

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 109/04

Date of award: 4 January 2005

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**Great Fortune Garment**

(Employer party)

**AND**

**C.CAWDU**

**C.CAWDU Union of Fortune Garment (C.CAWDUoFG)**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:** 1- Mr. Fung Kinchor, Company Director;

2- Mr. Ly Leang, Director Assistant;

3- Mr. Xu Yao Ping, Accounting Manager; and

4- Long Heang, GMAC representative;

**Address:** Street 21, Prek Khsev village, Rorka Kh'pors Commune, Sa'ang District, Kandal.

**Tel:** 012 812008 Fax: 023 425 035

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Mr. Om Visal, C.CAWDU Dispute Resolution Official;

2- Vorng Siek La, C.CAWDUoFG Financier;

3- Ol Sam Ath, worker representative;

4- Heang Roth, worker;

5- Long Simet, Vice President of C.CAWDUoFG;

6- Noeu Vibol, textile worker;

7- Soy Sivorn, Deputy Finance Officer of C.CAWDUoFG;

8- Ly Bony, Secretary for C.CAWDUoFG;

9- Bee Bon, textile worker;

- 10- Tong Chamroen, textile worker;
- 11- Soch Vy, President of C.CAWDUoFG;
- 12- Lux Samnang, worker;
- 13- Sien Sros, worker;
- 14- Iem Lim, worker;
- 15- Chhan Sokha, Vice President of C.CAWDU; and
- 16- Meas Vanny, C.CAWDU Dispute Resolution Assistant.

**Address:** #6C, Street 276, Sangkat (commune) Tuol Tompoung 1, Khan (district)  
Chamkarmorn, Phnom Penh.

**Tel:** 012 650 013 Fax: N/A

### **ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The knitting workers at the old building demand a PN 113 Lot price of US\$4.30.
- 2- The knitting workers at the new building demand an increase in the Lot price of all styles by US\$0.50.
- 3- The employee party demand that the company allow them to have paid leave when the company has no work.

### **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 Arbitration Council 99/04; Prakas on the Nomination of Arbitrators 103/04; the Arbitration Council Procedural Rules 265/04; and the Arbitration Council Procedural Rules, which form an Annex to Prakas 99/04.

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 hearing was unsuccessful in relation to the three issues. The non-conciliation report dated 15 December 2004 was submitted to the Secretariat of the Arbitration Council on 15 December 2004.

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

- Arbitrator chosen by the employer party: Mr. Kao Thach
- Arbitrator chosen by the worker party: Mr. Tuon Siphann
- Chair arbitrator (chosen by the two arbitrators): Mr. Kong Phallack

## **HEARING AND EVIDENCE:**

**Date and place of hearing:** 23 December 2004 at 2:00 p.m. at the Secretariat of the Arbitration Council.

**Witnesses and Experts:** N/A

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

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

- 1- Letter of delegation, dated 14 December 2004;
- 2- Certificate of registration, dated 31 August 1998;
- 3- Report on worker activities within the factory, dated 23 December 2004;
- 4- Internal Work Rules, dated 3 October 1998;
- 5- Pay rolls for November 2004 of Fortune Garment and Sun Lee Fong Garment;
- 6- Report in Chinese on the number of lots workers are able to sew; and
- 7- Report on worker activities within the factory, dated 25 December 2004.

#### **B. Provided by the employee party:**

- 1- Letter of notification of a union election to be held at Great Fortune Garment, written by C.CAWDU on 23 July 2004;
- 2- Letter of request for union registration, dated 8 August 2004;
- 3- Minutes of the union election at Great Fortune Garment by C.CAWDU, dated 8 August 2004;
- 4- List of union leaders, dated 8 August 2004;
- 5- Bylaws of C.CAWDUoGF, dated 8 August 2004;
- 6- Receipt of the case, dated 4 November 2004;
- 7- Memorandum on the increase in lot prices by Great Fortune workers, dated 19 December 2004;
- 8- Letter of request for lot price increases by workers dated 15 December 2004;
- 9- Letter of the suspension of Sok Vy, C.CAWDUoGF President, dated 7 December 2004;
- 10- Letter of request for the Arbitration Council to proceed with the case from C.CAWDU, dated 27 December 2004; and
- 11- Report on the violation of the 30 December 2004 agreement.

#### **C. Received from MoLVT:**

- 1- Minutes on the collective dispute resolution, dated 14 December 2004; and
- 2- Non-conciliation report by the Kandal Department of Labour and Vocational Training, dated 15 December 2004.

#### **D. Letters from the Arbitration Council**

Order of the Arbitration Council to conclude the strike and return to work, dated 15 December 2004;

Agreement on return to work between the employer and workers, dated 16 December 2004;

Letter of notification on the stop of the Arbitration Council process, dated 24 December 2004;  
and

Minutes of the Arbitration Council, dated 23 and 28 December 2004.

#### **E. Presentation and testimony of the worker and employer parties during the hearing.**

***Both parties decided at the hearing that this award is not binding.***

#### **CASE SUMMARY:**

Fortune Garment is located at #21, Prek Khsev village, Rorka Khpuos commune, Sa'ang district, Kandal, and employs 2,700 workers. On 14 December 2004, the Kandal Department of Labour Inspectors received a telephone call about a collective labour dispute in the factory and went to conciliate the dispute at the factory. The employees demanded that the company accede to three demands. The result of this was that none of these issues were successfully conciliated. After that the employee party resumed their strike in the factory.

The Arbitration Council received the non-conciliation report on the three issues on 15 December 2004. On the same day, the Arbitration Council ordered all the workers to return to work pending the Arbitration Council decision. Still, the employees remained on strike in spite of the Arbitration Council order.

At 5:00 p.m. on 16 December 2004, the Arbitration Council conducted an informal conciliation between the worker party and the company party and the parties made an agreement before the Arbitration Council that all the workers must return to work and the employer must allow them to go back to work.

On 23 December 2004, the two parties in question were called to a hearing at 2:00 p.m. At the hearing, the Arbitration Council encouraged the two parties to resume their negotiations to find a way to conclude their dispute through conciliation. But none of the issues were successfully conciliated.

On the morning of 24 December 2004, after the hearing, the Secretariat of the Arbitration Council received news that the workers were still not working. On the evening of the same

day, the Arbitration Council decided to give a notification by a two-thirds decision to order the workers to stop their activities and return to work as normal. Otherwise, the Arbitration Council would not proceed with the arbitration process.

On 25 December 2004, the Secretariat of the Arbitration Council received a letter from the CCAW DUoFG asking the Arbitration Council to go on with the arbitration process and also received a report from the company that only a few workers were still not working.

On 28 December 2004 at 10:00 a.m., the Arbitration Council called the parties for another conciliation and further inquiry; still, it was a failure, except for the workers' promise that they would return to work awaiting the Arbitration Council award. As for the employer party, they requested the Arbitration Council not issue an award because they would first ask the Kandal Labour Inspector and local authority to help in this dispute. If the workers returned to work as normal, the employer would ask the Arbitration Council to issue an award.

On 30 December 2004, the Arbitration Council received a report from the workers that the company had violated the 16 December 2004 agreement and then, on 28-29 December 2004, Y Kim Hong, a policeman from Rorka Khpuos district, delivered a verdict by a Kandal prosecutor in respect of ten of the workers including Chann Pisey, Pe Chantha, Rann Narith, Neou Vibol, Yang Sras, Sien Noeun, Iem Lim, Vong Siek La, Soeun La and Lon Samnang accusing them of inciting workers.

On 4 January 2005, the Arbitration Council, before issuing its award, contacted the two parties again in order to find out about the events in the factory. The workers at the factory were working as normal, but slowly.

**FINDINGS OF FACT:**

- Having examined the collective labour dispute conciliation report
- Having listened to presentations by the company and employees as described above and in the hearing report
- Having checked the documents listed above

**We find that:**

*Issue One:*

1. The customary practice in the factory with respect to PN prices is that the employer proposes the price while the workers bargain [and that] they will not work unless an agreement is reached. This customary practice had not resulted in a problem [in the

- past]. However, when the company proposed PN 133, the issue over prices occurred in a new building. During the claim, there were also few workers who accepted PN 133.
2. Prior testing in order to determine piece rates used to apply, but the employees did not agree because the employer chose only outstanding workers [for the testing].
  3. As far as PN 133 is concerned, the company proposed the first price of US\$3.60 per lot while the workers demanded US\$4.50 per lot. The bargaining arrived at the final price of US\$3.80 per lot given by the employer, while the workers insisted on US\$4.30 per lot. The workers say it takes two or three days to sew a PN 133 lot while the employer says it takes only one and a half days.
  4. All the PNs vary in price. For example,
    - PN 561 is US\$8.10 per lot and four or five days are needed to knit a lot.
    - PN 254 is US\$4.20 per lot and one day and a half or two days are needed to knit a lot.
    - PN 320 is US\$4.20 per lot and one or one and a half days are needed to knit a lot.
  - 5- The workers in the old building refused to work because no agreement was reached on the price. The employer confirmed that the price proposed was proper and that if any worker knitted and got less than US\$45 per month, the company would increase their wages to US\$45. The workers recognised that the employer did add an amount to their wages to achieve up to US\$45 but [stated] that if any one could not make the target for three months, the company would dismiss him/her. The employer objected to such an allegation and asked the workers to produce the names of those dismissed by the employer for not knitting the proposed amount. The workers said they could not remember the names but that they had heard it.

*Issue Two:*

- 1- The company first proposed US\$4 per lot for PN 121. Mr. Sien Sras, the representative of the workers in the new building, had already signed an agreement about PN 121 with the company, accepting US\$4.20 per lot. But the workers in that building did not agree and asked the employer to cancel the agreement. Meanwhile, there were also a few workers who accepted PN 121 at the set price.
- 2- The workers said it was more difficult to knit PN 121 than PN 320. PN 320 is US\$4.20 per lot and needs one and a half days of knitting while PN 121 is US\$4.20 per lot and needs three days of knitting. The company emphasized that the proposed [rate] was made in comparison with other kinds of PN.

*Issue Three:*

- 1- All workers asked to take paid leave if an agreement could not be reached about the price, because the company had no work for them to do.
- 2- The company said there was enough work to do, but a deal on the lot prices could not be reached and the employees did not work. While some workers accepted the above two PNs, others would hit the table or pour fuel onto their knitting machines so that they could not work.

*Issue regarding the most representative status*

- 1- There are three unions in the factory: Solidarity Union, Khmer Youth union and the C.CAWDU Union of Fortune Garment which is the complainant in this case.
- 2- C.CAWDU had submitted an application form for registration and was called by the Ministry of Labour and Vocational Training about the registration on 13 November 2004. But the union had not received the formal letter of a successful registration yet.
- 3- Fortune Garment factory employs approximately 2,700 workers. According to the worker representatives' claim, yet without evidentiary documents, C.CAWDU is comprised of approximately 800 members.
- 4- At the hearing, the employer party and worker party said no union, including C.CAWDU, had gained the most representative status.

**REASON FOR DECISION:**

*Issues One and Two:*

In order to solve issues one and two, the Arbitration Council must find out whether these are rights or interests based issues. In the two issues, the workers demanded the company increase the prices of PN 133 from US\$3.80 to US\$4.30 dollars per lot and PN 121 from US\$4.20 to US\$4.70 per lot. As a matter of fact, the Arbitration Council found that both the employer and the worker party agreed that if any worker earned less than US\$45 per month, the company would provide an additional amount to make a total of US\$45 per month, as required by law. Therefore, the Arbitration Council found that the employer's acts do not violate the effective law (Article 104 of the Labour Law and Notification 017/00 by the Ministry of Labour). The workers' demand indicates that the worker party wants the employer to provide better benefits than the law. Hence, the Arbitration Council finds that this issue is interests based.

At the hearing, both parties accepted that as a customary practice, the employer sets the lot prices and the worker party bargains before they start work. The Arbitration Council finds that setting the prices this way cannot ensure that the employer complies with Article 108 of the Labour Law, which states, *“For task-work or piece-work, whether it is done in the shop or in the home, prices must be calculated in a manner that permits the workers of average ability working normally to earn, for the same amount of time worked, a salary at least equal to the guaranteed minimum wage as established for an employee paid by the hour.”* The Arbitration Council finds that although it is not sure if the employer really violates Article 108 of the Labour Law, the employer still has to set the lot prices in accordance with Article 108.

As these issues are interests based, the Arbitration Council must find out whether or not the worker party has the right to demand the Arbitration Council resolve the disputes.

Article 43 of Prakas 99/04 states, *“An Arbitration Council award which resolves an interest issue shall replace a collective bargaining agreement and remain in effect for one year, as from the date the award comes into effect, unless the parties to the dispute agree on a new collective bargaining agreement to replace the award.”* Under this Article, if the Arbitration Council issues an award on these issues, then it will become a collective bargaining agreement, which will apply to all the workers in the factory, and deprive other workers of their right to file a claim regarding interest based issues in the future.

According to the facts, the Arbitration Council finds that the union representing the workers in this case does not have representative status, let alone most representative status. To receive representative status or most representative status, the union is required, by Article 277 of the Labour Law and Article 6 of Notification 305/01, to have at least more than half of all the workers in the factory register with the MoLVT and satisfy other conditions as set out in this Article.

Accordingly, the Arbitration Council finds that C.CAWDUoGF does not have the legal right to make demands to the Arbitration Council to render an award on interests based issues, which would become a collective bargaining agreement and apply to all the workers in the factory (*see 04/03-Lida, 06/04-Chou Sing, 24/03-Top One, 61/04-Best Honor, and 62/04-Yi Sin*). In addition, the Arbitration Council has so far concluded that a union without most representative status does not have the right to raise an interests based issue for resolution by the Arbitration Council, either (*see 31/03-Hong Wa, 60/04-United Art, 99/04-AIA and 98/04-Great Union*).

Therefore, to resolve these issues, the employer and worker party should continue negotiations and arrive at an agreement for future application. One of many other options which is achievable and will benefit both parties may be the establishment of a pilot sewing group which is comprised of workers of various abilities in order to set lot prices. The trial duration should not exceed three days.

*Issue Three:*

The Arbitration Council finds that in this situation, workers do not have the right to take paid leave according to law. However, the 1997 Labour Law states [that workers have] the right to strike, yet [they do so] without pay. The company presented evidence of giving jobs to the workers, but the workers did not accept these jobs. The Arbitration Council finds that the workers' claim goes beyond what is stated in the law. Therefore, the claim is not a rights-based dispute. As far as an interests dispute is concerned, the Arbitration Council takes it into account only if the union possesses most representative status. Please see the reasons for decision on issues one and two.

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

**DECIDES :**

- 1- Refuses to consider the workers' claim for an increase in the PN 133 price to US\$4.30 per lot.
- 2- Refuses to consider the workers' claim for an increase in all styles of the PN 121 prices by US\$0.50 per lot in addition to the current price.
- 3- Refuses to consider the workers' claim for the company to allow them to take collective leave if the bargaining for an increase in a lot price is a failure.
- 4- To order the company and worker representatives to establish a bargaining committee to discuss resetting the price for PN 133 and PN 121, together with other interests that might exist within the company. The two parties must negotiate within six months from the date this award comes into effect, and the actual negotiation must take place in at least one working hour per week.

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

**Arbitrator chosen by the employer party:**

Name: Mr. Kao Thach

Signed: .....

**Arbitrator chosen by the worker party:**

Name: Mr. Tuon Siphann

Signed: .....

**Chair of arbitration panel:**

Name: Mr. Kong Phallack

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.*