

KINGDOM OF CAMBODIA

NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 10/04

Date of award: 19 March 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Eternity Apparel (Cambodia) Co., Ltd

(Employer party)

And

Cambodia Federation of Independent Trade Union (CFITU)

(Employee party)

Details of employer party:

Address: #646C, National Road 2, Chak Angre Leu commune, Meanchey district,
Phnom Penh.

Tel: 023 425 838

Fax: 023 425 838

Representatives: Attorney Sar Samnang

Details of employee party:

Address: #45, Street 63, Boeng Keng Kang I commune, Chamkar Mon district,
Phnom Penh.

Tel: 023 213 356

Fax: N/A

Representatives: 1- Mr. Ros Sok, CFITU President;
2- Mr. Saom Vat, CFITU staff member; and
3- Mr. Chan Ratha, CFITU staff member;

ISSUES IN DISPUTE:
(In non-conciliation report)

- 1- Workers demand that the company reinstate the workers in the ironing section.
- 2- Workers demand that overtime work be on voluntary basis.
- 3- Workers demand that if [they are to] work overtime until 09h00PM, the company grant food allowances of 2,000 Riels in addition [to the overtime wages].
- 4- Workers demand that the company hand over their time cards before 4h00PM.
- 5- Workers demand that the company pay wages in accompany with pay slips.
- 6- Workers demand that the company pay 50 percent of the wages when the company has no work for workers.
- 7- Workers demand that the company give permission for leave when a worker is busy or has an urgent matter.

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 on 12 January 2004 as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was unsuccessful and non-conciliation report dated 13 January 2004 was submitted to the Secretariat of the Arbitration Council on 15 January 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:

Mr. **Mar Samborana**

Arbitrator chosen by the worker party:

Mr. **An Nan**

¹Jurisdiction means judicial power.

Chair arbitrator (chosen by the two arbitrators):

Mr. **Ang Eng Thong**

HEARING AND EVIDENCE

Date and place of hearing:

- 1- First, on 09 March 2004 at 14h30 at Arbitration Council Secretariat; and
- 2- Second, on 12 March 2004 at 14h00 at the Secretariat of Arbitration Council.

Witnesses and experts: N/A

Evidence considered by the Arbitration Panel:

I. Documents obtained from employer party:

1. Letter appointing Attorney Sar Samnang to represent the company, dated 09 March 2004;
2. Internal work rules of the company approved by the Labor Inspectorate on 29 August 2000;
3. Non-conciliation report of seven issues dated 06 March 2004; and
4. Letters of resignation and of receipt of termination payments by 12 workers, nine of whom were involved in the dispute, including:
 - Khom Sokheang Male Ironing section and CFITU President
 - Soy Vansophea Male Ironing section and CFITU Vice President
 - Ven Ngim Male Ironing section
 - Phan Sopheak Male Ironing section
 - Long Ratanak Male Ironing section
 - Saing Seang Hai Male knitting section
 - Vong Von Male Ironing section
 - Heang Ra Male Ironing section
 - Ong Sopal Male Ironing section

² From Articles 309 to 317 of the Labor Law

- Nuon Vanara Male Ironing section
- Chong Mau Male Ironing section.

II. *Documents obtained from employee party:*

1. Letter of designation of the composition of the Committee of Eternity Apparel CIFTU, dated 23 February 2004;
2. Name list of nine employees who are CIFTU activists and who were dismissed from Eternity Apparel on 21 February 2004;
3. Letter (No. 22/04 of 27 February 2004) of CIFTU seeking MoSALVY intervention in the reinstatement of its nine activists; and
4. Letter (No. 370 SALVY of 10 March 2004) pressuring the company to accept the nine workers back to work.

III. *Presentation by the disputed parties in the hearing*

CASE SUMMARY

Eternity Apparel is located at #646, National Road 02, Chak Angre Krom Commune, Meanchey District, Phnom Penh and employs 700 people. On 24 February 2004, the company's workers lodged a complaint to Meanchey District's Labor Inspectorate, asking the company to improve 11 points in the working conditions. On 26 February 2004, the two parties in question conciliated and agreed on four of the above 11 demands. Whereas, the remaining 7 issues not successfully conciliated were as follows:

- 1- Workers demand that the company reinstate the workers in the ironing section.
- 2- Workers demand that overtime work be on voluntary basis.
- 3- Workers demand that if [they are to] work overtime until 09h00PM, the company grant food allowances of 2,000 Riels in addition [to the overtime wages].
- 4- Workers demand that the company hand over their time cards before 4h00PM.
- 5- Workers demand that the company pay wages accompanied with pay slips.
- 6- Workers demand that the company pay 50 percent of the wages when the company has no work for workers.

- 7- Workers demand that the company give permission for leave when a worker is busy or has an urgent matter.

The case was forwarded to the Secretariat of the Arbitration Council on 02 March 2004. The Secretariat of the Arbitration Council invited the two disputing parties to appear before the Arbitration Council with vital documents and evidence beneficial for their claims on 09 March 2004 at 14h30mn. In the first meeting with the Arbitration Council, the employees who appeared were from the CIFTU who were just representatives and defenders while the direct parties to the dispute, including [those from] Free Trade Union of Cambodian Workers and CCAWDU, did not appear for the resolution. On the employer side, Attorney Sar Samnang provided the report dated on 06 March 2004 on the seven unsuccessfully-conciliated issues of the disputed parties and letters of receipt of severance pay, as well as letters of resignation of the 12 workers, nine of whom were involved in the dispute. The CIFTU President asked the Arbitration Council to give him a week to investigate the issues, reasoning that he had not learnt about the conciliation as set out in the above conciliation report of the seven issues. Due to the time limit for the Arbitration Council to resolve a collective labor dispute, it decided to give two days as of 09 March 2004 to the president to conduct the investigation and determined that the two parties should return for another hearing at the Secretariat of the Arbitration Council on 12 March 2004 at 14h00.

On 12 March 2004, only the representatives of the workers; including Mr. Ros Sok, the CIFTU President and Mrs. Tep Kim Vanary, Vice President and Mrs. Chao Srey Ya, trainer of the CIFTU; attended the hearing; the 12 workers who resigned did not appear to state their demands. For the employer party, it had Attorney Sar Samnang as a representative. In the 12 March 2004 hearing, the Arbitration Council raised each of the unsuccessfully-conciliated issues for resolution.

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- For issue 01 regarding the reinstatement of nine workers, the employer's attorney presented the letters of severance pay receipt and letters of resignation of 12 employees, nine of whom were those involved in the dispute. The employer representative furnished a report of successful conciliation dated 06 March 2004, in which their resignations and the working conditions they claimed in the other six issues had already been resolved. As for the CIFTU representative of the workers who have demanded [the seven issues], they objected to the conciliation report dated 06 March 2004, saying that without any fingerprints or things alike, it was just a document of falsification. The CIFTU President claimed that he had met with those whose names were in the report (such as Khom Sok Kheang, Yang Yoeung) and that they denied knowing and fingerprinting [the report], so, he said, it was a fraudulent letter; on the other hand, the nine workers were threatened by the employer or its associates, which is why they did not dare to appear before the Arbitration Council. The employer's attorney claimed that the conciliation report dated 06 March 2004 were really fingerprinted but it was not clear; which is why, when it was photocopied, the fingerprints were not clearly visible. And there were no threats for the workers to receive the money or to fingerprint the report or the letters of resignation.
- 2- Regarding issue 02, the employer's attorney claimed that the employer agreed that working overtime is on voluntary basis.
- 3- For issue 03, the company's attorney confirmed that working overtime is voluntary and as for food allowances, the company would offer 1,000 riels each as provided for in MoSALVY

Instrument No. 017 SALVY of 18 July 2000. The CIFTU side said that the company had so far had workers work until 09h00 PM, for four or five hours; accordingly, despite the voluntary basis, the company was asked to offer 2,000 riels in food allowances to the workers who agree to work overtime.

- 4- For issue 04, the company agreed to hand over the time cards before 4h00 PM to those who are not working overtime.
- 5- For issue 05, the attorney representing the employer claimed that the company agreed to produce pay slips that clearly specify the amount in each category and give them out at pay time, and it would also try its best to get this done in time for the payday for April 2004.
- 6- For issue 06, the attorney claimed that the employer has and will continue paying 50 percent [of wages] to its workers when there is no work.
- 7- For issue 07, the attorney ensured that the company agreed to facilitate leave requests of the workers who can reasonably show that they are busy or have urgent matter, and to permit leave as appropriate to the circumstances.

REASONS FOR DECISION :

- 1- **For issue 01:** Because the nine dismissed workers have agreed with the employer to accept the indemnity, wrote letters of resignation by themselves and failed to appear before the Arbitration Council to support or continue their demands regarding the dismissal or indemnity or the reasons why they resigned, the Arbitration Council, therefore, finds that they have indeed resigned and given up the claims for their reinstatement.
- 2- **Issue 02:** The employer party accepts the claim, agreeing that working overtime must be voluntary.

3- **Issue 03:** According to Article 140(C) of the Labor Law, which provides about the extension of time to compensate the working hours not worked due to the suspension of a labor contract:

"Hours of work cannot exceed ten hours per day."

Although the article does not relate to the maximum overtime hours [which may be worked] in case of irregular urgent matters, it indicates an appropriate maximum number of working hours.

Additionally, Article 01 of Prakas 80 SALVY dated 10 March 1999 stipulates, "The owner or director of an enterprise/establishment covered by the Labor Law may seek MoSALVY's permission to extend the working hours beyond the regular working hours." In cases that an enterprise/establishment requests overtime work, the Labor Inspectorate allows it, saying, "in order to ensure workers' health, the Labor Inspectorate allows only two hours of overtime work per day."

Therefore, although the Labor Law fails to explicitly limit the overtime hours in case of an irregular urgent matter, the Arbitration Council finds that the company may not ask its employees to work overtime for the number of hours longer than ten hours per day [including the regular working hours].

Furthermore, Article 04 of Prakas 017 SALVY dated 18 July 2000 states, "workers who volunteer to work overtime as is requested by the employer, are entitled to food allowances of 1,000 riels per day or otherwise to a free meal. Accordingly, for their voluntary and lawful overtime work, workers are entitled to 1,000 riels per day in addition to their wages for the duration of overtime work set forth in Article 139 of the Labor Law.

- 4- **Issue 04:** The employer agrees to make time cards available before 16h00 PM to the workers who do not volunteer to work overtime.
- 5- **Issue 05:** The employer party agrees to produce pay slips that expressly clarify the amount in each category and to give them out to workers upon payment, and [it will] try to make them available in time for the payday for April 2004; whereas, the CFITU side also agrees on the given period.
- 6- **Issue 06:** The employer party agrees to pay workers 50 percent of their salaries when the company has no work to do and that the amount will not set off against the 18-day annual leave [to which workers are entitled].
- 7- **Issue 07:** The employer party agrees to make it easy for workers to request leave when they reasonably prove that they are busy or have an urgent matter, and to permit leave as appropriate to the circumstances.

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

DECISIONS AND ORDERS :

- 1- **Reject to the workers' demand for the employer to reinstate the 9 (nine) ironing workers.**
- 2- **Order the employer party to respect and implement the principle voluntary overtime. (as agreed by both sides)**
- 3- **Order the employer not to have workers work overtime for more than two hours per day. During the overtime hours, the employer must pay the workers salaries and food allowances of 1,000 riels per day.**

- 4- Order the employer party to hand time cards to the workers who do not work overtime before 16h00 PM. (as agreed by both sides)`
- 5- Order the employer to give out pay slips upon payment. The handing of the pay slips must be implemented by the payday for April 2004. (as agreed by both sides)
- 6- Order the company to pay the workers 50 percent of their salaries when the factory has no work. (as agreed by both sides)
- 7- Order the employer to give leave permits to workers who are truly busy and/or have an urgent matter with acceptable reasons. (as agreed by both sides)

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the employee party:

Name: **An Nan**

Signature:

Chair of Arbitration Panel:

Name: **Ang Eng Thong**

Signature:

This award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.