



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ
THE ARBITRATION COUNCIL

Case number and name: 03/07- The United Knitting

Date of Award: 13 February 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Ann Vireak**

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

DISPUTING PARTIES

Employer party:

Name: **The United Knitting MFG (Cambodia) Co., Ltd.**

Address: Mondol 1, Sangkat 4, Khan Mitapheap, Sihanouk Ville

Telephone: 034 933 746 Fax: N/A

Representative:

1. Mr. Long Heang Company Representative and GMAC dispute resolution officer

Worker party:

Name: **Free Trade Union of Workers of Kingdom of Cambodia**

Address: Mondol 1, Sangkat 4, Khan Mitapheap, Sihanouk Ville

Telephone: 012 929 174 Fax: N/A

Representative:

1. Yang Sophorn Officer of FTUWKC
2. Ouk Samen Head of local FTUWKC at the United Knitting Factory
3. Thou Vannak Vice-head of local FTUWKC at the United Knitting Factory
4. Kim Sreynith Secretary of local FTUWKC at the United Knitting Factory

ISSUES IN DISPUTE

- 1- The workers demand that the company increase the piece rates for three sizes:
 - Large size: from US\$ 8 to US\$ 8.50 (eight dollars and fifty cents)

- Medium size: from US\$ 7.50 to US\$ 8
- Small size: from US\$ 7 to US\$ 7.50 (seven dollars and fifty cents)
- 2- The workers demand the company allow the workers who have proper doctor certificates to take sick leave from one month to six months based on the type of their illness.
- 3- The workers demand that the company disclose the piece rates for them to follow before the weaving starts.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor 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. 099 dated 11 May 2006 (Fourth 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 hearing was unsuccessful, and the non-conciliation report No. 369/06 KKBV dated 28 December 2006 was submitted to the Secretariat of the Arbitration Council on 19 January 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 30 January 2006 (at 2:30 p.m. to 4:30 p.m.)

Procedural issues:

On 25 December 2006, the Department of Labour Disputes in Sihanoukville received a complaint from workers demanding the company to improve working conditions in accordance with the Labour Law. Upon receipt of this complaint, the Department of Labour Disputes in Sihanoukville assigned an officer to handle this labour dispute over consecutive sessions and the last conciliation was held on 27 December 2006 with 5 issues of 8 issues conciliated. The three non-conciliated issues were sent to the Secretariat of the Arbitration Council on 19 January 2007.

After receiving the case, the Secretariat of the Arbitration Council invited the employer party and the worker party to attend the hearing and conciliation on the three non-conciliated issues on 30 January 2007 at 2:30 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted further conciliation on the three non-conciliated issues but did not receive any conciliated result. Therefore, in this Award, the

Arbitration Council will consider [the non-conciliated issues] based on evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter by the company director to authorise Mr. Long Heang, dated 18 January 2007
- Certificate of registration of the United Knitting Company, No. 1051 PN.BAP, dated 10 May 2006
- Statute of the United Knitting Company
- The Internal Work Rules of the United Knitting Company, registration No. 039/2003, dated 29 April 2003
- Letter by worker delegate regarding recognition of the Internal Work Rules, dated 07 April 2003
- Statement by the company, dated 02 January 2007-02-12
- Letter regarding negotiation on the piece rate, dated 23 October 2006
- Payroll list for October 2006
- Payroll list for December 2006

Provided by the worker party:

- Certificate of union registration of the local FTU at the United Knitting Factory
- Pay slip for December of Ouk Samen, a worker
- Letter by the head of the Department of Labour Dispute to the head of local FTU at the United Knitting Factory, dated 12 January 2007
- Pay slip

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

- Report on collective dispute resolution at The United Knitting company, No. 369/06 K.K.B.V by the head of the Department of Labour and Vocational Training at Sihanouk Ville, dated 28 December 2006
- Minute of the collective labour dispute conciliation, dated 27 December 2006
- Minute of the collective labour dispute conciliation, dated 25 December 2006

Provided by the Secretariat of the Arbitration Council: N/A

FACTS

- Having reviewed documents the parties submitted to the Arbitration Council
- Having reviewed the report of collective labour dispute

- Having listened to the statements by the representatives of the worker party and the employer party

The Arbitration Council finds that:

The company is located in Mondol 1, Sangkat 4, Khan Mitapheap, Sihanoukville. It employs 684 workers. The company has only one union, the FTUWKC. According to the workers' claim, over 50% of workers are members of the union but it does not have the most representative status yet.

Issue 1:

- Workers demand the company to increase piece rate for model 120008 which they had worked on since the end of November 2006 to the end of December 2006 [as follows:] Large size from US\$ 8 to US\$ 8.5; Medium size from US\$ 7.5 to US\$ 8; and Small size from US\$ 7 to US\$ 7.5.
- Workers claim that for a fast worker, it took one week to finish one dozen. An average worker needed 8 days to finish one dozen. And a slow worker needs 10 to 12 days to finish one dozen. There were 48 pieces in a dozen (12 front sides, 12 back sides, and 24 sleeves.) Workers mention that on average a worker needed to spend at least 8 days plus 12 hours overtime to finish one dozen. The employer does not object to the workers' claim.
- Kim Sreynit, a worker, claims that she needed to spend 8 days plus 12 hours overtime to finish one dozen of the large size. Worker Ouk Samen claims that as a fast worker she needed to spend 7 days plus 12 hours overtime to finish one dozen.
- The company representative who was present at the hearing mentions that the company cannot increase the piece rate further because the head of the company made such decision; and he does not refute what the workers asserted. In the statement submitted to the Arbitration Council after the hearing, the company did not provide any reasons for denying the claim.
- At the hearing, the AC asks the parties to provide more evidence regarding the piece rate, the method to determine the piece rate, the payroll list for November and December 2006 and other relevant documents by 5 February 2007 at the latest. On 1 February the employer provided the payroll list for October 2006; the certificate of registration of the United Knitting Company, No. 1051 PN.BAP, dated 10 May 2006; the Internal Work Rules of the United Knitting Company, registration No. 039/2003, dated 29 April 2003; a letter by the worker delegate regarding recognition of the Internal Work Rules, dated 07 April 2003; a statement by the company, dated 02 January 2007-02-12; and a letter regarding

negotiations on the piece rate, dated 23 October 2006 to the Arbitration Council (through the Secretariat of the Arbitration Council) and a copy to the worker party. However, the employer did not provide the payroll list for November and December 2006, and the workers did not provide any documents.

- On 8 February 2007, the Secretariat of the Arbitration Council, on behalf of the Arbitration Council, called the parties to request [the following] documents to clarify Issue No. 1: (i) the payroll list for the relevant workers in December 2006 from the employer and (ii) the pay slips for the relevant workers in December 2006 from the worker party. The Secretariat of the Arbitration Council told the parties that the deadline for submitting the new evidence was on 9 February 2007. However, both parties did not provide additional document on the deadline set but in the morning of 12 February 2007 the employer sent the payroll list of all workers in the company for December 2006 to the Arbitration Council and the workers sent pay slips with many different dates in the afternoon of that same day.

Issue 2: Workers demand company provide sick leave from 1 month to 6 months based on type of sickness.

- The company allows workers to take only 1 week sick leave when they are sick with a certificate from the doctor.
- Worker Kim Sreynith claims that when she contracted typhoid in 2003, the company permitted her to take 2 weeks leave -one week sick leave and one week of annual leave-and she also had a doctor's certificate which mentioned that she should take 2 weeks leave.
- It is difficult for workers to take long sick leave because the company only allows them a short time [for leave].
- The representative of the company does not deny the workers' claim and mentions that he would like to follow the Labour Law and the company's Internal Work Rules. In its statement, the company requested to follow the Labour Law and the Internal Work Rules dated 29 April 2003.
- Point 5 of the United Knitting Company's Internal Work Rules states that "*Workers who are sick needs to ask for permission to obtain treatment ...The total amount for sick leave per year should not exceed 30 days...if already compensated but not yet recovered, [workers] have to make a request to keep their position without receiving salary but this is limited to only 6 months.*"

Issue 3: Workers in weaving section demand company to issue piece rate in advance

- Workers do not state the exact number of days but only request that the company issue the piece rate after the sample-testing earlier than the present practice.

- Regarding the present practice, for workers in weaving section, the company lets workers weave for 10 days before it issues the rate.
- Workers mention that, when there is a new model, the company asks two skilled workers in the sample room to make sample clothes but does not determine the piece rate yet.
 - Workers mention that the duration for each model is as follows:
 - Some models take a long time: up to one and a half months to finish
 - Some models take an intermediate time: a half month to finish
 - Some models take a short time: one week to finish
 - Some models take very short time: only three days to finish
 - In the hearing the workers claim that, for any model, the company takes 10 days to issue the piece rate.
 - The company's representative states in the hearing that the company does not agree but he does not say why and does not explain the method of issuing the piece rate because he does not know. In its statement submitted after the hearing, the company does not explain the method to determine the piece rate but provides the following proposal:
 - for work which workers work on from 3 days to 10 days, issue the piece rate on the 6th day;
 - for work which workers work on from 11 days to 15 days, issue the piece rate on the 8th day;
 - For work which workers work on from 16 days up, issue the piece rate on the 10th day;
 - Workers reject this offer.

REASONS FOR DECISION

Issue 1: Workers demand [employer] increase piece rate

Based on the above mentioned facts, some evidence was provided to the Arbitration Council on 12 February 2007. The Arbitration Council declines to consider any evidence provided after 9 February 2007 which is the deadline for submission of the evidence because the Award due date is on 13 February 2007 thus the Arbitration Council does not have sufficient time to consider such evidence. In addition, the other party does not have time to review and respond to the evidence of the other party either. Therefore, the Arbitration Council will consider on these issues as follows:

Article 108 of the Labour Law states, *"For task-work or piecework... the wage must be calculated in a manner that permits the workers of average ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker."*

Article 137 of the Labour Law states, “... *the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.*”

Notification No. 017 SKBY dated 18 July 2000 by the Ministry of Social Affairs Labour Vocational Training and Youth Rehabilitation provides the minimum wage of US\$ 45 per month which is equal to US\$ 1.73 per day for garment workers and this is effective until the end of 2006.

In case 03/05-Flying Dragon (Issue 6), the Arbitration Council considers that “*Article 108 provides a guideline to determine the piece rate (piecework cost) under the Labor Law and means that piece rate shall allow workers who have average skills working during the normal 8 hours per day (48 hours per week) to receive at least the minimum wage (USD \$45.00 per month for garment workers).*”

In case 44/06-Gold Fame (Issue 1), the Arbitration Council decides that “*the determination of piece rate price must allow workers of average ability working normally to earn the minimum wage.*”

In case 30/06-Sportswear (Issue 1) the AC stated that “*The Labour Law does not define who is a worker of average skill. To determine whether a worker with average skills who works normally is able to earn the minimum wage, and therefore to know whether a piece rate is lawful or not, the Arbitration Council considers all relevant facts and evidence found in the case.*”

In this case, because the parties failed to provide sufficient and timely evidence, it is impossible to tell whether a worker of average skill who works normal hours is able to earn the minimum wage when calculated according to the piece rate. However, because this demand is about a past practice that happened in December 2006, there is evidence to show that some workers did not receive a lawful amount of wages when calculated according to the piece rate which was set by the employer in December 2006.

In this case, worker Kim Sreynith had to spend 8 days plus 12 hours overtime to finish a dozen set for which she could earn US\$ 8. Worker Ouk Samen has to spend 7 days of normal working days plus 12 hours overtime to finish one dozen for which she could earn US\$ 8. In addition, in the hearing, the company’s representative did not raise any objection to the workers’ assertions, and in its statement dated 02 February 2007 the company did not make any objection to the workers’ assertions either.

In order to find out how much workers who weave model 12008 can earn in a day, the Arbitration Council will show the following calculation without counting the overtime:

According to the facts, on average it takes 8 days of normal working hours plus 12 hours over time for a worker to weave a dozen set but the Arbitration Council will not calculate the 12 hours which is the overtime because if during the normal working time of 8 hours a day a worker receives lower than the minimum wage of US\$ 1.73 per day this means that the [piece rate for the] model workers worked on was set under the minimum wage.

How much can a worker earn per month? Based on the above facts, the Arbitration Council can find the piece rate in the following formula:

26 days divided by 8 days is equal to 3.25 dozen sets.

Thus, how much can a worker earn per month? And how much per day?

3.25 dozen multiplied by US\$ 8 (per dozen) is equal to US\$ 26. Thus, a worker can earn US\$ 1 per day. For this US\$ 1, the Arbitration Council does not include the 12 hours overtime into the calculation.

Therefore, the Arbitration Council finds the piece-rate that the worker received was lower than the minimum wage (US\$ 45 per month) for normal working hours, 8 hours per day (48 hours per week).

In conclusion, the employer has to add the wage to the minimum wage (US\$ 1.73/day) to workers who worked from the end of November 2006 to the end of December 2006 for model 120008 and did not receive the minimum basic wage.

Issue 2: Workers demand the company to provide sick leave from one month to 6 months based on type of sickness.

Art 71(3) of the Labour Law provides, *“The labour contracts shall be suspended under the following reasons:...The absence of the worker for illness certified by a qualified doctor. This absence is limited to six months, but can, however, be extended until there is a replacement.”*

Point 5 of the United Knitting Company’s Internal Work Rules states that *“Workers who are sick need to ask for permission to obtain treatment...The total amount of sick leave per year should not exceed 30 days...if already compensated but not yet recovered, [workers] have to request to keep their position without receiving salary but this is limited to only 6 months.”*

In this case, the worker party claims that it is very difficult for them to ask for long-term sick leave even though they have a letter from the doctor. For example, in the case of Ms. Kim Sreynit, in 2003 she contracted typhoid and the doctor mentioned in a letter that she needed to take 2 weeks leave; but the company allowed her to take only one week sick leave and she had to use her annual leave for the other week. The company asserts in its statement that it follows the Labour Law and the company’s Internal Work Rules.

Thus, according to the Labour Law and point 5 of the company’s Internal Work Rules, the Arbitration Council considers that the sick workers with official doctor certificate are entitled to take sick leave up to 6 months without having to lose their position.

Issue 3: Workers in weaving section demand the company to issue piece rate in advance

Article 112 of the Labour Law states, *“The employer must take measures to inform the workers in a precise and easily comprehensible fashion of:*

- a) *The terms regarding wage that apply to the workers before they are assigned to a job or at any time that these terms change.*
- b) *The terms that make up their wage for every pay period when there is a change to the items.”*

In case 62/04-Ecent (Issue 2) the Arbitration Council found that [regarding] *“the meaning of Article 112, point A of the Labour Law as mentioned above, there is no clear provision about the exact number of days the employer has to inform the employees about their dozen rate, but the Article explicitly means that the employer is obliged to issue this notification. As for the number of days the employer needs for the period of notification, the Arbitration Panel needs to consider the practical needs of the employer.”*

In this case, the Arbitration Council considers that the Labour Law requires the company to inform workers the rate of product (dozen) they will work on.

Again, in case 62/04-Ecent (Issue 2) the Arbitration Council mentions, *“the Arbitration Panel finds that the determination of the technical difficulty in respect of the sewing [tasks] of individual workers the employer needs only to look at a small sample. This kind of evaluation must not exceed three days. For products brought in from other factories, the employer has to control and evaluate again; therefore, it should take the same time the company needs for in-house production.”*

In addition, in case 05/06-W&D, the company’s representative mentioned that, *“the quantity rate could not be issued in advance; it required at least three to seven days after the trial sewing of each model for the rate to be issued. The Arbitration Council finds that the argument raised by the employer party was reasonable and is compatible with Article 112 of the Labour Law...Thus the Arbitration Council decides that the company must inform the workers of the piece rate three to seven days following the testing of each model.”*

In this case, the workers demand the company to issue the piece rate after finishing the sample but the employer proposes in its written statement as follows: for work which workers work on from 3 days to 10 days, issue the piece rate on the 6th day; for works which workers have to work on from 11 days to 15 days, issue the piece rate on the 8th day; for works which workers have to work on from 16 days up, issue the piece rate on the 10th day. However, the statement does not explain in detail or clearly how the employer determined the number of days for issuing the piece rate. Therefore the Arbitration Council considers that there is no reason to accept the employer’s suggestion.

Therefore, the Arbitration Council in this case considers that duration from 3 days to 7 days for testing to determine piece rate in case 05/06-W&D is enough for the company to conduct test for each model.

Therefore, the Arbitration Council considers that the company has to inform workers about the piece rate they will work on within 3 to 7 days after the test of each model.

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

DECISION

1. Order the employer to add wage to meet the minimum wage (US\$ 1.73/day) to workers who worked from the end of November 2006 to the end of December 2006 for model 120008 and did not receive the minimum basic wage.
2. Order the employer to permit workers who have a letter from the doctor to take sick leave up to six months.
3. Order employer to inform workers about rate of the work they receive within 3 to 7 days after the test for each model.

Type of Award: Non binding awards

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.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: