

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case:105/04

Date of award:10 January 2005

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**United Eternity (Cambodia) Co., Ltd.**

(Employer party)

**AND**

**Dhamathipaktay Federation Union (DTFU)**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representative:** 1- Mr. Mok Chorn, Administrative Director

**Address:** # 650, National Road 2, Chak Ang Re Krom quarter, Mean Chey district, Phnom Penh.

**Tel:** 012 875 872 **Fax:** N/A

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representative:** 1-Mr. Kheng Srey, Union President and staff

**Address:** # 07, Street 06, Prek Leap quarter, Rousey Keo district, Phnom Penh.

**Tel:** 102 941 662 **Fax:**N/A

**ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The worker party demands the company pay 50 percent wages during the [work] suspension from 1 September to 18 October 2004.
- 2- The worker party demands the company provide the US\$5 attendance and seniority bonuses, and annual leave paid for one half day per month when the company suspended the Labour Contract of workers from 1 September to 18 October 2004.

## **JURISDICTION OF THE ARBITRATION COUNCIL :**

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labour Law (1997); the Prakas on the establishment of the Arbitration Council 338/02; the Prakas on the Arbitration Council 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Nomination of Arbitrators 103/04 and 265/04.

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 Labour Law. That conciliation not successful and the non-conciliation report dated 24 November 2004 was submitted to the Secretariat of the Arbitration Council on 6 December 2004.

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

|   |                          |
|---|--------------------------|
| Arbitrator chosen by the employer party:          | <b>Mr. Ouk Ry</b>        |
| Arbitrator chosen by the worker party:            | <b>Mr. Vong Vanna</b>    |
| Chair arbitrator (chosen by the two arbitrators): | <b>Mr. Sok Mathoeung</b> |

## **HEARING AND EVIDENCE:**

**Date and place of hearing:** 15 December 2004 at 8:00 a.m. at the Secretariat of the Arbitration Council.

**Witnesses and Experts:** N/A

## **EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW :**

### **Provided by the employer party:**

- 1- Payroll for five months from July to November 2004;
- 2- Internal Work Rules of United Eternity (Cambodia) Co., Ltd.;
- 3- Certificate of most representative status union in the United Eternity dated 8 January 2003;
- 4- Certificate of commerce registration dated 4 October 2002;
- 5- Certificate of MFN/GSP list dated 12 January 2002 due date, 12 January 2003;
- 6- Agreement between company representatives and union representatives dated 6 October 2004;
- 7- Company's letter of labour contract suspension dated 6 October 2004;

- 8- Letter from the Labour Inspection Department informing the Director of United Eternity Cambodia Ltd. about the suspension of the workers' labour contracts and referencing the letter from the company Director dated 6 October 2004; and
- 9- Letter from the Chief of the Labour Inspection Department informing the local Union President of United Eternity about recognition of union leaders in the second term and referencing letter dated 25 May 2003.

**Provided by the employee party: N/A**

**Received from MoLVT: N/A**

**CASE SUMMARY:**

United Eternity (Cambodia) Co., Ltd. is located at #650, National Road Number 2, Chak Angrek Kraum, Mean Chey District, Phnom Penh, and employs about 689 workers. There are 210 sewing workers who are divided into five groups (based on the monthly payroll, groups 2, 3, 4 and 5 worked on the second floor in July to November 2004). So far, there are two unions in the company:

- 1- CCAWDU, recognized by the Ministry of Labour, has most representative status
- 2- A Dhama Thpaktay Federation Union (DTFU has approximately 20 members and registered with the Ministry of Labour on 19 October 2004).

The DTFU filed a complaint with the Labour Inspector in the Meanchay district about the employer changing two working conditions on 12 November 2004. After receiving the complaint, officers were assigned to [help] negotiations [between the parties] and finally negotiated on 24 November 2004; as a result, there were two non-conciliated points out of two issues.

On 15 December 2004 at 8:00 a.m., the Arbitration Council heard the case at the Secretariat of the Arbitration Council, which both parties attended for the conciliation and hearing process.

**FINDINGS OF FACT:**

- Having examined minutes of the conciliation of the collective labour disputes
- Having listened to the company and the employees as described above
- Having checked all other relevant documents above

**We find that:**

*First issue:*

- 1- The company suspended the labour contracts of the workers from 1 September to 18 October 2004 because the company attests that it faced an economic crisis since there were not any purchase orders yet.
- 2- The workers did receive notice from the employer in respect of their labour contract suspensions from 1 September to 18 October 2004.
- 3- The company party submitted payroll for a five month period (July to November 2004) that certified the number of sewing workers on the second floor, approximately 210 workers, who worked regularly up to the end of August and received wages regularly. The Arbitration Council finds that the work normalized in November 2004 after the one-month suspension in September and [the half-month suspension in] mid-October 2004, as can be concluded from the following payroll, below:

**Table of five months payroll for sewing workers' wages  
on the second floor of the United Eternity Co. Ltd.**

| 2004                             | July                                 | August                               | September                              | October                                      | November                             | Remarks   |
|----------------------------------|--------------------------------------|--------------------------------------|--|--|--------------------------------------|---|
| Number of workers                | 212                                  | 211                                  | 211                                    | 197  | 196                                  | decreasing  |
| Amount of union contribution     | 85 workers<br>40.1%                  | 84 workers<br>39.8%                  | 3 workers<br>/[sic.]                   | No workers<br>0%                             | 78 workers<br>39.8%                  | 40% of workers pay union contributions to C.CAWDU |
| Wage ranges                      |                                      |                                      | 11 workers<br>paid under<br>12.5\$     |  |                                      |   |
| \$10 - \$22.5                    | 3 workers                            | 2 workers                            | 147 workers<br>paid \$17.5 of<br>wages | 127 workers                                  | 5 workers<br>Abs 406,<br>425, 460    | Absent over<br>20 days                            |
| \$22.5-\$45                      | 7 workers<br>50% 3                   | 6 workers<br>50% 3                   | 53 workers<br>50% 3                    | 4 workers<br>50% 4                           | 3 workers<br>50% 3                   |   |
| \$45-\$90                        | 202 workers                          | 203 workers                          | No workers                             | 66 workers                                   | 188 workers                          |   |
|                                  | ID: 515, 222,<br>248 50% of<br>wages | ID: 537, 222,<br>248 50% of<br>wages | ID: 248, 515,<br>537 50% of<br>wages   | ID: 529, 537,<br>414, 454<br>50% of<br>wages | ID: 335, 455,<br>414 50% of<br>wages |   |
| Situation of work in the factory | regular<br>activities                | regular<br>activities                | suspend one<br>month                   | suspend 18<br>days                           | regular<br>activities                |   |

- 4- C.CAWDU had the most representative status in the United Eternity Company.

- 5- C.CAWDU signed an agreement with the employer's representative on 6 October 2004.
- 6- On 6 October 2004 the company and representatives from C.CAWDU agreed to sign an agreement to manage the payment of wages as below:
  - A- Provide 50 percent of basic wages between 1 to 7 September 2004.
  - B- From 8 September to 16 October 2004 the company suspended work with payment of US\$10 per month.
  - C- Regarding annual leave and seniority payments, the company offers US\$5 per month for September and October.
  - D- On 10 October 2004 the company provided 50 percent of wages for the workers who worked on the first and second floors. In particular, on 4 October 2004 the company provided 100 percent wages for the second floor workers and on 6 October 2004 the company provided 100 percent for the first floor workers.
  - E- On 12, 13 and 14 October 2004 the company provided 100 percent basic wages to all workers.
  - F- As for the workers who worked in October 2004 the company offered a daily food allowance.
    - o The workers who worked in October but did not work a total of 26 days did not receive an attendance bonus of US\$5 for October; for workers who worked from 1 to 30 October 2004 must receive the attendance bonus of US\$5.
- 7- The DTFU has approximately 20 members and others who resigned from C.CAWDU and said that there was a submission for registration on 19 October 2004.
- 8- The DTFU filed a complaint about the work suspension to the Labour Inspector and made a claim in respect of the two non-conciliation issues through a letter dated 5 October 2004. In the hearing the DTFU said that its union used to claim only annual compensation of one and half day(s) equal to US\$2.6.

#### **REASONS FOR DECISION:**

##### *First and second issues:*

The worker party demands 50 percent of the basic wage during the suspension from 1 September to 18 October 2004.

Was the labour contract suspension lawful under Article 71, point 11 of the Labour Law?

Article 71, point 11 of the Labour Law [states] "... ***the labour contract shall be suspended when the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This***

***suspension shall not exceed two months and [should] be under the control of the Labour Inspector."***

At the hearing, both parties argued that the company faced temporary economic difficulty because there were not purchase orders; so the company suspended workers' labour contracts from 1 September 2004 until 18 October 2004. The employer party did not give evidence in respect of the serious economic difficulty that caused the labour contract suspension, but the worker party, who is party to this dispute, did not object to the employer's argument. In addition, the suspension was approved by the local union of United Eternity that has most representative status. The Arbitration Council finds that suspension period was one month and 18 days, which is less than the legal maximum [of two months]. During the suspension, the company sent a letter dated 6 October 2004, asking for suspension approval from the Labour Inspection Department of the Ministry of Labour, and the Ministry responded to the request by recognising the lawful suspension in a letter dated 27 October 2004.

Therefore, the Arbitration Council considers that the labour contract suspension of United Eternity was for a valid reason under Article 71, point 11, in that that the company faced economic difficulties.

But was the suspension under the control of the Labour Inspector as required by law? Based on the facts found by the Arbitration Council, it shows that the Labour Inspector issued a decision dated 27 October 2004 regarding the labour contract suspension of United Eternity which recognised the suspension, although the Labour Inspector received information after the suspension had happened and [when it was] almost finished. The Arbitration Council finds that the Labour Law does not clearly state the meaning of the phrase "the suspension must be under the control of the labour inspector" and Article 71, point 11 of the Labour Law does not [contain information] about the manner of notification or control of the Labour Inspector. When shall the labour inspector control the suspension?

If we compare it to the prior notice requirements in respect of termination of undetermined duration contracts under Articles 74 to 82, they afford the worker to have an opportunity to find a new job before the termination becomes final in order to have enough wages to earn a living. In regard to labour contracts and the suspension of operations/labor contracts, this is not to provide an opportunity for the worker to find a new job, rather it is a suspension of the activities of the company for a period which cannot exceed 2 months before the workers is permitted to go back to work. In the same way, Prakas 80/99 on the time required to give notice to the Labour Inspector before overtime work may occur. Both Prakas 80/99 and Articles 74 to 82 of the Labour Law are explicit about notification to the Labour Inspector

before overtime work or termination of undetermined duration contracts. With no clear Labour Law or any provisions of any Law, the Arbitration Council considers that the operation of a suspension under the control of the Labour Inspector is a benefit to the employer, employee and economic stability [in general]. When there is control, the Labour Inspector can clearly see whether the company faces economic or other difficulties and how many workers' labour contracts were suspended; and, if so, what benefits workers receive. Therefore, the Arbitration Council considers that the control of the Labour Inspector while the company suspends its operation is to avoid the serious impact on labour contracts and workers' living. However, we also can argue that if the Labour Inspector finds out that the company is attempting to suspend labour contracts, and its operation does not face economic or any particular difficulty, the company cannot suspend its operations. The Labour Inspector can stop the suspension of operations, even though the Labour Inspector was notified after the suspension happened, in order to determine whether the workers are entitled to wages under Article 72, point 2 of Labour Law during duration of the suspension.

In this case, the Labour Inspector received a letter from the company on 6 October 2004 about the request of a suspension of the company's operations for a while and responded by a letter dated 27 October 2004, saying that it received the request of the collective labour suspension and ordered compliance with the Labour Law. Additionally, the Arbitration Council has no jurisdiction over the examination of the letter from the Labour Inspector (see 10/03, 02/04, 21/03-Loyal Cambodia, 33/04-Bou Min, 46/04-M&A Garment and 91/04- Honey Wear Garment), in terms of considering whether the labour contract suspension is lawful or not (see 95/04-ASD).

Because the Labour Inspector's letter did not stop the suspension of the labour contract, the Arbitration Council concludes that the labour contract suspension was lawful and did not contradict Article 71, point 11 of the Labour Law

***Are the workers entitled to wages? Is the agreement between the local union of United Eternity and the employer valid?***

Under Article 72 of the Labour Law, workers do not receive wages during suspensions of operations unless there is a supplementary agreement with the employer.

In this case, the Arbitration Council considers the labour contract suspension from the employer lawful; therefore, workers are not entitled to wages during labour contract suspension periods. But the local union of United Eternity, which has most representative status, signed an agreement with the employer on 6 October 2004 on wage payments and

other benefits during the labour suspension duration from 1 September to 18 October 2004. The Arbitration Council considers that this agreement provides more benefits than the Labour Law according to principles of social public order; Article 13 of the Labour Law does not apply in this case to nullify the agreement. Also, the employee party who is party in dispute in this case is a union which has a minority of members in the factory (there are 20 members), and demands 50 percent of wages during the labour contract suspension period and demands work bonus, US\$5 attendance bonus, US\$5 seniority bonus and 1.5 days of paid annual leave from when the company suspended the workers' labour contracts from 1 September to 18 October 2004. Under Article 277 of the Labour Law and Article 6 of Prakas 305, "*any union [that] has in its membership an absolute majority of the workers of an enterprise or establishment, shall entitle [it] to represent all the workers of said company or establishment...*" The Arbitration Council considers that the agreement between the local union and United Eternity can generally apply to all workers in the United Eternity factory because the union who is the party to the agreement has most representative status in the factory as recognized by the Ministry of Labour.

Therefore, the Arbitration Council decides to retain the agreement between the employer and the local union of United Eternity, C.CAWDU, which has most representative status in the United Eternity Factory.

In addition, according to the jurisdictional power of the Arbitration Council in previous cases, an employee party who was the union and party to the dispute cannot bring an interests dispute to the Arbitration Council if this union does not have most representative status in the company. Under Article 43 of Prakas 99, the award regarding the interests disputes will become a Collective Bargaining Agreement (CBA) (see 31/03-Hong Wa, 60/04- United Art, 99/04- AIA, and 98/04-Great Union). Therefore, the Arbitration Council rejects all the demands of the local DTFU since (1) there was an effective agreement; and (2) the union, which is the party to the dispute, does not have the legal status to bring this claim to the Arbitration Council because it does not have most representative status in the factory (see Article 96, point 2 of the Labour Law and Article 9 of Prakas 305).

The Arbitration Council finds that in this case, the Arbitration Council should hold the neutral position and not interfere in the enterprise's affairs in order to set up the win-lose atmosphere in its decision. Both parties have an interest in having further negotiations to reach a collective bargaining agreement to determine working conditions such as: wage determinations under the Labour Law in special circumstances when the company faces economic difficulty in the future, the relationship among the employer, employees and union which is the worker representative, insuring the social risk, maintaining the peace in the

entire enterprises to prevent grievances, and smooth application of win-win principles and solutions.

In order to encourage both parties to reach a collective bargaining agreement that covers many issues, the Arbitration Council understands the interests of each party. In order to assist a negotiation of a collective bargaining agreement, the Arbitration Council refers to 24/03-Top One which can be considered as a [standard] to establish a collective bargaining agreement under Article 34(E) and 34(G) of Prakas 338 dated 11 December 2002. The reason that the Arbitration Council does not use the lose-win principle, which causes economic and social difficulty to enterprises, as the ground to decide the award is related to [the following:]

***Perception towards the economy and society related to the garment industry***

Passing through the economic difficulties in the situation where the quota system was removed by the United States, from early 2005 onward unemployment and layoffs creates an unfavorable condition for workers to negotiate their wages. Workers can ask whether there are better options rather than just maintaining their work and wages until the economic situation improves. An examination of the payroll for August, September, October and November 2004 shows that the situation is normal again in term of wages (an average of US\$65 for 26 days) and union contribution fees. Therefore, the Arbitration Council considers that for the past labour contract suspension, both parties should be encouraged by each other to continue to cooperate to get more income for collective interests and collective bargaining agreement negotiations. However, to maintain a peaceful environment in the workplace, the Arbitration Council urges and encourages [the parties] to come to agreement or [agree to a] collective bargaining agreement in order to prevent any labour contract suspensions in the future as defined by Article 8 of Prakas 305/01.

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

**DECISION:**

Reject the workers' demands in respect of both issues

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

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signed: .....

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signed: .....

Chair of arbitration panel:

Name: **Sok Mathoeung**

Signed: .....

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