests. However, the Arbitration Council was able to obtain a copy of the Internal Rules of New Point One through the Department of Labour Inspection. These Internal Rules confirm that they are also applicable to New Point Two Garment but they do not contain any provision regarding suspension.

### **Findings of Fact:**

Based on oral statements of the Worker Party during the hearing and in the absence of any evidence to the contrary from the Employer Party, the Arbitration Panel has found the following facts:

1. The Employer Party has not entered into written employment contracts with its workers.
2. The Employer Party has not given a copy of its Internal Rules to its workers nor put a copy of them on display in the factory as required by Article 29 of the Labour Law (1997).
3. The Employer Party regularly suspends employees, usually in group of 20-30 workers, employees for one to two weeks, stating as the reason for the suspensions that there is not enough work. During the suspensions the workers receive no salary or other payment from the Employer Party.
4. All of the workers party to this dispute are working full-time for the Employer Party on a permanent basis.
5. It is widespread practice in the garment industry to pay workers 50% of their basic salary when their contracts are suspended. New Point One Garment follows this practice as well.

At the end of the hearing the Arbitration Panel instructed the staff of the Arbitration Council to make enquiries with MOSALVY as to whether the Employer Party has submitted its Internal Rules for visa, and any plans for suspensions of workers under control of the Labour Inspector. The Arbitration Council received a copy of the Internal Rules of New Point One Garment which provide that they also apply to New Point Two Garment but they contain no provisions regarding suspension of workers.

### **Reasons for Decision:**

Pursuant to Article 9 of the Labour Law, workers may be defined as "regular" or "casual" depending on the stability of the work required. Casual work is limited to employment which is normally completed within a short period of time or which is performed temporarily, intermittently or seasonally. Regardless of the classification of worker or contract, pursuant to Articles 10 and 104 of the Labour

Law, all employees (even casual employees) are guaranteed the minimum wage and working conditions.

Pursuant to the provisions of Article 66 of the Labour Law, all employees must be hired on the basis of time, either under contracts of fixed duration (i.e., with a specific ending date), or contracts of undetermined duration (i.e., with no specific ending date). Pursuant to Article 68, probationary contracts are allowed for the maximum periods mentioned in that Article. At the expiry of the probation period, any worker who continues to work for the employer must have his/her status changed to that of a regular worker and be placed on either a fixed term duration contract or undetermined duration contract at full pay rates required by law.

The "floating worker" status applied by the Employer Party, whereby groups of workers are regularly suspended without pay because of lack of work is not a valid employee contract status recognized or sanctioned under the Cambodian Labour Law. As the practice of the Employer Party is to employ "floating workers" for longer, even undetermined, periods of time, these employees cannot be properly considered to be casual workers as defined in Article 9 of the Labour Law. Accordingly, they must either be on probationary contracts, contracts of fixed duration or contracts of undetermined duration. In this regard, the Arbitration Council refers to its decision in the matter *Tonga Garment Co., Ltd. v Union (Members of the Coalition of Cambodian Apparel W.D.U.)* (Case number 03/03, award dated 11 June 2003).

Article 71 of the Labour Law does provide for the possibility to suspend employment contracts, but only for the reasons mentioned in that Article. The reasons for suspension of employment contracts referred to in paragraphs 1 - 6 and 8 - 10 of this Article clearly do not apply in this case. Article 71.7 provides that workers may be terminated temporarily in accordance with internal regulations but, as the Employer Party does not have internal rules, this paragraph does not apply either. Article 71.11, however, provides that the employment contract can be suspended "when the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty which leads to a suspension of [the] enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector".

Therefore, Article 71.11 allows the suspension of employment contracts in the event of an economic crisis affecting the operation of the enterprise, but it does not allow the regular suspension of groups of employees whenever the employer has not acquired sufficient orders, as occurred at the New Point Two Garment factory. Moreover, the Arbitration Panel was provided with no evidence that the Employer Party subjected the suspensions of the workers to the control of the Labour Inspector, as required by Article 71.11 of the Labour Law.

An employer is not allowed to circumvent the protection granted to employees by the Labour Law by hiring or paying employees effectively only during the periods when the employer has sufficient work and suspending them without the control of the Labour Inspector when there is not enough work. Therefore, the Arbitration Panel concludes that the suspensions of workers by the Employer Party are invalid and that the workers who are currently suspended are entitled to payment of their salaries and other benefits as if their contracts had not been suspended. The workers will have to be compensated for the salaries and other benefits that they have not received during their suspension. This is different from the scope of the work suspension under Article 71 of the Labor Law. But the workers said that the workers in New Top One and other factories receive 50% of the wage during their suspension. The Arbitration Council finds that it does not have enough evidence to support this payment under the Labor Law.

In accordance with the non-conciliation report the Arbitration Council finds that the suspension started on December 19, 2003. Because there was no evidence to clarify that the suspension started on December 19, 2003, the Arbitration Council decides to take December 19, 2003 as the suspension date.

### **Decisions and Orders:**

On the above basis the Arbitration Council issues the following decisions and orders as a full resolution of the dispute before it:

1. To deny the employees' demand of 50% of the basic wage during suspensions of their employment contract period.
2. The Employer Party shall not suspend employment contracts without following the reasons stated in Article 71 of the Labor Law. In case of violation of Article 71 of the Labour Law, employer shall pay workers 100% of their wage during the suspension.
3. The Employer Party shall cease any suspension and reinstate all currently suspended workers effective the date of this award.
4. The Employer Party shall compensate full wages during the suspension to the workers who were suspended from December 19, 2003.
5. Both parties shall reach an agreement on the amount of compensation to be paid by the Employer Party to workers suspended from December 19, 2003 within one (1) month of the date of this award enters into effect. If no agreement can be reached within this period, the Employer Party shall engage, at its expense, an accountant agreed by the Worker Party to calculate the amount of compensation payable to the workers by the Employer Party. The Employer Party shall then pay the amount as calculated by the accountant within one (1) month from the submission of the accountant's report.

**Signatures of Members of the arbitration panel:**

Arbitrator chosen by the Employer Party:

Name: Kao Thach

signature: .....

Arbitrator chosen by the Worker Party:

Name: Liv Sovanna

signature: .....

Chair of Arbitration Panel:

Name: Matthew Rendall

signature: .....

*This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.*

*This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*