



Case number and name: 103/06 – M&V III
Date of Award: 21 November 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party: **MAR SAMBORANA**
Arbitrator chosen by the worker party: **AN NAN**
Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

1- Employer Party

Name : **M&V International Garment Branch III**
Address : No. 1623, National Road No. 2, Sangkat Chak Angrae Kraom,
Khan Meanchey, Phnom Penh
Telephone : 023 425 010/ 425 043, 016 707 046 Fax: 023 425 001
Employer Representatives:

1. Mr. Yin Nak Deputy Administrative Manager;
2. Mr. Long Heang GMAC Officer.

2- Worker party

Name : **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU)
and C.CAWDU in M&V**
Address : No. 6C, Street 478, Sangkat Tuol Tumpung I, Khan Chamkarmon,
Phnom Penh
Telephone : 023 210 481, 012 396 069 Fax: 023 210 481
Worker Representatives:

1. Mr. Ek Sopheakdey Second Vice President of C.CAWDU;
2. Mr. Vann Phea President of C.CAWDU in M&V Factory;
3. Ms. Roath Sothy Vice President of C.CAWDU in M&V Factory;
4. Mr. Pouch Chanthea Union Activist;
5. Mr. Khon Sothy Union Activist;
6. Mr. Vet Nhav Union Activist.

ISSUES IN DISPUTE

(In the non-conciliation report)

- 1- The workers demanded that the company provide them with 100 percent wages when the company has no work for the workers to perform for a short period of time, so that workers can ensure their living conditions. The company rejected the demand claiming that it implements the previous agreement which provides that when the company has no work for the workers to perform for a short period of time, the company provides 50 percent of the regular wage; but if the company is permitted by the Ministry of Labour and Vocational Training to suspend workers for a long period of time, the company shall pay only for accommodation;
- 2- The workers demanded that the company convert those who have worked for more than two months to regular workers because they have worked as probationary workers for a long time. The company said that it sometime hires casual workers based on an increase in production following Article 9 and 10 of the Labour Law and at present the company is converting casual workers to become regular workers by signing fixed duration contracts;
- 3- The workers demanded that the company reinstate Khon Sothy, Pouch Chantha and Vet Nhav and pay them full wages and bonuses during the period since the company dismissed them, because they were not blackmailing other workers, the workers were simply raising money to hold a monthly party themselves. The company did not agree to reinstate the above three workers arguing that these three workers blackmailed other workers every month (if the workers did not give them money, they would dismiss those workers). Furthermore, the company rejected the idea of negotiating about this issue because they argued that it is an individual dispute. The three workers admitted that they did blackmail other workers.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).

An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 1568 dated 24 October 2006 was submitted to the Secretariat of the Arbitration Council on 24 October 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:

Place of Hearing : **The Arbitration Council**, Phnom Penh Centre, Building A,
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh.

Date of the Hearing : 3 November 2006 (from 2:00 p.m. to 5:30 p.m.)

Procedural Issues:

On 19 September 2006, the Department of Labour Disputes received a complaint from the C.CAWDU in M&V III Factory demanding that the company improve four issues in relation to working conditions. Having received the complaint, on 13 October 2006 the Department of Labour Disputes designated its expert official to conciliate the dispute and as a result one out of four issues was successfully conciliated. The three non-conciliated issues were submitted to the Arbitration Council on 24 October 2006.

Having received the case, the Arbitration Council summoned the employer party, C.CAWDU in M&V Factory and the workers to attend a hearing and to conciliate the three non-conciliated issues on 3 November 2006 at 2:00 p.m. Both parties were present in accordance with the Arbitration Council's invitation. On the hearing day, the Arbitration Council made a further attempt to conciliate and two issues were successfully conciliated - issues 1 and 2. Therefore, in this Award, the Arbitration Council considers only the third issue in dispute based on the evidence and the findings of fact as follows:

EVIDENCE**Witness and experts besides parties:**

Witnesses:

1. Mr. Pech Vuthy Ironing Section worker;
2. Mr. Lim Kim Ironing Section worker;
3. Mr. Ngoun Saroeun Ironing Section worker;
4. Mr. Sam Sarat Ironing Section worker;
5. Mr. Pech Chanthan Ironing Section worker;
6. Mr. Khut Pengchhea Ironing Section worker;
7. Mr. Sok Theary Ironing Section worker.

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 - 1- Brief report defending case 103/06 dated 1 November 2006;
 - 2- Internal Work Rules of the company registration No. 045 dated 2 May 2001;
 - 3- Minute of the collective labour dispute conciliation at M&V Company dated 5 December 2002;
 - 4- Business Registration License No. 1311 dated 11 July 1995;
 - 5- Job Announcement looking for female workers for the Embroidery Unit dated 27 March 2002 prohibiting bribery in exchange for work;
 - 6- Job Announcement looking for workers dated 17 October 2005 listing the relevant documents required for those who want to work for the factory;
 - 7- Complaints of Khut Pengchhea, Sam Sarat, Lim Kim, Sok Theary, Pech Chanthan and Ngoun Saroeun dated 12 September 2006 suing Pouch Chantha, Vet Nhav and Khon Sothy for blackmailing [them] on payday;

- 8- Special Invitation dated 2 October 2006 from the Department of Labour Disputes to the Director of M&V Company to provide information on the dismissal of Khon Sothy, Pouch Chantha and Vet Nhav on 3 October 2006 at 2:00 p.m.;
 - 9- Letter of Khon Sothy, Pouch Chantha and Vet Nhav requesting for the withdrawal of their complaints from the Department of Labour Disputes dated 3 October 2006;
 - 10- Letter from the Director of the company authorizing Mr. Yin Nak and Mr. Long Heang dated 3 November 2006.
- b. Provided by the worker party:**
- 1- List of 27 workers' names from the Ironing Section testifying that Pouch Chantha, Khon Sothy and Vet Nhav did not blackmail workers and that workers voluntarily gave him money to hold a party at the end of the month;
 - 2- Application form of Khon Sothy, Pouch Chantha and Vet Nhav applying for membership at C.CAWDU;
 - 3- Identification Card of Khon Sothy, Pouch Chantha and Vet Nhav as C.CAWDU leaders;
 - 4- Special Invitation dated 2 October 2006 from the Department of Labour Disputes to the Director of M&V Company to provide information about the dismissal of Khon Sothy, Pouch Chantha and Vet Nhav on 3 October 2006 at 2:00 p.m.;
 - 5- Invitation No. 1422 dated 4 October 2006 from the Department of Labour Disputes to the Director of M&V Company to attend the collective labour dispute conciliation meeting with leaders of C.CAWDU on 12 October 2006 at 8:30 a.m.;
 - 6- Letter No. 15/06 dated 25 July 2006 to the Director of M&V Company about the election to select new union leaders;
 - 7- Registration Certificate No. 840 dated 18 November 2005.
- c. Provided by the Ministry of Labour and Vocational Training:**
- 1- Report No. 1568 dated 24 October 2006 of the Director of the Department of Labour Disputes on the collective labour dispute conciliation in M&V Company;
 - 2- Minute of the collective labour dispute conciliation dated 13 October 2006.
- d. Provided by the Secretariat of the Arbitration Council:**
- 1- Invitation No. 461 dated 25 October 2006 to the worker party to attend the hearing;
 - 2- Invitation No. 460 dated 25 October 2006 to the employer party to attend the hearing.

FINDINGS OF FACT

- Having examined various documents submitted to the Arbitration Council;
- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimony from both the employer and the worker parties;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

Issue 3: The workers demanded that the company reinstate Khon Sothy, Pouch Chantha and Vet Nhav

- Mr. Khon Sothy, Pouch Chantha and Vet Nhav are team leaders in the Ironing Section;
- At the Arbitral hearing, Khon Sothy, Pouch Chantha and Vet Nhav admitted that they did receive US\$3 from each casual worker on payday and Nhem Sony was the money collector. However, Khon Sothy, Pouch Chantha and Vet Nhav denied that they forced those workers to pay them money and that rather, those workers voluntarily gave them money to organize a party for all [the workers];
- Most of the casual workers did not go to the party with the three team leaders; only a small number of workers sometimes attended the party;
- The union has provided a list of 27 workers' names testifying that they voluntarily gave money and that they were not forced to do so. Among the 27 workers, seven became witnesses for the company. At the hearing, the employer's witnesses claimed that they were forced to pay the money, otherwise they would not have a new job after their contracts expired.
- All witnesses testified that they have paid US\$3 to Khon Sothy, Pouch Chantha and Vet Nhav through Nhem Sony on payday. [In addition] that the money could not be less than the expected US\$3, even US\$1 less, or they would not be able to continue their work;
- The company dismissed Khon Sothy, Pouch Chantha and Vet Nhav on 8 September 2006 without prior notice and based on the following four reasons:
 1. The announcements of the company dated 27 March 2002 and 17 October 2005 prohibiting bribery in exchange for jobs. The three workers have violated the announcements of the company by taking money from casual workers;
 2. Oral and written complaints of workers on 6 September 2006;
 3. Article 83(B) of the Labour Law; and
 4. Article 260 of the Labour Law;
- The announcements of the company dated 27 March 2002 and 17 October 2005 stated that the company will dismiss both recipients and providers of bribes. However, in this case, the company did not dismiss those who provided bribes because they agreed to be witnesses for the company. The company dismissed only the bribe recipients. The seven witnesses admitted that they gave a US\$3 bribe on the payday in order to continue their work;
- The employer said that the dispute was not a collective dispute, but an individual dispute because the dispute was between the employer and the three workers. Khon Sothy, Pouch Chantha and Vet Nhav asked two other union federations to help them – Cambodian Industrial Union Federation (CIUF) and Cambodia Federation of Independent Trade Union – before seeking help from Coalition of Cambodian Apparel Workers' Democratic Union. The company has already been to settle the dispute twice at the Ministry of Labour and Vocational Training. The three workers have already withdrawn their individual complaint from the Department of Labour Disputes on 3 October 2006 and they were not on the list of candidates for union leader position in Letter No. 15/06 dated 25 July 2006. The worker party did not respond directly to the claims of the employer;

- The union said that the dispute was a collective dispute because the three workers were union activists. They joined the campaign demanding the collective benefits for workers in July 2006 in order to collect voters. However, Khon Sothy, Pouch Chantha and Vet Nhav did not provide documents proving that they were activists of C.CAWDU on 17 November 2006; C.CAWDU sent the membership application forms and C.CAWDU identification cards of Khon Sothy, Pouch Chantha and Vet Nhav to the Arbitration Council.

REASONS FOR DECISION

Issue 3: The workers demanded that the company reinstate Khon Sothy, Pouch Chantha and Vet Nhav

In this case, the employer argued that the dispute was an individual dispute and that the Arbitration Council did not have jurisdiction to settle the dispute. Therefore, the Arbitration Council will consider whether or not the Arbitration Council has jurisdiction over the dispute.

In regards to jurisdiction, in previous awards of the Arbitration Council, it has stated, "*Normally the Arbitration Council will follow the decision of the Labour Inspector and the Minister of Labour and Vocational Training, if it has no clear reason to reject the case.*" (See Arbitral Awards 10/03 – Jacqsintex, 07/05 – Coca Cola, 41/04 – Micasa and 02/04 – Cambodiana Hotel).

Article 302 of the Labour Law provides, "*A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardise the effective operation of the enterprise or social peacefulness.*"

In Arbitral Award 10/03 – Jacqsintex, the Arbitration Council clarified, "*In order to identify a dispute as a collective dispute, three requirements of the collective dispute must be met as stated in Article 302 of the Labour Law. The three requirements are:*

- A. dispute between a certain number of workers and one or more employer;*
- B. issue of the dispute related to the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers;*
- C. the dispute could jeopardise the effective operation of the enterprise or social peacefulness.*"

In cases 20/05 – Fortune, 57/06 – Evergreen Garment, 77/06 – PCCS and 83/06 – Roo Hsing, the Arbitration Council declined to consider the demands of workers because the dispute did not meet requirement C. Likewise, in this case, requirement A and B have been met because the complaint was lodged by a union who represents workers and the dispute was related to the relationship between workers and the employer. The requirement C has not yet been met, even though the local union has helped the workers to settle this complaint. Three workers are only a small number compared to the total number of 2,976 workers in the factory and they are not [uniquely] skilled workers which the company cannot do without even though they were team leaders in the same Ironing Section. The Arbitration Council considers that not all members of C.CAWDU in M&V will support the three workers causing to jeopardise the effective operation of the enterprise or social peace (see Arbitral Awards 20/05 – Fortune, 57/06 – Evergreen Garment, 77/06 – PCCS).

In addition, the Arbitration Council considers that not all disputes lodged by the union are collective dispute unless those disputes meet the requirements provided in Article 302 of the Labour Law which refer to the definition of a collective dispute.

Based on the above interpretation, the Arbitration Council considers that the dispute was not a collective dispute but an individual dispute which arose between the three workers and the company and the dispute shall be settled based on the procedures provided in Article 301 of the Labour Law.

In accordance with Chapter 12, Section 2 of the Labour Law, the Arbitration Council has jurisdiction only over collective disputes. Therefore, the Arbitration Council does not have jurisdiction over this dispute. Thus, the Arbitration Council declines to consider this dispute.

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

DECISION

Decline to consider the workers' demand that the company reinstate Khon Sothy, Pouch Chantha and Vet Nhav.

TYPE OF AWARD: NON-BINDING AWARD

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.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **MAR SAMBORANA**

Signature:

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: