

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 05/05

Date of award: February 1, 2005

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

G.H.G (Cambodia)

(Employer party)

AND

Union of Worker in G.H.G (Cambodia)

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representative : Mr. Tieng Sareth Administration staff of the company
Address : Resey Village, Sangkat Steng Meanchey , Khan Meanchey,
Phnom Penh.
Tel : 016 883 701

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representative: 1. Long Sophath Official from Khmer Youth Federation of
trade Union (KYFTU);
2. Mai Vathana Official from KYFTU;
3. Chhem Sophea President of the Union;
4. Seng Set Vice president of the Union;
5. Seng Sok Worker at warehouse section;
6. Sin Sovanthy Worker at cutting section;
7. Duch sinath Worker at machinery section.
Address: # 34X, Street 265, Sangkat Tek La Ak, Toul Kok district, Phnom Penh.
Tel: 012 435 466 or 011 622 963

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The workers still demand that the company reimburse a medical exam fee of 16,000 riels. The company did not agree with the worker's demand.
- 2- The workers demand that the company reimburse the employment card fee of 12,000 riels. The company did agree with the workers' demand.
- 3- The workers demand that the company provide the same benefits and other compensations to casual workers as permanent workers. The company rejected the workers' demand because it has to have complied with the Labor Law.
- 4- The workers demand that the company build a day care center, and nursing room, and offer babysitters. If not, the workers demand the company give 3 cans of milk each month and \$20 for the babysitter. The company did not agree with the workers' demand because the company has a narrow location and few workers as well as the company has only run its business for one year.
- 5- The workers still demand that the company reinstates 3 workers named Seng Set, Phat Vuthy, and Chhim Sophea because they alleged that the three workers did not commit a mistake. The company denied completely reinstating the three workers because Seng Set and Phat Vuthy, vice president and secretary of the Union are not old enough according to the law. Chhim Sophea incited other workers not to do the jobs and to work over time.

JURISDICTION OF THE ARBITRATION COUNCIL:

The Arbitration Council derives its power to make this Award from Section IIB (Article 309-317) of Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council No.099, dated April 21, 2004; No.265 dated July 13, 2004; and the Arbitration Council Procedural Rules which form an Annex to the Prakas No. 099 dated April 21, 2004.

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. The conciliation hearing failed. The non-conciliation report No. 045/MoLVT dated January 12, 2005 was submitted to the Secretariat of the Arbitration Council on January 12, 2005.

COMPOSITION OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:	Mr. Kao Thach
Arbitrator chosen by the worker party:	Mr. An Nan
Chair arbitrator (chosen by the two arbitrators):	Mr. Kong Phallack

HEARING AND EVIDENCE:

Date and place of hearing:

- First hearing: 14 January 2004 at 8:00 a.m. at the Secretariat of the Arbitration Council.
- Second hearing: 18 January 2004 at 14:00 p.m. at the Secretariat of the Arbitration Council.

Witnesses and Experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:

A. Provided by the employer party:

- 1- Minute of an agreement dated 17 January 2005;
- 2- Report refusing a return to work of workers dated 13 January 2005;
- 3- Request to negotiate and resolve labor dispute of workers dated 10 January 2005;
- 4- Template of 10 casual worker labor contracts;
- 5- Patent No. 1266/2004 dated 19 April 2005;
- 6- Internal Work Rule of the Company dated 22 March 2004 and registered on 24 March 2004.

B. Provided by the employee party:

- 1- Registration certificate dated 04 January 2005;
- 2- Suspension letter dated 03 January 2005;
- 3- Minute on an agreement between employees and employer of G.H.G Company dated 17 January 2005.

C. Documents received from Ministry of Labour and Vocational Training (MoLVT):

- 1- Letter N0. 034/MoLVT dated 20 January 2005 to resolve a collective labor dispute at G.H.G company;
- 2- Report on collective labor dispute at G.H.G Company, N0. 045/MoLVT dated 12 January 2005 from Labor Inspection Department;
- 3- Minute of collective labor dispute dated 11 January 2005.

D. Received from the Secretariat of the Arbitration Council:

- 1- Interim Order to stop a strike dated 12 January 2005;
- 2- Minute on a selection of Arbitrators by lot dated 12 January 2005.

E. Presentation and answering as witnesses from employees and employers sides in the hearing

F. Both parties agreed to choose a non binding award.

CASE SUMMARY:

G.H.G Company (Cambodia) is located at Resey village, Sangkat Steng Meanchey, Khan Meanchey, Phnom Penh and consists of a total of 344 workers.

On 11 January 2005 the Labor Inspection Department in Resey Keo received a phone call from workers on strike demanding that the company improve working conditions according to the Labor Law. After obtaining information the Labor Inspectors in Resey Keo came to settle the dispute with the result that 4 of 9 issues were conciliated; and five non-conciliation issues remain in issue. The workers refused to put their thumbprints on a minute of conciliation at the conciliation process.

On 12 January 2005 this case was sent to the Arbitration Council to resolve. After receiving the case on the same day the Arbitration Council invited the employees and the employer sides to select arbitrators, but the employees refused to come to choose an arbitrator saying that they did not agree to send the case to the Arbitration Council to be settled. So, the Secretariat of the Arbitration Council continued its procedure by picking up a lottery where there is also participation from the employer side, representative of arbitrator from employer list and staff of the Secretariat of the Arbitration Council. On 12 January 2005 the Arbitration Council issued an order back to work from 13 January 2005 at 7:00 a.m.

On 13 January 2005 the employees' side was continuing the strike on the basis that the company refused to reinstate the three union leaders in accordance with the interim order of the Arbitration Council. In addition, the employees' side committed an ugly activities like tearing the interim order of the Arbitration Council.

On 14 January 2005 at 8:00 a.m. the Arbitration Council invited both parties to provide detailed information and help to resolve the dispute in order to get the workers back to work rather than first awaiting an arbitral award. In the hearing the Arbitration Council attempted to obtain the employees and the employer sides to find a good way to end the strike immediately. The Arbitration Council asked all workers to go back to work and the three union representatives stay away from the factory with pay and other benefits until there is a decision from the Labor Inspector. The employer agreed with this suggestion but the employees denied it and still did not return to work according to the interim order of the Arbitration Council by saying that the company refused to allow the three union leaders back to work. Therefore the employees were still conducting a strike.

The strike activities appeared in front of the MoLVT and in front of Labor Inspection Department. On 17 January 2005 under the auspices of Her Excellency Prak Chantha, the

parties in dispute reached an agreement. In the agreement the employees agreed that the three union leaders who were suspended would accept the company continuing to suspend their jobs for one month more, from 7 January to 7 February 2005, in order to leave time for the Labor Inspectors to make a decision. The Company agreed to pay wages and fringe benefits as usual. The other issues between the parties were left for the Arbitration Council to resolve.

On 18 January 2005 at 14:00 p.m. the Arbitration Council invited both parties to appear in a hearing. Before proceeding with the hearing the Arbitration Council attempted to conciliate. The result was that the parties agreed on the 3rd and 4th issues by making a particular agreement and both parties decided that therefore the Arbitration Council did not need to decide on the issues 3 and 4 above.

In the hearing the employees demanded that the Arbitration Council consider the 5th issue which relates to a suspension of three workers named Chhem Sophea, Seng Set and Phat Vuthy who are union leaders of KYFTU at G.H.G Company. The company decided to suspend the three workers for one month from 7 January to 7 February with wages and other fringe benefits in order to leave time for the Labor Inspectors to decide on this issue. Therefore the Arbitration Council did not consider the issue because if they did so, this would mean that the Arbitration Council encouraged the parties to violate the agreement signed after a non-conciliation report was sent to the Ministry in charge of Law and the Arbitration Council. As noted, the employer side rejected the demand that the Arbitration Council consider the 5th issue and agreed to leave this issue for the Labor Inspector to make a decision upon then suggested the Arbitration Council and the employees respecting the agreement dated 10 January 2005.

The Arbitration Council will decide only the 1st and 2nd issues because the 3rd and 4th issues were conciliated before the hearing process and the 5th issue was reconciled on 17 January 2005 under the auspices of Her Excellency Prak Chantha, Secretary of State at the MoLVT.

FINDINGS OF FACT:

- After having examined a minute of collective labor dispute's conciliation;
- After having listened to both parties in the hearing;
- After having checked other relevant documents.

We find that:

1st issue: related to medical exams

- The company does deduct an amount of 16,000 riels from each worker to pay for the cost of a medical check that the company paid to labor medical doctors.
- Both parties acknowledged that there was a deduction in the amount of 16,000 riels from each worker in December 2004.
- The company gave all of the money deducted from workers' wage to the civil government officials at the Ministry of Labor who come to check health.
- A group of civil servants came to check health in the factory because the company found that it was too difficult for the workers to go to the Department of Labor Medical Doctor.

2nd Issue: Related to employment card

- The workers are required to register for an employment card.
- If the workers went to get an employment card by themselves they would spend a round trip transportation cost of on average 2000 riels and lose a half-day of time which equates to lost wages of US\$0.86.
- Civil servants came to the factory to register employment cards because the company and the workers found that it was difficult to go there themselves and they would lose half a day and wages of US\$0.86.
- The company does deduct an amount of 12,000 riels from each worker for the employment card.
- Both parties acknowledged that there was a deduction of an amount of money as mentioned above in May 2004.
- The company gave the entire amount of money that was deducted from the workers' wage to civil servants of the Ministry of Labor who came to register the employment cards.
- The workers recognized that to register for an employment card is in their interest but the workers demanded that the company compensate wages deducted from the workers' wage for the payment of the employment card which is more than the law stipulates.

REASONS FOR DECISION:

1st issue: in relation to medical exams

The workers demand that the company compensate them in the amount of 16,000 riels that was paid for the cost of the medical check. According to the facts, the company recognized that it did deduct money from each worker in the amount of 16,00 riels in May 2004.

The Arbitration Council has released many arbitral awards related to the cost of medical exams such as: arbitral award #02/03-Chou Sing dated May 21, 2003; #21/03-Loyal

Cambodia dated December 8, 2003, #19/04-Kba Koh II dated May 21, 2004; #53/04-Kong Hong dated July 26, 2004; #60/04-United Art dated August 16, 2004; and #63/04-Shine Well dated August 24, 2004; also Article 247 (C) of the 1997 Labor Law states that the employer must pay medical check costs for the employees. Article 247 of the Labor Law states also that the Ministry in charge of Labor shall issue Prakas to determine: (a)- the conditions under which pre-employment, re-employment, periodical, and special physical exams are given; (c)- the conditions under which employers are required to establish and provide at their expense: (4) the medical exams of workers as stipulated in point (a) of this article.

Even though there is no new Prakas established by the Ministry in charge of Labor the Arbitration Council finds that Article 247 of the 1997 Labor Law provides a sufficient legal basis to conclude that the employer has a duty to pay for medical exams for the employees including payment of medical cost at a new recruitment; the meaning of Article 247 (c) identifies clearly that when there is a new Prakas, it is required that the employer pay for employees' medical exams. (See a dissent opinion of arbitral award #60/04-United Arts.) Also, Joint Prakas number 09 dated 19 January 1994 on Medical Examination for Cambodian and Foreigners who come to Work in Cambodia, requires the employer pay the medical exam fees for the employees.

In the previous arbitral awards the Arbitration Council based their findings on joint Prakas number 09 dated January 19, 1994 made under the 1992 Labor Law which was replaced by the 1997 Labor Law. Clause 7 of the joint Prakas states clearly that an enterprise or company must pay for employees' medical exams. However, the Arbitration Council has had conflicting views over the joint Prakas number 09 and whether this joint Prakas is still effective or not (See arbitral award #60/04-United Arts and the arbitral dissent as attached in annexure). However this conflict is not important because in this case the Arbitration Council noted that Article 247 of the 1997 Labor Law by itself has enough legal basis to require the employer to pay for employees' medical exams before offering them the job.

In addition, Article 377 of the labor Law states that " Those guilty of violating the provision of articles 247 or violating their implementing Prakas of labor health are liable to a fine of one hundred twenty days to three hundred sixty days of the base daily wage and to imprisonment of one to five years, or to only one of the both penalties". This article shows that the employer has the responsibility to pay for workers' medical exams and identifies that if the employer does not follow article 247 the employer will be liable for a fine and a custodial sentence in accordance with the law.

Thus, the Arbitration Council decides that the employer must compensate for the cost of medical exams to the employees in the amount of 16,000 riels each, but only for those whose medical exam cost was deducted.

2nd issue: related to employment card

The workers demand that the company compensate them for the cost of an employment card in the amount of 12,000 riels that the company deducted over the law for the payment of an employment card. In the hearing the Arbitration Council finds that the company invited government employees from the Ministry to come to register employment cards at the factory location and as a consequence it deducted from workers' wage an amount of 12,000 riels. Both parties agreed that this matter happened in May 2004;

Article 32 of the 1997 Labor Law states that "Every person of Cambodian nationality working as a worker for any employer is required to possess an employment card". The Arbitration Council finds that Article 32 requires all workers to have workbooks as a required condition before starting to work in an enterprise or a company and obtain an employment card; the workers must go to register by themselves at the Occupational and Manpower Department and also must pay for this themselves. Therefore the Arbitration Council finds that the payment of an employment card is the responsibility of employees who must pay for the registration according to the law and other regulations related to the labor law area. (See case 21/03-Loyal Cambodia).

The notice number 13/MoSALVY/97 dated May 29 1997 determined the cost of an employment card as: An application form costs 1,500 riels and stamp costs 1,000 riels; so in total costs 2,500 riels. Thus an official cost for the employees to pay their own workbook is 2,500riels.

In a previous case the employer deducted from the workers' wage the payment of an employment card over the amount specified by law. The Arbitration Council found the deduction from the workers' wage was not correct and required the employer to compensate all money deducted over the law to the employees (see arbitral award 21/03-Royal Cambodia). But In this case, the workers and the employer agreed that the labor inspectors should come to the factory, and that the employer could deduct the cost of the employment card, but the parties do not agree how much should have been deducted. The employer deducted the full amount that he had to pay to the labor inspectors, and the workers demand that only the amount specified under law should be deducted.

The labor Law does not require the employer invite the Labor Inspectors to register an employment card at the location of the enterprise or establishment or in the company; it just requires the employees to have an employment card. So the employer should allow the workers to go to register an employment card by themselves. In this case the employer should not [or is not required to???] arrange any activities to facilitate for the registering of an employment card. Although if the company did not facilitate registering for the employment book, the employees must spend a half day registering for their employment cards and they will lose US\$0.86 (equal to 3,440 riels with the exchange rate of US\$1 =4000 riels) plus transportation costs at an average of 2,000 riels. In conclusion, if the workers went to register their own employment cards they would pay 7,940 riels (wage US\$ 0.86 + 2000 riels of transportation cost + official cost of 2500 riels).

In this case the company deducted money (12,000 riels) to make an employment card for the workers, which has an official cost of only 2500 riels, and in so doing the company over charged the workers by 9,500 riels. The workers demand this amount.

However, the Arbitration Council finds that if the employer compensate for the full amount; it is not fair for the employer because according to the analysis of the Arbitration Council the employees must pay 7,940 riels for an employment card if the employees go to register by themselves. Furthermore, the employees also recognize that they would have had these costs (registration + transportation + losing half a day's wages).

Under Article 34 of the Prakas 099 dated January 21, 2004 the Arbitration Council has power and right to order the parties to compensate civil expenditure or damages that are proper and fair. Thus the Arbitration Council finds that the company improperly deducted an amount (12,000 riels) over the cost of the workbook (only 2,500 riels) from the workers' salary which is against the law, so the company must pay compensation to the workers. But the workers should be responsible for the amount of money (7,940 riels) that they would have spent to go register themselves. So the Arbitration Council decides that the company must compensate the employees in the amount of $12,000 - 7,940 = 4,060$ riels that was deducted above the expenditure that the employees would have made.

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

DECISION:

- 1- Order the company to compensate each worker an amount of money of 16,000 riels that the company deducted to pay for medical exams.
- 2- Order the company to compensate each worker in the amount of money of 4,060 riels deducted by the company for the payment of an employment card and other expenditures.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signed:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signed:

Chair of arbitration panel:

Name: **Kong Phallack**

Signed:

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.