

KINGDOM OF CAMBODIA

NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 05/04

Date of award: 19 February 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Thai Dou Garment Co., Ltd

(Employer party)

And

Worker Representatives

(Employee party)

Detailed information of employer party:

Address: #15CE₁, Street 265, Toek La'ak III commune, Tuol Kok district, Phnom Penh.

Tel: 012 513 728

Fax: N/A

Representative: Wang Tianguo, Company Director.

Detailed information of employee party:

Address: #788, Street 472, Boeng Trabek commune, Chamkar Mon district, Phnom Penh.

Tel: 011 670 841

Fax: N/A

Representatives: 1- Sok Dara, worker representative;
2- Mom Saven, worker representative;
3- Mom sros, worker representative;

- 4- Mam Ti, worker representative; and
- 5- Satt Chheang Hua, from Union Federation of Cambodian Workers, as defender.

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- Employee party claims that if a worker is absent without permission for one day, the enterprise should deduct only the wage earned that day. The employer party demands to double the deduction, which means one day of absence without permission results in two days of wage deduction.
- 2- Employee party demands that when the enterprise has no work, it is asked to pay 50 percent of the wages, as well as the bonuses. The employer party agrees to pay only USD 0.50 per day.
- 3- The company agrees to reinstate workers called Ser and Makara but asks to warn [them] in writing. However, the worker representatives do not allow the warning.

JURISDICTION¹ OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Section II B2 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 non-conciliation report dated 30 January 2004 was submitted to the Secretariat of the Arbitration Council on 04 February 2004.

¹ Jurisdiction means judicial power.

² From Articles 309 to 317 of the Labor Law

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Mar Samborana
Arbitrator chosen by the worker party:	Mr. Liv Sovanna
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE

Date and place of hearing: On 11 February 2004 at 15h30 at Arbitration Council Secretariat.

Witnesses and experts: N/A

Evidence considered by the Arbitration Panel:

- I. ***Documents obtained from employer party:*** N/A

- II. ***Documents obtained from employee party:***
 1. Letter from the worker representatives in respect of the withdrawal of the case, dated 14 February 2004; and
 2. Letter of request for the withdrawal of the Thai Dou workers from Union Federation of Cambodian Workers (No. 0825 UFCW of 17 February 2004).

CASE SUMMARY

Thai Dou Garment Enterprise employs some 60 workers who are directly involved in this collective labor dispute. On 26 January 2004, the Labor Inspectorate of Phnom Penh's Tuol Kok district on the phone received a complaint from the workers of the above enterprise. On the same day after receiving the complaint, officers from the Labor Inspectorate of Tuol Kok district conciliated the labor dispute at the enterprise, which resulted in seven out of ten issues being successfully conciliated. The employer party did not implement the result of the seven successfully-conciliated issues, saying that he does not read Khmer; therefore, he did not sign the collective labor dispute conciliation report of 26 January 2004.

The three issues which were not conciliated successfully are as follows:

- 1- Employee party claims that if a worker is absent without permission for one day, the enterprise should deduct only the wage earned that day. The employer party demands to double the deduction, which means one day of absence without permission results in two days of wage deduction.
- 2- Employee party demands that when the enterprise has no work, it is asked to pay 50 percent of the wages, as well as the bonuses. The employer party agrees to pay only USD 0.50 per day.
- 3- The company agrees to reinstate workers named Ser and Makara but asks to warn [them] in writing. However, the worker representatives do not allow the warning.

On 27 January 2004, the Labor Inspectorate of Tuol Kok district wrote a letter, inviting the two sides to go on resolving [their dispute] at the Department of Labor Inspectorate at 08h30mn on 28 January 2004. The employer party objected to the invitation and refused to participate in resolving this dispute at the Department of Labor Inspection.

On 11 February 2004 at 15h30mn, the Arbitration Council conducted the hearing under legal procedures to resume the conciliation of the **above three issues**. However, the employer party did not attend [the hearing], saying that he has already resolved all the issues with the workers. The employee party as the plaintiff did not appear to resolve [the issues] either, having Lieng Sok Heang, Vice-President of the Union Federation of Cambodian Workers, and Mr. Chhay Sophea, Coordinator of the Federation represent them. Both representatives claimed that they did not know the true facts [about the case] or what had happened regarding the workers' demands. Additionally, not only had most of the plaintiff employees accepted the resolution by the company but also [some of them] had been offered new jobs in another company; thus, they no longer represented the employees of Thai Dou. On 17 2004, the Union Federation of Cambodian Workers sent a letter for the withdrawal of the complaint to the Minister of Social Affairs, Labor, Vocational Training and Youth Rehabilitation through the Secretariat of Arbitration Council, confirming that some of the employees had received wages, some had returned to their hometowns and others

had been offered jobs by another company. Therefore, the employees asked to conclude the case without any demand.

FINDINGS OF FACT:

- After having reviewed the non-conciliation report of the labor dispute,
- After having heard the presentation of the company and employees as described above and in the hearing records,
- After having reviewed documents as described above.

We find that:

The two disputed parties did not appear in the hearing, as were invited, on 11 February 2004. Furthermore, the Arbitration Council received letters for the withdrawal of the complaint from the employee party on 14 February 2004 and from the Union Federation of Cambodian Workers (No. 0825 UFCW of 17 February 2004), in which demands were no longer made from the employer. The Arbitration Council [,therefore,] assumes that the employees of Thai Dou have dropped their complaint and demands.

REASONS FOR DECISION

Article 21 of Prakas 338 SALVY dated 11 December 2003 provides that in case one of the parties having been duly invited fails to appear before the Arbitration Council without showing proper cause, the Arbitration Council may proceed in the absence of that party or may dismiss the arbitral proceedings by means of an award. In this case, the two disputing parties did not appear before the Arbitration Council, in accordance with the proper invitations issued by the Secretariat of the Arbitration Council, and because the employee party wrote a letter for the withdrawal of the case, as is stated above, the Arbitration Council finds that the employee party agreed to drop their complaint. For this reason, the Arbitration Council finds that it must terminate the arbitral

proceedings over this Case 05/04 by removing it from the list of cases at the Secretariat of the Arbitration Council.

Based on the above reasoning, the evidence and the law stated above, the Arbitration Council decides as follows:

DECISIONS AND ORDERS:

- **Remove Case 05/04 from the list of cases of Secretariat of Arbitration Council.**

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the employee party:

Name: **Liv Sovanna**

Signature:

Chair of Arbitration Panel:

Name: **Ang Eng Thong**

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.