

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 08/05, Winner Knitting

Date of award: 23 March 2005

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**Winner Knitting**

(Employer party)

**And**

**Union of Winner Knitting Factory**

(Employee party)

**Detailed information of employer party:**

**Address:** National road 21, Village 4, Khum Svay Rorlum, Srok Saang, Kandal Province.

**Tel:** 024 391 226

**Fax:** 024 393 698

**Representative:** 1- Mr. Song Jiangting, Director of the Company;  
2- Mr. Chan Hak MIng, General Manager;  
3- Mr. Yin Han Biao, Group leader of production section;  
4- Mr. Song Xiao Liang, Accountant;  
5- Mr. Chea Ly Chhay, Administrator;  
6- Mr. Ms. Leakhena, Administrator; and  
7- Mr. Long Hieng, GMAC representative;

**Detailed information of employee party:**

**Address:** # 788, St. 474, Sangkat Boeung Trabek, khan Chamcar Morn, Phnom Penh

**Tel:** 012 866 682

**Fax:** N/A

**Representatives:** 1- Mr. Som Oun, President of CLUF  
2- Mr. Heng Uy, President of Winner Union;

- 3- Mr. Nuoy Ratha, President of Theamea Thipatey Union;
- 4- Mr. Srun Bonna, Vice President of Winner Union;
- 5- Mr. Men Sarim, Secretary of Winner Union;
- 6- Mr. Ven Sam Ol, Vice President of Theamea Thipatey Union;
- 7- Mr. Mao Sothea, Secretary of Theamea Thipatey Union;
- 8- Mr. Yim Sothea, worker representative;
- 9- Ms. Kun Line, worker representative; and
- 10- Mr. Ngo Borath, worker

### **ISSUES IN DISPUTE:**

(Non-conciliation report)

- 1- the employee claim for the company to increase the piece rate price from \$0.38 to \$0.416 for one shirk for shirk type 01, 02 and 04
- 2- The workers claim for reinstate Mr. Heng Uy, union president of Winner Factory

### **JURISDICTION<sup>1</sup> OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Section II B, Chapter 12 of the 1997 Labor Law; the Prakas on the Arbitration Council (no. 099 of 21 April 2004), the Prakas on Nomination of Arbitration Council Members (no. 103 of 26 April 2004 and no. 265 of 13 July 2004), 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 not successfully conciliated in respect of two points. The non-conciliation report dated March 01 2005 was sent to The Secretariat of Arbitration Council on 02 March 2005.

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

Arbitrator chosen by the employer party:	<b>Mr. Mr. Mar Samborana</b>
Arbitrator chosen by the worker party:	<b>Mr. An Nan</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Koy Neam</b>

### **HEARING AND EVIDENCE**

**Date and place of hearing:** 4 March 2005 at 11:00 PM and 11 March 2005 at 15:30 PM at the Secretariat of Arbitration Council.

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<sup>1</sup>Jurisdiction means judicial power.

**Witnesses and experts:** N/A

**EVIDENCE CONSIDERED BY THE ARBITRATION PANEL AS BELOW:**

**A. *Obtained from the employer party:***

- 1-Certificate of the Winner dated April 04 1997;
- 2- The Company's statute dated November 28 2000;
- 3- Internal Work Rule dated October 08 2001;
- 4-Letter from the company sent to Kandal Labor Inspector Department dated March 02 2005;
- 5- Report on worker's activity No A 0009 dated February 25 2005;
- 6- Report on worker's activity No A 0057 dated February 25 2005;
- 7- Report on worker's activity No A 0013 dated February 25 2005;
- 8- Payroll slip of the company for February 2005;
- 9- Labor suspension letter of Mr. Heng Uy dated February 26 2005;
- 10- Report on worker's activity No A 1975 dated February 25 2005;
- 11- Report on worker's activity No A 0010 dated February 25 2005;
- 12- Report on worker's activity No A 2036 dated February 25 2005;

**B. *Obtained from the employee party:***

1. Certificate of union registration of Winner Factory No. 194 dated September 08 2004; and letter of registration No.647 dated September 08 2004
2. Letter from the Cambodian Worker Union Federation denying the company's allegation, dated March 10 2005
3. Motion in support of Mr. Heng Uy from workers of the textile section with thumb prints in which 55 workers refused the incitement which prevent from working on February 25 to March 02 2005

**C. *Obtained from the Ministry of Social Affair, Labor, Vocation and Youth (MOSALVY)***

1. Non-conciliation report, dated March 01 2005 of MOSALVY
2. Minute on Labor collective dispute conciliation dated February 28 2005

**D. *Evidence and testimony by the employee during hearing:*** N/A

**E. *The award is non-binding.***

## **CASE SUMMARY**

The company, Winner Knitting Factory LTD, is located at national road 21, village 4, Khum Svay Rolum, Saang district, Kandal province. There are 4028 employees in total. On February 28 2005, the Labor and Vocational Training department of Kandal province were informed of a strike by employees of the factory, the MOSALVY then assigned relevant officers to negotiate at the factory location but could not reach any agreed points among the two issues as stated in the above non-conciliation report. The case was sent to the Secretariat of the Arbitration Council on March 1 2005. On March 01 2005, the company, Winner Knitting Factory requested the Arbitration Council issue an Award to stop the employee's strike in order to wait for the legal settlement of the Arbitration Council. The Arbitration Council issued an Award ordering the employees to stop going on strike immediately and ordered both parties to appear at a hearing on March 04 2005.

On March 4 2005 at 13:30, the Arbitration Council heard the case NO. 08/05 at the Secretariat of the Arbitration Council at which both parties appeared.

In the first day of the hearing, the parties reached an agreement on issue 1 by setting the piece rate price set by the employer: type 1, 02 and 04 to remain at 0.416 and for the workers who do not meet the minimum wage the company will subsidize their basic wage to the amount of USD 45. The company will also give advice [to the worker about] their current practice with an appropriate attitude and language.

On March 11 05 at 15:00, the Arbitration Council again heard the case at the Secretariat of the Arbitration Council in order to further handle issue 2.

The Arbitration Council ordered both parties to have witnesses testifying at the hearing. The employee party brought only some of their witnesses, The employer party had only one witness, the Chinese supervisor. The employer party gave written testimony of ten witnesses but the witnesses did not appear because of security reasons.

At the hearing, Mr. Tian Zhi jiu, a Chinese teacher testified to the issues related to Mr. Heng Uy's misconduct. Mr. Tian testified that on February 23 2005 he had tried to invite Mr. Heng Uy three times to attend to setting the price for the new month but Mr. Heng Uy refused to attend to this. The section teacher asked whether or not Mr. Heng Uy will attend to this next month. Mr. Heng Uy responded that no [he would not]. On February 24 05 in the afternoon, the Chinese teacher told Mr. Mao Sothea, Vice Union President, that if he attended to set the

price he would be welcomed, and at that time, Mr. Mao Sothea said yes. But on February 25 05 in the morning, Mr. Heng Uy did not allow Mr. Mao Sothea to attend to this. The employer decided to set the price for the new month without Mr. Heng Uy and his representative. On the same day, after setting the price around 10:10, the new price was announced to all the workers. At 10: 30 of the same day, all the textile workers where Mr. Heng Uy also performed his job did nothing at their workstations until midday of March 02 05. At midday of this day, all the workers resumed working. Mr. Tian confirmed that on February 25 2005 at 10:30, when the workers started going on strike, he, himself, saw Mr. Heng Uy walking around in the textile building and talking to about five to six workers with an unusual attitude. But he did not know or understand what Mr. Heng Uy said because he did not understand Khmer.

During the strike, the company's witnesses confirmed that there were not any violent act that happened and none of the company's property was damaged or the public order effected in the Factory. The witnesses only saw that Heng Uy held a hammer while walking around and then sat on the clothes boxes. The company's representative argued and alleged that Heng Uy did not intend to set the price and incited the workers to go on strike. When the workers went on strike, Heng Uy, being union president and shop steward, did not appear to negotiate and to settle the workers' claim which is an unusual attitude unlike the past when he was always bringing claims or settling problems on behalf of workers.

The company argued that the suspension of Heng Uy's labor contract since February 26 2005 is a sign to terminate Mr. Heng Uy for the reasons of serious misconduct, in making the company loose USD 300.000 by (1)- Mr. Heng Uy did not attend to setting the price following the company's invitation as usual in the past and did not allow his representative to set the piece rate price; (2)- Mr. Heng Uy incited workers to go on strike as established by Article 83, point B(5) of Labor Law; (3)- Mr. Heng Uy did not appear to settle or give the employer reasons why the workers went on strike in the textile section at that time.

At the hearing, Heng Uy argued that he was invited to set the price and refused, but he argued that he told the company that he had not asked the other workers about the price yet and that therefore he could not attend to setting the price. He acknowledged the questions raised by the Chinese teacher over whether he would join in setting the price or not in this or in the next month? At that time he responded that he would not; it was up to the Chinese teacher to decide. He acknowledged that on February 23 2005, the company invited him three times to set the piece rate price but he refused to do so. He argued that he took leave for three days and returned to work on February 23 2005 therefore he did not have time to ask the other workers as before. Generally, he always asks about 100 workers and as a

result he decides to set how much the piece rate price should be in order to negotiate with the employer. He argued that he has ever attended about more than ten times and the price he set is often accepted by the employer. Regarding the Arbitration Council's questions: on the 23<sup>rd</sup>, when he refused to attend to setting the price, did you ask the employer for a postponement in order to ask the other workers for a price and then set the new price? He replied that he did not ask for a delay; he only refused not to attend to it and when the company asked him whether he would not attend to this task forever in the future? He replied: it was up to the Chinese teacher to decide.

Mr. Heng Uy further argued that on February 24 2005, he had asked the other workers and he had the price for a bid but the company did not invite him to bid on the price instead they invited Mao Sothea to attend to this. Mr. Uy argued that Mr. Mao Sothea met him and asked him whether the company had invited him to set the piece rate price? As a result, he was invited to attend. Mr. Uy replied that " I am the union president here; therefore the company had to invite me, the union president, in cases where the union president is absent the vice union president is authorized to attend to set the price." He also argued that at that time he asked Mao Sothea whether he had asked the price from the workers or not. If he had not he could not attend to setting the price. Therefore, [it was inappropriate for] Mr. Mao Sothea to attend to setting the price as he did. [Mr. Uy] said that he did not allow Mr. Mao Sothea to attend to setting the price and did not give the price he had to Mr. Mao Sothea.

Mr. Heng Uy's role is group leader and repairer. On 25 February 2005 at 10:10, Mr. Uy went to work as normal with the other workers until 10:30. In that time he heard the workers shouting that the piece rate price was too low and then they stopped working. Mr. Uy argued that all workers who went on strike told him that it was not his issue, that it was the workers' issue and that therefore he should not attempt to solve the problem. As a result he did not appear. Mr. Heng Uy argued that he did not incite the workers to go on strike and if he did it would not have been [just] in the textile section but the whole building. All the workers went on strike voluntarily due to the piece rate price being too low. On the other hand, he attended with the workers.

While the group leader was asking Mr. Heng Uy why he did not appear to solve the problems, Mr. Uy responded that, in the past, the Director told Mr. Heng Uy that if he had any problems, he should meet with the section teacher Tian only. Therefore, he did not meet with the Director. But when the Arbitration Council asked Mr. Heng Uy about the issues which occurred, and whether he met the section teacher Tian, [he responded, saying] he did not meet him because the workers did not ask him for assistance.

## **Findings of fact**

- Having examined the non-conciliation report
- Having listen to the company and the employee parties as described above
- Having reviewed all the above documents

## **We find that**

### **Issue1:**

Both parties agreed that " the price agreement set by the employer for skirt type 01, 02 and 04 being the same price 0.416 and for those who do not reach the basic wage the company will subsidize and will be invited to receive advice from the company as to the current practice with an appropriate attitude and language.

### **Issue 2:**

The employee demands the company reinstate Mr. Heng Uy after he was suspended awaiting termination.

Mr. Heng Uy is a Union President and shop steward in the Winner Knitting factory. The company accused Heng Uy of inciting a strike but the company did not give any specific evidence. The company decided to indefinitely suspend his work on February 26 2005 based on the letter dated February 26 2005 by copies to the Labor Inspector of Kandal province. The company has not sent the letter of termination to the Kandal Labor Inspector.

The Arbitration Council finds that the company paid wages based on the piece rate cost (lot). The company held meetings with the Union President and Shop Steward on piece rate price setting before February 23 2005. Heng Uy regularly attended and [gave input into] the setting of the piece rate price which was always accepted by the employer.

Mr. Heng Uy refused to attend to the price setting on February 23 2005 three times because he had not asked the other workers in the textile building [for their input] but he did not tell the employer that he would ask the other workers and then attend to it later. Mr. Heng Uy did not give the price, which he had and had gotten from the workers on February 24 2005 to Mr. Mao Sothea, the Vice President in order that he attend following the invitation of the employer. In addition Mr. Mao Sothea did not attend because he was not authorized by the Union President. On February 25 2005 at 10: 30 am, the workers of the textile section went on a non-violent strike until midday of March 02 2005 which included Heng Uy. There was no

one appearing to negotiate or to present the claim to the company in order to settle the disagreement.

Article 2 (K) of the Internal Work Rule of the company states that each shop steward in both sections shall persistently respect his/her responsibilities, which is [the role of the] legal representative of the worker in order to have progress between the parties, the company and the employee.

### **Reasons for decision**

**Issue 1**- both parties agreed.

**Issue 2**- Article 83 B (5) of Labor Law states that "[The following are] considered to be serious offenses ...Inciting other workers to commit serious offenses."

Article 330 states that "... Committing violent acts during a strike is considered to be serious misconduct that could be punished, including work suspension or disciplinary layoff."

Because the Arbitration Council only listened to a witness of the employer; the Arbitration Council considers the testimony that is given as adding only to the argument of the company's management.

In this case, the Arbitration Council finds that there is not any evidence to show that Heng Uy incited other workers to go on strike as argued by the employer. Furthermore, according to the parties' argument, there was not violence during the strike or any damage [sustained].

Also, the Arbitration Council considers that the non-violent acts of the workers in Winner Knitting factory were not serious misconduct. Therefore, although there was an appeal to go on strike, it is not considered to be serious misconduct as defined in Article 83 B (5); unless there is evidence to show that Mr. Heng Uy incited the workers to commit violent acts during the strike

But, the case indicates that Mr. Heng Uy who is the Union President and shop steward did not fulfill his duty to be a good partner with the company.

Article 2 (K) of the Internal Work Rule states that each shop steward in both sections shall respect persistently his/her responsibilities, which is legally representative of the worker in order to have progress between the parties, the company and the employee.

In addition, Article 284 of Labor Law stipulates that "the missions of the shop steward are as follows: to present to the employer any individual or collective grievances relating to wages and to the enforcement of labor legislation..."

Heng Uy refused to set the piece rate price on February 23 2004 three times despite the employer's invitation. In a case where he had a proper reason, which he was not ready to participate to set the price, he is entitled and should ask the company for a postponement in order to get the necessary data to set [the price]. In contrast, Mr. Heng Uy refused to attend to setting the price by responding that he did not ask the workers for the price and his answer was not clear as to his future attendance [to setting the price] which caused the company to misunderstand [and think] that Heng Uy will not attend [to setting the price] in the future.

When the Company invited Ms. Mao Sothea to attend to setting the price instead of him, the Arbitration Council considers that he did have other choices besides participating or prohibiting Mao Sothea from participating in order to maintain a good partnership with the employer and be good shop steward. The Arbitration Council considers that Mr. Heng Uy did have other choices besides participation, such as telling Mr. Sothea to talk to the employer [and say] that he is ready to set the price or give Mr. Sothea the price he had in order to set the price with the employer instead of him. In this case, the Arbitration Council finds that Mr. Heng Uy chose not to attend to setting the price, not to give the price he had and not to authorize the vice president to set the price.

As a result, the new price setting for some types of skirt caused a lot of the workers to be disappointed because the representative and yourself did not attend to bargain as was the normal [action] in the past which make the issues occurred related to the new piece rate price. The Arbitration Council considers that the issues which occurred in relation to the new piece rate price would, in fact, have been avoided if Mr. Heng Uy participated or gave his representative the price instead of him. This is because Mr. Heng Uy also argued himself that the employer has always accepted his request in the past, on at least 10 occasions.

Also, when the employees were disappointed with the new piece rate price, Mr. Heng Uy, as a union president and shop steward, is a representative of workers' interests as defined by

Article 284 above and should have immediately met with the employer party to confirm the workers' claim and negotiate a new piece rate price. In contrast, he did not do so.

The Arbitration Council finds that Mr. Heng Uy clearly made a mistake in fulfilling his duty as a shop steward but this mistake was not serious misconduct as defined in Article 83(b) or 330, which led the employer to suspend or terminate him promptly.

The employer can suspend Heng Uy's employment contract without pay if the suspension is under Article 71 of Labor Law. Article 71 (7) allows the employer to [suspend] the employee's contract during disciplinary action as defined in the Internal Work Rule.

But in this case, the Internal Work Rule<sup>2</sup> of the company does not have any provision talking about a suspension procedure in order to discipline the employee. Therefore, the company cannot discipline Mr. Heng Uy by suspending him without payment.

Also, even if the Internal Work Rule allows the employer to suspend the employee's labor contract, Article 27 of Labor Law states, "*Any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labor Inspector is empowered to control this proportionality*". In this case, the employer has suspended Mr. Heng Uy indefinitely. The Arbitration Council considers that the Law does not allow the employer to suspend the employee's labor contract indefinitely whilst disciplinary action [occurs] because the indefinite period is not proportional to the seriousness of misconduct as defined in Article 27 of the Labor Law.

Although, the employer cannot suspend Mr. Heng Uy indefinitely, the Arbitration Council considers that Mr. Heng Uy should be disciplined for failure to fulfill his mission as a shop steward. Therefore, under equity principles and the Arbitration Council authority as established by Article 34 of Prakas 99, 2001 on the Arbitration Council, the Arbitration Council decides to issue an Award for a written warning for Mr. Heng Uy and that Mr. Heng Uy should be in a disciplinary probation period for not longer tree months from February 23 2005. During the disciplinary probation period, if Mr. Heng Uy commits further misconduct, the employer can take termination action following the procedure of the Labor Law.

### **Order**

Based on the facts, law, evidence and reasoning, the Arbitration Council decides and issues the order as follows:

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<sup>2</sup> The employer can include the suspension procedure to the employee as disciplinary action in the Internal Work Rule with including additional request of disciplinary action by prior consulting with shop steward and then sent to the Labor Inspector as defined in Article 30 of Labor Law on modification

- 1- Maintain the piecework price 0. 416 of skirt 01, 02, and 04. For those who do not reach the basic wage of USD 45 the company has to subsidize [the amount the employee earns per piece up to USD 45]. The company has a right to provide advice based on the current practice of the company with a good attitude and appropriate language. (Based on the agreement)
- 2- The employer must reinstate Mr. Heng Uy in his previous position and provide wages from the day of his suspension of Mr. Heng Uy, February 26 2005
- 3- The Award becomes a written warning to Mr. Heng Uy and Mr. Heng Uy must be on the disciplinary probation period for not longer than three months from February 26 2005. During the disciplinary probation period, if Mr. Heng Uy commits further misconduct, the employer can take termination action following the procedure of the Labor Law.

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

Arbitrator chosen by the employer party:

Name: **Mr. Mar Samborana**

Signature: .....

Arbitrator chosen by the employee party:

Name: **Mr. An Nan**

Signature: .....

Chair of Arbitration Panel:

Name: **Mr. Koy Neam**

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.*