

KINGDOM OF CAMBODIA

NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 08/04

Date of award: 10 March 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Wash Concept Enterprise

(Employer party)

And

Member Employees of Free Trade Union of Workers of Cambodia (FTUWKC) at Wash

Concept Enterprise

(Employee party)

Details of employer party:

Address: National Road No. 04, Ang Keo village, Angsnuol district, Kandal

Tel: 023 219 831

Fax: 023 219 819

Representative: Liv Chhiv Mei

Address: National Road No. 04, Ang Keo village, Angsnuol district, Kandal

Telephone: 012 899 980 / 012 864 018

Details of employee party: *Free Trade Union of Workers of Cambodia*

Address: #28, Street 222, Boeng Reang commune, Daun Penh district, Phnom Penh.

Tel: 012 941 308 / 012 935 496

Fax: 023 216 870

Representatives: 1- *Sam Srey Mom, Acting President of Free Trade Union of Workers*

2- *Chea Sinat, union representative*

- 3- Vann Sina, union representative
- 4- Snguon Chanthar

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- Employees demand wages and bonuses for the period of strike (12-27 February 2004)

During the hearing, the employees raised another issue in respect of this dispute:

- 2- Employees claim that the company not force its workers to work in Shift 3, a new shift started on 01 March 2004.

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 17 February 2004 was submitted to the Secretariat of the Arbitration Council on 25 February 2004.

COMPOSITION OF THE ARBITRATION PANEL:

| | |
|---|--------------------------|
| Arbitrator chosen by the employer party: | Mr. Mar Samborana |
| Arbitrator chosen by the worker party: | Mr. Tuon Siphhan |
| Chair arbitrator (chosen by the two arbitrators): | Dr. Sok Mathoeung |

¹Jurisdiction means judicial power.

²From Articles 309 to 317 of the Labor Law

HEARING AND EVIDENCE

Date and place of hearing: On 01 March 2004 at 09h00 AM at Arbitration Council Secretariat.

Witnesses and experts: N/A

Evidence considered by the Arbitration Panel:

I. *Documents obtained from employer party:*

1. Certified Internal Work Rule (No.041 SALVY of 09 October 2001); and
2. Notice of the Employer dated 20 February 2004.

II. *Documents obtained from employee party:*

1. Collective Dispute Resolution Report of Yong Yi laundry company (Wash Concept Enterprise) dated 27 February 2004;
2. Name list of workers who signed and pledged not to go on any other unlawful strike;
and
3. Name list of five workers who the Employer took on during the strike.

CASE SUMMARY

This dispute arose starting on 12 February 2004 when worker representatives brought a complaint to the head of the Department of Labor Inspection of the Ministry of Social Affairs [Labor, Vocational Training and Youth Rehabilitation (MoSALVY)] in a letter dated 12 February 2004, the same day on which the employees started a strike at Wash Concept Enterprise (hereinafter known as the Laundry Company). The workers demanded as follows that:

1. the Laundry Company accept two workers named Vann Sina and Chea Sinat back to work as normal;
2. if the company closes down, it must calculate the payment for the workers, pursuant to the Labor Law; and
3. if the company resumes its operation, it must bear the striking workers no ill will.

On 17 February 2004, the head of the provincial office of MoSALVY attended a conciliation meeting in the headquarters of the company. As a result, a new issue of non-conciliation arose out of the complaint namely that: *Employees claim that the Employer pay salaries and bonuses for the duration of the strike.* But the company objected to this, stating that prior to a strike, notice must be given in accordance with the Labor Law [,and that] not complying [with the Labor Law] would lead not only to a cut in wages for the number of days not worked but also a cut in the monthly bonus for regular work.

This dispute was forwarded to the Arbitration Council on 25 February 2004. The Secretariat of the Arbitration Council called upon the two disputing parties for conciliation and held a hearing on 01 March 2004. On 27 February 2004, the workers continued the strike outside the Ministry of Commerce; meanwhile, on the same day the employees and the company bargained in the presence of Mr. Cheat Khemara, a labor dispute mediator of the Garment Manufacturing Association of Cambodia (GMAC). The two sides reached an agreement on such eight issues as stipulated in the report dated 27 February 2004 attached herein. Nonetheless, the two sides failed to conciliate the demand for wages and bonuses for the period of the strike.

The Arbitration Council proceeded the hearing in the presence of both the parties on 01 March 2004 from 09h00 AM until 12h00 PM.

Both sides agreed that this award is not binding.

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:

1- In the company, there were 347 workers for two shifts until 29 February 2004: Shift 01 from 07h00 AM to 07h00 PM and shift 02 from 07h00 PM to 7h00 AM. The shifts were to be divided into three, starting from 01 March 2004: Group A of 80 people (from 07h00 AM to 04h PM), Group B of 80 people (from 4h00 PM to 01h00 AM) and Group C of 40 (from 01h00 AM to 07h00 AM). And the rest would work in other such groups as the sand blasting team, the paint spraying team, as mechanics and so on. The worker party said in the hearing that the employer party verbally agreed, when they were protesting outside the Ministry of Commerce, that the workers would not be forced to work in Group C [and that] working in that group would be on voluntary basis.

2- The workers started to go on strike on 12 February 2004 without any notice at all. The workers mentioned that their strike [broke out] because on 12 February 2004, the employer called and blamed Chea Sinat and Vann Sina in retaliation for their participation in the strike on 12 January 2004; which was resolved on 19 January 2004 on the basis that [they] would bear each other no ill will. Furthermore, the company suspended the contracts of these two people and told them to get their final pays on 10 March 2004. Whereas, the company representatives said that the company invited the two people to meet and blamed them and suspended their employment for a month until 10 March 2004 because the company found out that in the camera, the actions of the two workers seemed to be ordering the other workers who had agreed to work overtime for the company, not to do as they had agreed. The company said that there were people who threatened workers not to work over time. By the two workers' actions [in the camera], the company assumed that the two employees were threatening workers. The two workers responded that they did not threaten anyone; actually, at 01h00 AM one night after they left work and while they were waiting for the van, they were stretching their arms and legs just because they were sore.

3- During the strike, the workers claimed that the company hired as many as 50 workers to replace them. Those people were to be sent by the company to Group C (the new group from 01h00AM until 07h00 AM). The company objected to such a claim, saying that it did not hire new people from outside; it just divided the people remaining from the strike and withdrew some from

the other sections that are not very busy to temporarily help in the major sections. Following the strike, the company could maintain only one shift of the washing teams from 7h00AM to 7h00PM. Then, the company, with the help from such other groups as mechanical, paint spraying and sand blasting teams, divided the team into two shifts: (1) from 7h00AM to 4h00PM and (2) from 4h00PM to 1h00AM. Accordingly, the company did not hire more workers. The company claimed this and gave its permission for the Arbitration Council to conduct an inspection. Whereas, the worker side kept claiming that there really were more workers hired from outside. The Arbitration Council ordered the two parties to present the evidence to the Arbitration Council in connection with the issue, by the evening of 3 March 2004. On the evening of 02 March 2004, the representatives of the workers furnished to the Secretariat of the Arbitration Council the name list of the workers who the employer hired during the strike: four on 22 February and one on 24 February without; though this did not include the name and signature of the sender as would be proper. The Arbitration Council, then, acknowledged that the employer did indeed recruit workers while a certain number of workers were going on strike.

REASONS FOR DECISION

The issue raises the question whether the workers are entitled to their wages during the strike. Article 332 of the Labor Law provides:

"The employment contract shall be suspended during the strike. During the strike, the allowance of work is not provided and the salary is not paid.

The workers shall be reinstated after in their jobs at the end thereof."

Additionally, Article 334 states:

During the strike, the employer is prohibited from recruiting new workers for a replacement for the strikers except to maintain the minimum service as provided for in Article 326 and 328 if the workers who are required to provide such service do not appear for work. Any violation

of this rule obligates the employer to pay the salaries of the striking workers for the duration of the strike.

However, as the Arbitration Council has decided, in Lida Garment Award 04/03, the protection for the striking workers in accordance with Article 334 shall fully be applied only when the workers go on strike in compliance with such procedures as set forth in the Labor Law.

Accordingly, in order to determine whether or not the workers shall be entitled to wages, the Arbitration Council must answer two questions: 1) - Did the employer party hire new workers in replacement for the striking workers during the strike? and 2) - Was the strike conducted in accordance with the procedures of the law? We will now look at the existing facts so that we can respond to the two foregoing questions.

1 - the worker side claimed that the employer, during the strike, recruited an estimated number of 50 workers in replacement for the workers on strike. The employer responded that they did not hire new workers, but that they used the workers of the company from other groups that were not busy to help with the sewing section the staff members of which were on strike. Despite this claim by the employer, the workers kept saying that the employer did indeed recruit workers other than those of the company because they saw with their own eyes that several people were standing outside the gate of the company in order to get in to work on Sunday, a week after the strike broke out. When the Arbitration Council asked about the operation of the company during the strike, the employer said that they merged the two groups together into one shift but that when they had gotten workers from other places, they regrouped the workers into two groups, just like before the strike. The Arbitration Council assumed that the workers did indeed recruit new workers during the strike and that the business was normally operated although there were an estimated number of over 90 out of approximately 200 workers on strike. It was obvious that without a certain number of their work force, the company would have had difficulty in its operation. Consequently, the employer's act of recruiting new workers during the strike was in violation of Article 334 of the Labor Law.

2 - Are the workers entitled to wages and bonuses during the strike?

Under Article 324 [of the Labor Law], the employees are required to give prior notice of at least seven working days. However, the employees [in this case] failed to give prior notice and started their strike immediately upon receipt of notice on the two workers' suspension. According to Article 320 (4), "The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out." In fact, the [workers went on] strike at the company without giving any notice or trying out all peaceful method of resolving the dispute in accordance with Article 320 (4), because the workers went on strike precedent to the procedures and during the process of the resolution of the dispute by conciliation and arbitration by the Arbitration Council, which is an institution for peaceful resolution of the collective labor disputes. Therefore, as the strike was not in accordance with the procedures, the workers are not entitled to their wages during the strike. It should be noted that this Article 334 can be applied only when the workers comply with such legal procedures as are set out in Chapter 13 of the Labor Law in conducting a strike.

Similarly, regarding Article 333 of the Labor Law which prohibits the employer from imposing any form of sanction on the striker; this prohibition can fully be enforced only when the strike is in accordance with the procedures. If workers do not follow these procedures, they should not expect full protection under this provision. Thus, although the Arbitration Council finds that the deduction of the workers' USD5 bonuses is not justified under Article 333 of the Labor Law, it cannot give this protection to the workers whose strike was inconsistent with procedures set forth in Chapter 13¹.

3 - According to Article 74, the employer can dismiss a worker's employment contract only when it is legally justified to do so. This rule can also be applied to the suspension of workers as set out in Article 71(7). For this reason, in order to justifiably suspend the contracts of the two workers, Chea Sinat and Vann Sina, the employer must present evidence that they have committed misconduct. In this case, the employer suspended the two workers on the ground that they prohibited other

workers from working overtime. The suspension is not legally right because the employer did not provide the Arbitration Council with adequate evidence that the two workers have committed any acts of misconduct. As a result, the suspension of contracts is considered null and void under the law. Due to the suspension, the two workers were not allowed to return to work. Therefore, the employer cannot reason that the two workers participated in the strike as they [were not allowed to] return to work, and accordingly must be granted wages and other bonuses during the suspension of their labor contracts.

4 - In addition, the employer party will, from 01 March 2004 onwards, divide the working shifts in the company into three shifts: Group A of 80 workers from 7h00AM to 4h00), Group B of 80 workers from 4h00PM to 1h00AM, Group C of 40 workers from 1h00AM to 7h00AM; while workers other than the groups will be in such others teams as the sand blasting group, the paint spraying group and the mechanics and so on and so forth. The employer party addressed in the hearing that while they were striking outside the Ministry of Commerce, the employer party verbally agreed that it would not force workers to work in Group C and that work in this group would be on voluntary basis. Therefore, the employees who are already working at the company are not to be forced to work in Group C unless they agreed otherwise. And the employer party must prepare them for Groups A and B at their own option, just as they did before.

Based on the foregoing fact, law, evidence and reasons, the Arbitration Council decides as follows:

DECISIONS AND ORDERS:

1. Reject the claim of the workers of Wash Concept Enterprise for the employer to pay them their salaries and bonuses for the duration of the strike.
2. Order the employer to pay wages and attendance bonuses to workers Chea Sinat and Vann Sina for the duration of suspension of their contracts when they go to work. The money must be paid to the two workers by the end of April 2004.

¹ See Award 04/03 (Lida company) of the Arbitration Council, regarding this issue.

3. Order the employer to no longer force the employees to work in Group C which is supposed to start from 01h00AM to 07h00AM.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the employee party:

Name: **Tuon Siphann**

Signature:

Chair of Arbitration Panel:

Name: **Sok Mathoeung**

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.