

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

***THE ARBITRATION COUNCIL***

Case: 06/04

Date of award: 10 March 2004

***ARBITRAL AWARD***

(Issued under Article 313 of the Labor Law)

**Chou Sing Garment (Cambodia) Co. Ltd**

(Employer party)

**AND**

**Cambodian Workers' Rights Union and others**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representative:** 1- Mr. Lee Hy Ming, Deputy General Manager  
2- Ms. Chang Vuoch Chhy, Administration Manager  
3- Mr. Long Heang, Labor issues officer, GMAC  
4- Mr. Kouch Kheang, Interpreter.

**Address:** National Road 6A, Sangkat Prek Leap, Khan Ressey Keo,  
Phnom Penh.

**Tel:** (855-23) 365 898 Fax: (855-23) 365 899

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Address:** National Road 6A, Sangkat Prek Leap, Khan Ressey Keo,  
**Tel:** 012 798 221, 011 678 365, 012 650 353 Fax: N/A

**Representatives:** 1- Mr. Chhin Sony (Union leader) and his members;  
2- Miss Sem Srey (Union's leader) and her members;

- 3- Mr. Noun Chan Theurn (Union's leader) and his members;
- 4- Mr. Ek Sokchea, Vice President, Legalist Worker Union;
- 5- Miss Tha Sokha, member of LWU;
- 6- Mr. Theng Sovannarith, Vice President, DUC;
- 7- Mr. Eam Chan Bony, Advisor of DUC;
- 8- Mr. Ho Nara Labor Officer, DTFU;
- 9- Mr. Nuon Chantha, president, DTFU.

#### **ISSUES IN DISPUTE:**

(In non-conciliation report)

1. The Employees claim that the company should provide incentive bonuses individually to the workers instead of through the groups which is the company's current practice for workers who perform well.
2. The Employees claim an increase in salary by applying Article 39 of the Internal Rules.
3. The Employees ask the company to dismiss the Chinese manager named Yang Chhing Chhing, the administrator named Leang Narith and the administrative assistant Leang Narin because they have problems with the workers.

#### **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 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 Labor Law. That conciliation hearing was unsuccessful and a non-conciliation report dated September 12, 2003 was submitted to the Secretariat of the Arbitration Council on September 15, 2003.

#### **COMPOSITION OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:	Mr. Ouk Ry
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Kong Phallack

**HEARING AND EVIDENCE:**

**Date and place of hearing:** Wednesday 18<sup>th</sup> February 2004 (08.00 – 12.00), Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

**Evidence:****Provided by the employer party:**

1. Document related to tax on benefits
2. Delegation letter
3. Internal rules of the company promulgated on 08 January 1999
4. Labor contract
5. Verbal evidence during hearing.

**Provided by the employee party:**

## a. Documents related to Ms. Yang Chhing Chhing:

- Minutes of union date September 3, 2003
- Letter of the Ministry of Defence dated November 27, 2003
- Medical Check letter of Mouk Kampoul District hospital dated December 8, 2003
- Permission letter, unsigned
- Minute of Mov Sitha
- Minute dated August 6, 2003
- Minute dated December 12, 2003
- Registration book on work time.

## b. Documents related to Mr. Leang Narith:

- Minutes and list of participants dated February 11, 2004, February 3, 2004
- Minute dated July 7, 2003
- Minute dated August 9, 2003
- Minute dated October 8, 2003, July 22, 2003
- Conciliation report dated June 5, 2003
- Conciliation report dated October 9, 2003 and November 13, 2003
- Announcement of Administration dated July 14, 2003
- Arrangement letter dated November 27, 2003
- Minute dated February 3, 2003.

## c. Documents related to Mr. Leang Narin:

- Minute dated November 6, 2003

- Conciliation report January 2, 2004
- Minutes dated December 6, 2003, November 17, 2003, November 18, 2003
- Complaint dated January 19, 2003 and September 17, 2003.

d. Letter to inform of the strike's date, dated January 21, 2004.

**CASE SUMMARY:**

Chou Sing Garment Factory is located along National Road 6A, Sangkat Prek Leap, Khan Ressey Keo, Phnom Penh. There are 2,500 workers. There are 3 worker unions in this factory, 1- Cambodian Workers' Right Union, 2- Dharmacratic Union and 3- Dhama Thpaktay Worker Union.

The Employer has a dispute with the workers at Chou Sing Factory and the workers filed their complaint at Russey Keo District's Labor Office on January 24, 2004. The District Labor Inspector conciliated at the factory on January 26, 2004 and both parties reached agreement on 15 points and the other 3 points failed to reach agreement. The 3 points, which failed to conciliate, are outlined in the above issues.

This case was referred to the Arbitration Council on February 6, 2004. On February 18, 2004, the Arbitration Panel met with both parties for a pre-hearing meeting to conciliate but this conciliation was not successful. The Arbitration Panel provided one week to both parties to try to conciliate again at the factory level. The Arbitration Panel conducted a hearing on February 25, 2004 at 8:00 am.

So far, the employer has offered bonuses to workers as a group in the sewing section. Workers who work in the warehouse or for piece rates receive their bonuses individually. Workers who work for the laundry receive bonuses the same as in the sewing section but there is a clearer process than for the other group. Groups of workers who are good and meet the standard of 90% - 100% of 76% that the factory determines, receive 3000 riel per worker and group leaders receive from 3000 riel - 5000 riel. The factory has 28 sewing section groups. The factory determines 76% as the standard for giving a bonus based on industrial engineering (100% including time limit and production). It means that if the workers meet about 90% of the standard 76%, then they can receive this bonus. The factory deducts 24% of the standard based on industrial engineering. The workers claim that this requirement is difficult to reach because there are only a few groups that can meet the requirement. Moreover, the groups that receive the bonus, most receive it again the next time. Then, the worker party accepts to receive the bonus as a group, the same as before

but they ask the employer to give better conditions than before. The workers suggest there be 3 ranks for the first group, second group and third group as follows:

- First group: Groups that meet from 90% to 100%, receive 3000 riel per person;
- Second group: Groups that meet from 85% to 90%, receive 1500 riel per person;
- Third group: Groups that meet from 80% to 85%, receive 1000 riel per person.

The factory offers as follows:

- First group: Groups that meet from 90% to 100%, receive 3000 riel per person;
- Second group: Groups that meet from 85% to 90%, receive 1000 riel per person;
- Third group: Groups that meet from 80% to 85%, receive 500 riel per person.

The Employee party claims that the bonuses that are provided to other sections, should be implemented in the same way.

The factory has increased salaries once or twice since the Internal Work Rules of this factory were created. However, factory stopped implementing it when Notification #017 dated July 18, 2000, on Providing Seniority Bonus to Workers in the Garment and Shoe Industries, was issued. The factory stopped implementing its Internal Work Rules, article 39, by replacing it with the Notification. Article 39 of the Internal Work Rules states that there should be an increase in salary every year at the end of December.

The Employee party claims the employer should dismiss Ms. Yang Chhing Chhing because she forces workers to work, against Article 15 of the Labor Law, unlawfully dismisses other workers who participate in solving problems with the employer, and did not sign a worker's permission letter by saying that she is busy. She forces workers to accept warnings and thumb print then. If the worker does not accept, she asks them to go out, does not allow them to come to workplace and deducts the worker's wages. These actions are against the law. On August 6, 2003, employer agreed with the workers "If Chinese supervisors commit serious misconduct, the factory will dismiss them like Cambodian workers".

The Employee party claims the employer should dismiss Mr. Leang Narin because he works beyond his position, changed birth certificate(s), discriminates against the union, does not pay the workers' salaries, did not take a worker who got seriously sick to the hospital, and provokes other workers.

The Employee party claims the employer should dismiss Mr. Leang Narith because he did not respect an agreement between workers and the factory.

The employer states that these three supervisors have made no serious mistakes requiring dismissal and the employer promises that the factory will change these supervisors to other position where they are not directly involved with the workers.

**FINDINGS OF FACT:**

The factory provides bonuses to groups of workers in the sewing section, 3000 riel per person for the groups who meet 90% - 100% of the 76% standard that is set by factory. Workers who work in the warehouse and work for piece rates receive bonuses individually. Workers who work in the laundry receive bonuses as in the sewing section but there is a clearer procedure than for the others. Each worker who works well receives 3000 riel per person but group leaders receive from 3000 - 5000 riel per person.

The factory has 2500 workers that are separated into 28 sewing section groups and other sections.

The factory has increased salaries one time since its Internal Work Rules were created. The factory stopped implementing article 39 of the Internal Work Rules when Notification #017 dated July 18, 2000 was issued and the employer applied the notification to replace the Internal Work Rules. The factory stopped implementing its Internal Work Rules, article 39 by replacing it with the Notification. Article 39 of the Internal Work Rules states that there should be an increase in salary every year at the end of December.

The factory sets out a condition of 76% of its 100% standard for providing bonuses based on industrial engineering (100% including time limit and production). This means that if workers meet or exceed 90% of 76%, they can receive this bonus. The factory deducts 24% of the standard based on industrial engineering.

The standard for the bonus is very difficult to achieve but the factory also said that this is the technical standard that the factory cannot change, but it offers a 24% decrease in this standard. There are a few groups that can receive the bonus and most of them are the same groups.

The employee party asks the employer party to provide bonuses as before but based on the following standards:

- First group: Groups that meet from 90% to 100%, receive 3000 riel per person;
- Second group: Groups that meet from 85% to 90%, receive 1500 riel per person;
- Third group: Groups that meet from 80% to 85%, receive 1000 riel per person.

The factory is able to offer bonuses to workers as follows:

- First group: Groups that meet from 90% to 100%, receive 3000 riel per person;
- Second group: Groups that meet from 85% to 90%, receive 1000 riel per person;
- Third group: Groups that meet from 80% to 85%, receive 500 riel per person.

For other sections, bonuses shall be implemented according to the former procedures.

It seems that the Chinese supervisor, Ms. Yang Chhing Chhing, forces workers to work, dismisses workers illegally (against article 15 of Labor Law), does not provide salary to workers who join to resolve problems with the employer, did not sign permission letters for worker (Mov Sitha, ID # 027) Group A2 by delaying because she said she was busy, forced workers to thumb print on a warning letter, (Pov Sophy, ID # 005 and Kim Seang, ID # 010), and for a worker who did not agree to thumb print, she dismissed her (ID # 010), cuts off thread when workers are sewing, forces workers to go outside their workplace and cuts their working hours.

On August 6, 2003, the employer agreed with the workers "If a Chinese supervisor commits serious misconduct, the factory will dismiss them like Cambodian workers".

Mr. Leang Narin may not work beyond his role because he changed a worker's birth certificate and may have discriminated against the union because he tries to ask workers who has joined the union and pays union fees. Mr. Leang Narin did not take a worker who got sick to the hospital.

Mr. Leang Narith and the employer have not respected an agreement between the workers and the factory. Although [further] agreements were made subsequently, Mr. Leang Narith has still been involved in resolving disputes with workers.

The employer agrees to change the three supervisors, Yang Chhing Chhing, Leang Narin and Leang Narith to new workplaces where they are not directly involved with workers.

**REASONS FOR DECISION:**

*1<sup>st</sup> issue:*

The dispute related to the first issue is both a rights and an interests dispute. The factory defines a standard of 100% of final production based on sewing to give a bonus to workers to encourage them to work hard and so the employer can gain higher productivity. In order

to help workers to receive this bonus, the factory offers a 24% decrease in the standard requiring workers to reach 76%.

So far, the factory has provided bonuses to the same group, which meet from 90%-100% of 76%, of 3000 riel per person. The number of groups that receive the bonus was not determined based on the number that met this standard. This implementation has become established practice and it is the right of the workers that the employer cannot decrease it unless both parties agree.

However, the employee party claims that the employers practices are too difficult to reach. Thus, the employee party claims that the employer should decrease the condition so that employees can receive the bonus.

The employee party offers its best final offer to the employer as follows:

1. Keep the same 3000 riel for individual workers in the groups that meet from 90% to 100% of 76%, which is the employer's standard and is currently implemented in the factory;
2. Provide bonus, 1500 riel to individual worker to the group that meet from 85% to 90% of 76%, which is the employer's standard and is currently implemented in the factory;
3. Provide bonus, 1000 riel to individual worker to the group that meet from 80% to 85% of 76%, which is the employer's standard and is currently implemented in the factory.

As for the employer, it agrees to decrease the standard that the factory is implementing in order to accommodate the workers who claim for a better interest than before.

The employer party agrees to offer its best final offer to workers as follows:

1. Keep the same 3000 riel for individual workers in the groups that meet from 90% to 100% of 76%, which is the employer's standard and is currently implemented in the factory;
2. Provide bonus, 1000 riel to individual worker to the group that meet from 85% to 90% of 76%, which is the employer's standard and is currently implemented in the factory;
3. Provide bonus, 500 riel to individual worker to the group that meet from 80% to 85% of 76%, which is the employer's standard and is currently implemented in the factory.

The Arbitration Council maintains the bonus of 3,000 riel to group of workers who meet between 90% to 100% of 76% as is the current practice of the factory.

As the second and third standards are new conditions, this is related to an interest dispute. The Arbitration Council does not decide on these two issues because the Arbitration Council's decision would become a Collective Bargaining Agreement (CBA) that would bind the employer party and the employee party for 1 year if an objection is not made to the award. Both parties did not receive notice and did not understand the implications of it being a CBA and that this is a barrier to the Arbitration Council deciding this interest dispute. This CBA would prevent disputes related to other interests of workers for one year.

Article 10, Prakas #305, MoSALVY, dated November 22, 2001 states that, "The employer has an obligation to negotiate with the union, and must join meetings with the union as a partner. During this negotiation, representatives will not have wages, bonuses and other benefits deducted".

To guarantee fairness for both parties, the Arbitration Council decides to give a time limit on the employee party to negotiate a CBA with the employer party on other interests issues that they require. The negotiation period is determined to be five months, which the Arbitration Council finds is a suitable period and to finish not later than August 31, 2004. In order that both parties understand exactly what they will do, the Arbitration Council therefore finds that both parties should meet at least one and a half hours per week to negotiate a CBA during working hours in the factory. If there is no agreement in that time, a party can bring this issue to the Arbitration Council to decide after conciliation by the Labor Inspector has failed.

*2<sup>nd</sup> issue:*

The second issue is that the employee party claims that the employer party should increase the salary of the workers every year, based on Article 39 of the Internal Work Rules of the factory. The factory created its Internal Work Rules on January 8, 1999 and the Labor Inspector recognized them on January 12, 1999. These Internal Work Rules have 44 articles. Article 39, which is related to this issue, states that, "Every year, at the end of December, the employer should increase the salary once. For workers who have finished the probationary period, their supervisors should report to the factory manager to decide their wages." Based on the first sentence of this article, the factory should increase the workers' salary every year at the end of December. The factory has an obligation to implement this condition because the Internal Work Rules are legally required to be implemented in the factory and it is a condition required by Article 22 of the Labor Law. Article 23 of the Labor Law requires that the Internal Work Rules of the factory have to apply the general provisions of the Labor Law and also a Collective Bargaining Agreement. Moreover, the labor contract of workers of the factory also states this condition. Thus, the

workers have a right to claim that the employer should increase their salaries based on the law.

These Internal Work Rules have been in force for 5 years, since January 1999. The employer party responds that the factory has increased salaries once or twice since these Internal Work Rules were created and that the factory stopped implementing this article when Notification #017, MoSALVY in 2000 that requires all garment factories to provide a seniority bonus. The employer party affirms that the factory applies this Notification to replace its Internal Work Rules. The employee party affirms that the factory has never increased salary. As an example most workers who have worked for 5 years receive \$45, which is the basic salary. However, the employee party accepts that the factory has provided the seniority bonus as the employer stated.

Based on Article 39 of the Internal Work Rules of the factory, the Arbitration Council thinks that the employer should increase the salary of their workers every year. Although it is true that the employer party has increased it once or twice, the employer party has not fully implemented their obligations. Furthermore, the employer party understood that the factory implemented the Notification of MoSALVY, and so may be released from implementing Article 39 of its Internal Work Rules. The employer is confused about this issue. These two documents are separate, one refers to the seniority bonus that binds all garment factories in Cambodia regardless of whether the Internal Work Rules of a factory states about this subject. The other document (the Internal Work Rules), which states about increasing salary every year, only applies in a specific factory, in this case the factory is Chou Sing. Based on the law, the factory should apply both documents. The Arbitration Council decides that the employer party should pay compensation individually to the workers of \$3 per person to compensate for the last 5 years because the employer party has not implemented Article 39 of its Internal Work Rules.

But Article 39 of these Internal Work Rules does not clearly state the amount and procedure to increase salary. The amount and the procedure by which the factory should increase salary are not clear. The amount and the procedure are based on the factory's economic situation and negotiation to define the procedure between the employer and the workers. So, the Arbitration Council encourages the employer party and the employee party to negotiate to reach an agreement that provides mutual benefit to both parties. The parties should negotiate before November 30, 2004 because December is the month for the salary increase.

*3<sup>rd</sup> issue:*

1. The employee party said that the Chinese supervisor, Yang Chhing Chhing, has committed serious misconduct by mistreating the workers. Also, based on the agreement between the employer and the employees, the employer promised to treat a Chinese supervisor and a Cambodian worker equally if s/he has committed serious misconduct, the employer will dismiss them. The employee party claims that Ms. Yang Chhing Chhing has committed serious misconduct and that the employer should dismiss her as with other workers in this factory. The employer party accepts that the factory has agreed accordingly, but they also affirm that they have not found Ms. Yang Chhing Chhing has made mistakes which would lead to dismissal. The employee party replies that after the employer party knew about this dispute, the employer party did not investigate her mistakes, but they told workers that Ms. Yang Chhing Chhing has made no mistakes. The Arbitration Council finds that the employees' assertion is more believable than the employer's in this case. However, the Arbitration Council finds that although Ms. Yang Chhing Chhing has committed serious misconduct as the employees raised, these mistakes should have resulted in a written warning to her, otherwise it would not be fair for her. Ms. Yang Chhing Chhing has not received a warning yet. So, the employer should give her a written warning, if she cannot change her behavior in three days, the employer should dismiss her.

Based on the minute dated August 6, 2003, the employer and employee party agreed, "If a Chinese supervisor commits serious misconduct, the factory will dismiss them like Cambodian workers". The employee party claims that Ms. Yang Chhing Chhing has committed serious mistake because: (1) She forced workers to accept their warning letters by making a thumb print and if the workers did not make a thumb print, she dismissed them. (2) She forces workers to go out of their workplaces and cuts off threads and cuts 3 hours off from the working hours of the workers. (3) She did not sign a worker's permission letter. The employee party said that these actions contravene the factory's Internal Work Rules and the Labor Law.

Ms. Yang Chhing Chhing should accept punishment because of her actions. If the employer still keeps her in the same position where she can directly meet with workers, it may aggravate or keep the dispute going. The employer may change her to another position that has less or no contact with the workers. This is necessary and may decrease problems in the workplace. Therefore, the Arbitration Council decides that Ms. Yang Chhing Chhing should be changed to another position and takes a new position that has no contact with the workers.

2. The employee party claims that employer agreed to change Mr. Leang Narith from Administration and not to allow him to have contact with workers. However, after that Mr. Leang Narith still resolves problems with the workers. The employer replies that Mr. Leang Narith ceased to work as Administrator a long time ago. The factory argues that the employee party could have reacted quickly if they were not happy to resolve problems with Mr. Leang Narith, but they waited for a long time before starting to complain. Because the employee party kept this issue for a long time, it means that they accept him resolving problems. So far, the employer has negotiated with the employees about Mr. Leang Narith. Finally, the employer agreed to change Mr. Leang Narith from his administrative position to another position, with responsibilities for some tasks like drafting documents and completing documents, but where he has no right to decide on documents that relate to workers' disputes. The agreements were made consecutively: the first that was made on July 22, 2003, the second agreement was made on October 13, 2003, the third agreement was made on February 3, 2004, and the fourth agreement was made on February 11, 2004. So, the employer should immediately change Mr. Leang Narith's position when this award becomes enforceable.
  
3. The employee party claims the employer should dismiss Mr. Leang Narin because they said that Mr. Leang Narin works beyond his position, changed worker's birth certificate, does not pay the workers, did not take a seriously sick worker to the hospital, made trouble with other worker to create problems and interferes with the union's activities. The employee party said that, in relation to this interference, Mr. Leang Narin insists on knowing about the deduction of union fees and whether union members are forced or volunteer to become members. The Arbitration Council finds that Mr. Leang Narin did what the employees said in his work practices. Thus, the Arbitration Council decides that the factory should investigate Mr. Leang Narin and inform Mr. Leang Narin by written letter and punish him for what he has done.

Moreover, based on Article 83 of the Labor Law, although there has been serious misconduct, this does not necessarily or automatically require the employer to terminate the employee. The right of termination belongs to the employer party, but if the employer does not terminate the employee who has committed misconduct then that will not be a violation of any law. In contrast, the Labor Law protects the employee who has committed serious misconduct because the employer does not dismiss within 7 days after becoming aware of the misconduct, it does not allow the employer to dismiss. Therefore the concession of the employer in changing the employment of Mr. Leang

Narin and promising not to have this kind of incident happen again is reasonable and acceptable.

**DECISION AND ORDERS :**

According to the facts, evidence and law as mentioned above the Arbitration Council decides to issue the decision and award as follows:

1. Order the employer and employee to do as follows:
  - 1.1 The employer is to give a bonus of 3000 riels per person to the employees of the group(s) that perform work over 90% of the 76% standard as determined by the company, which is the same as the previous practice of the company, until a collective bargaining agreement comes into existence.
  - 1.2 The employees and employer are to negotiate in order to create a collective bargaining agreement before 31 August 2004, which includes any interests, including incentive bonuses, that the employees need or want at present and in the future. The employee and employer parties are to meet within the working hours of the company for at least one hour and 30 minutes per week to negotiate on the collective bargaining agreement.
2. Order the employer to:
  - 2.1 pay damages to each employee of US\$3.00 at the end of March 2004 for the failure to increase the wages of the employees in the past in accordance with Article 39 of the Internal Work Rules of the company.
  - 2.2 increase the wages of the employees from December 2004 and hereafter every year in accordance with Article 39 of the Internal Work Rules of the company. The employer and employee parties are to negotiate in order to define the procedure for the wage increase and the amount of the annual increase as well as the procedure for the work performance appraisals of the employees by no later than 30 November 2004.
3. Order the employer to:
  - 3.1 notify Mrs Yang Chhing Chhing in writing of her misconduct following the results of the investigation of the company and change her employment to another place, in conformity with the agreement of the company with the employees during the hearing.

3.2 change the workplace of Mr. Leang Narith from administration to another place which has the role of filling out and producing documents only, but no right to make decisions on documents relating to conflicts with the employees in accordance with the agreements between the company and the employees of 22 July 2003, 13 October 2003, 03 February 2004 and 11 February 2004.

3.3 change the work of Mr. Leang Narin from administration and notify Mr. Leang Narin in writing about his previous misconduct with respect to employees.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL :**

**Arbitrator chosen by the employer party:**

Name: Ouk Ry

Signed:

**Arbitrator chosen by the worker party:**

Name: Tuon Siphann

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.*