

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

Case number: 04/03  
Date of Award: 19 June 2003

**ARBITRATION COUNCIL**

**ARBITRAL AWARD**  
Issued under Article 313 of the Labour Law

Lida Garment Company represented by Han Saew Mei

**AND**

1. Chhouern Chumroen;
2. Phol Nan;
3. Mr Om Darawuth;
4. Mr. Yun Kanop;
5. Mr. Souern Singaen;
6. Mr. Mom Thon;
7. Sok Sivandet;
8. Mr. Chum Phally;
9. Mr. Chiem Phally (representatives of the workers)

**details of employer party:**

address: Building #1 Street #528, Sangkat Bongkok 1, Khan Toul Kok, Phnom Penh  
telephone: 023 830 684 fax: 023 368 882

representative: Han Saew Mei

address: House #43, Street #608, Sangkat Bongkok 2, Khan Toul Kok, Phnom Penh  
telephone: 023 880 684

**details of worker party:**

address: House #184, Street 112, Sangkat Depot 3, Khan Toul Kok, Phnom Penh  
telephone: 012 837 789

representatives: see above

address: see above

telephone: see above

### **ISSUES IN DISPUTE:**

1. The demand of the workers regarding wages and bonuses during the strike period 28 May 2003 to 05 June 2003.
2. The demand of the workers that Lida Garment Company (hereafter “the Company”) dismiss the Company accountant Sun Yiing.
3. The responsibility of the Company for the mistakes of the Company accountant in incorrectly calculating wages which was a cause of the strike.

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

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

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 Labor Law. That conciliation hearing was unsuccessful and a non-conciliation report dated 30 May 2003 was submitted to the Secretariat of the Arbitration Council on 03 June 2003.

### **Composition of the arbitration panel:**

Arbitrator chosen by the employer party: Mr. Ma Samborana

Arbitrator chosen by the worker party: Mr. Liv Sonvanna

Chair arbitrator (chosen by the two arbitrators): Mr. Sok Matheoung

### **Hearing and Evidence:**

date of hearing: 11 June 2003 at the Secretariat of the Arbitration Council

Witnesses and experts:  
None

documents, exhibits, and other evidence considered by the Arbitration Council:

Received from the employer party:

1. Payroll ledger for February, March, April
2. Time cards of workers

3. Method for calculating wages at the Company
4. Letter dated 30 May 2003 in response to the 11 demands of the workers
5. Agreement to binding arbitration

Received from the worker party:

1. Payslips of workers #N241, #N233; #N111; #P144; #H468; #K751; and #G445
2. List of workers who had issues with the payment of wages and bonuses in the month of April 2003
3. List of demands from workers outlining 11 points addressed to the manager of the Company, dated 21 May 2003.

### **Summary of the case:**

This dispute began on 21 May 2003 when representatives of the workers gave notice of a strike to the Company with regard to their claim (for the Company to address the 11 issues).

On 27 May the Company invited representatives of the workers to meet at the premises of the Company to discuss and resolve the above claims. On this date the Company and the representatives of the workers reached an agreement on the first 10 points of the workers' demands as contained in the response of the Company dated 30 May 2003. With regard to the last, 11<sup>th</sup> point, the Company confirmed that the act of dismissing the accountant is at the discretion of the Company which could not be exercised in accordance with the request of the workers.

As for the workers, their demand that the Company terminate the Chinese accountant Sun Yiing was made on the basis that she consistently calculated wages and bonuses incorrectly.

As a result, approximately 500 workers went on strike by not going to work starting from 17.30 (after the evening meal of workers in the 2<sup>nd</sup> shift) on 28 May 2003, and this strike continued through until 5 June 2003. The remaining workers, numbering 48, continued working at the Company.

During the strike, on 29 May 2003 at 08.00 and on 30 May at 17.00, the Company and the representatives of the workers were invited by the Labor Inspectorate stationed at Toul Kork district to attend conciliation meetings. As a result only the following points were not conciliated:

1. The representatives of the workers requested that the Company pay the wages and bonuses during the period of the strike if the Company still retained the accountant Sun Yiing.
2. The Company insisted on keeping the Chinese accountant Sun Yiing and promised not to miscalculate the workers' wages any longer. The Company agreed to pay a bonus in the amount of \$4 if the workers returned to work on 31 May 2003, but insisted that the wages for the days of the strike would not be paid. However, if on 1 June 2003 any worker did not return to work their \$4 bonus for the month of May and \$5 for June would not be paid.

The workers continued to strike until 5 June 2003, but then agreed with the Company to return to work in the morning of 06 June 2003 as ordered by the Arbitration Council.

This dispute was referred to the Arbitration Council on 3 June 2003. The Secretariat of the Arbitration Council invited the parties to meet the Arbitration Panel for an initial conciliation at the Secretariat of the Arbitration Council on 5 June 2003. As there was an agreement between the parties in the course of this initial conciliation, the Arbitration Panel issued a consent order for the workers to immediately cease their strike action and return to work as a temporary measure starting from 6 June 2003 at 07.00, and for the employer to allow the workers to return to work as normal and not to penalize or take any other action against workers who had come back to work after the above date.

The Arbitration Panel requested that the employer provide:

1. Ledger and piece work receipts for the workers during the past 3 months;

2. The method used for workers' wage and bonus calculation; and the Arbitration Panel requested the workers to provide, if any, a list of the names of the workers who had problems with the calculation of wages and bonuses.

The Arbitration Panel held a hearing at which both parties were present on 11 June 2003 from 09.00 – 13.00.

On 12 June 2003 the Arbitration Panel invited the parties (representatives of the workers and the employer) to attend the Secretariat of the Arbitration Council in order to further explain a number of points which were not clear with regard to the method by which the Company calculated wages incorrectly which resulted in the complaint and strike by the workers. The Chairman of the Arbitration Panel encouraged both parties to reach an agreement to prevent such disputes in the future; he provided them with comments and methods on how to prevent disputes based on a grievance procedure to be used in the event that the workers observe that there is a mistake in computer system's wage calculation and shown in the ledger. Both parties signed an agreement before the Arbitration Council stating that there would be binding arbitration.

### **Findings of Fact:**

- After examining the report of the conciliation of the collective dispute;
- After listening to the Company and the workers as described above and as is reported in the minute of the hearing;
- Having examined the above documents

We find that:

1. The workers at the Company number 600 working 2 shifts. The morning shift starting from 06.30 to 15.00 has 298 workers and the evening shift starting from 15.00 to 22.30 has 302. Mr. Chhouern Chumroen who is President of the union and also a worker representative works the evening shift. The number of 600 workers was just estimated by

the workers but the employer confirmed this number based on the Company's workers list. The number was agreed by both parties.

2. The workers gave the Company notice of their 11 claims and their intention to strike on 21 May 2003 and they began their strike on 28 May 2003 at 17.30. Before taking strike action, on 27 May 2003, the two parties had discussed how to resolve their dispute, and the Company and the workers agreed on 10 points leaving just point #11 in which the workers requested the termination of the accountant Sun Yiing. The Company did not agree to this insisting that it was the right of the Company (to decide on such matters). The parties agreed on these facts.
3. During the strike the Company transferred raw materials to another factory in order to continue production. The parties agreed on this point but the Company added that the transfer of raw materials to other factories in this manner is a practice which is usual for all factories; even when they have normal production they do this if they have many orders which they cannot fill on time and meet their client's order.
4. There were instances of incorrect payment of the workers' wages and bonuses by the accountant Sun Yiing. In particular, there is an attachment issued on 10 May 2003 listing 35 workers who insist that their wage was incorrectly calculated and that the wage calculation was incorrect for April and May in the amount of 175.18 USD which is verified in the document given by the Company to the Secretariat of Arbitration Council and Arbitration Panel. Moreover, the workers insisted that it was an instance of embezzlement by the Company's accountant Sun Yiing, because she consistently calculated wages incorrectly; and when the representatives of the workers or the workers themselves disputed the wage and bonus calculations, the accountant did not resolve the problems but replied that they should wait until next month. As for the Company it insisted that this was only a technical problem, not an intentional mistake and that if there were complaints then the Company always rechecked and resolved the problem quickly in regards to the April wages.
5. After signing a binding arbitration agreement and before leaving the meeting, both parties promised before the Arbitration Panel to make a Collective Bargaining Agreement to

inform the employees and to help them understand the procedure of grievance settlement prior to the act developing into a dispute. Arbitration Panel will give the parties a form regarding the procedures for grievance settlement (Annex 1).

### **Reasons for Decision:**

1. Decision #1 is made in accordance with Article 332 of the Labor Law (1997) which stipulates that the employment contract is suspended when there is a strike. For the duration of a strike neither salary nor other benefits of employment need be provided to the worker. However, according to Article 334 of the Labor Law if, during a strike, an employer chooses new workers to replace the strikers, then the employer is required to pay all the strikers their wages during the period of the strike.

The Arbitration Panel acknowledges that the transfer of raw materials to another factory could have the same value as choosing new workers to replace the strikers only that this act of choosing new workers would involve workers who work outside the factory which is having the dispute. The act of transferring raw materials to another factory in this manner could cause the strike not to have any effect, and this would be contrary to the intention of a strike which directs pressure on the employer to resolve employee demands. Thus the workers might be entitled to wages for the duration of the strike. However, the strike of the workers at the Company was not conducted in accordance with the procedures such as the requirement to give proper notice in accordance with law and the requirement to exhaust other means of dispute resolution before conducting a strike. In accordance with Article 324, before conducting a strike workers must give prior notice of at least 7 working days; but in this case the notice given prior to the strike was only 7 days including a Sunday which is not a working day. In accordance with Article 320 paragraph 5 of the Labor Law the right to strike can only be exercised once all peaceful methods of resolving the dispute with the employer have been exhausted. But in the present case, the strike at Lida Garment Factory was conducted before all peaceful means of dispute resolution had been exhausted pursuant to Article 320 paragraph 5, because the workers conducted the strike before arbitration by the Arbitration Council, which is a peaceful method of resolving collective labor disputes. Thus this strike was not conducted in accordance with the legal procedures with the consequence that the workers' claim for wages during the strike could not be accepted. Notably, Article 334 of the Labor Law is enforceable provided that the strike is organized in accordance to the legal procedure stated in chapter 13 of labor law. Similarly, while Article 333 prohibits any form of sanctions by an employer against striking workers, the prohibition is fully effective only if such strike is organized in compliance with the Law. If workers do not comply with

the law, they cannot expect to benefit from its full protection. Accordingly while it may be considered an improper sanction in the sense of Article 333 to withhold the \$5 attendance bonus from workers who participates in a strike in compliance with Chapter XIII, the Arbitration Council will not extend such protection to employees who have failed to follow the Chapter XIII procedures.

However, the Arbitration Council recognizes:

- a. repeated professional mistakes made by the accountant Sun Yiing in the calculation of wages were a substantial cause of the strike;
- b. the Company took action to reduce its loss by sending raw materials to another factory in order for that factory to carry out production on behalf of the Company, which could be interpreted as a contravention of the prohibition on choosing other workers to replace strikes as set out in Art. 334 of the Labor Law.;
- c. the workers did give notice of their strike to the employer;
- d. the workers participated in conciliation of the dispute; and
- e. the workers returned to work by agreement when this was suggested by the Arbitration Council.

In these circumstances the Arbitration Council feels obliged to invoke its equitable jurisdiction in order to equalize the loss between the employer and the employee. The award of damages in these circumstances (see decision 3b below) is supported by Article 34 of the Prakas on the Arbitration Council (#338 of 2002) which gives the Arbitration Council the full power to resolve the disputes which come before it by providing "any civil remedy or relief which it deems just and fair."

2. Decision number 2 is made in accordance with Article 65 (of the Labor Law) which states that the employment contract is a contract which creates the employment relationship between employee and employer. Therefore it is only the contract parties who can terminate such a contract. Thus the act of hiring or terminating an employee at a Company is at the discretion of the employer who is a party of the employment contract.

Furthermore, according to Articles 73 and 74 of the Labor Law every termination of an employment relationship must take place in accordance with the legal procedures. Where this fails to occur the injured party will have a right to compensation. Therefore the demand of the employee to terminate the employment of the accountant Sun Yiing would be a violation of the rights of the employer, and would be coercive to the employer to violate the employment contract with the accountant Sun Yiing as well as violating the proper procedures for the termination of the employment contract.

3. Decision number 3 is made in accordance with Article 112 of the Labor Law 1997 which provides that the employer shall establish procedures to give clear and simple information to their workers about
  - a. The conditions of payment that apply to the worker in question prior to engagement and at any such time as these conditions change;
  - b. The details of their wages during each period of pay when the wages are variable.

Thus the employer shall prepare a ledger of wages and bonuses for working hours and overtime and submit it to a shop steward to review every month prior to pay day in order to allow workers to timely argue any abnormal calculation of their wages and bonuses.

### **Decision & Orders:**

Based on both the facts and the law as well the equity principle the Arbitration Panel decides to issue this award:

1. To reject the claim of the workers in which they requested the Company to pay wages and bonuses to the workers for the duration of the strike.
2. To reject the claim of the workers of the Company in which they demanded the Company to dismiss the accountant Sun Yiing.
3. To order the Company to accept responsibility for the losses and civil damages of the workers whose wages and bonuses were incorrectly calculated by the accountant Sun Yiing causing the strike. As a result:
  - a. The Company must cooperate with the representatives of the workers to check and review the salaries and bonuses of the workers for the months of February, March, April, May and June 2003 within 2 weeks of the date of this award. In the case that there has been an error the Company shall pay the workers the full amount to which they are entitled within three days of the discovery of the error. In addition the employer and the employees should try to reach an agreement on the amount of money to be paid to the workers within the time limit. If there is no agreement within the time stated above the employer shall engage a skilled accountant to check the wage and bonus payments of the workers whose payments have been calculated incorrectly during the past 4 months. Thereafter the employer shall pay the amounts as calculated by the accountant within one month of the date on which the accountant issues her report.

- b. The Company shall pay damages to each employee who went on strike in the amount of \$10.
  
- c. The Company shall ensure that there is at least one Khmer accounting assistant who has a sound understanding of the Company's accounting system and who has the duty to receive and resolve the workers' grievances with regard to the correct calculation of wages and bonuses within 1 week of receiving such complaint.
  
- d. Twice per month the Company shall provide to the workers with notification of the number of normal and overtime hours which they have worked based on the calculations of the accountant so that the workers can timely check the number of hours which they have worked. This notification shall be issued twice per month; namely in the middle of the month and at the end of the month so that the workers can check according to their group A, B, C, D, E, F, G,... within the Company so that the employees can easily check their wages and request revision. The accountant shall issue the notification at the end of the month to the shop stewards three days prior to each payday. Both parties have agreed to this procedure already and they have to implement it effectively until the Company has a computer system to administer the wages and bonuses and working hours of the Company with transparency.

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

Arbitrator chosen by the employer party:

name: Mr Ma Samborana

signature: .....

Arbitrator chosen by the worker party:

name: Mr. Liv Sovanna

signature: .....

Chair of arbitration panel:

name: Mr Sok Matheoung

signature: .....

*This award becomes final immediately after notification of the award.*