

KINGDOM OF CAMBODIA
Nation King Religion

ARBITRATION COUNCIL

Case number and name: 11/06-Fortune

Date of Award: 24 February 2006

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

Arbitration Panel

Arbitrator chosen by the employer party: Mr. Kao Thach

Arbitrator chosen by the worker party: Mr. Ven Pov

Chair Arbitrator (chosen by the two Arbitrators): Mr. Pen Bunchhea

Disputing parties

Employer party:

Name: Fortune Garment and Woolen Knitting Factory

Address: Street 21, Roka Khapuos Commune, Saang District, Kandal Province

Telephone: 024 391 282

Fax: 023 365 182

Representative:

1. Mr. Long Heang, company representative
2. Mr. Sok Hak, company Vice-President
3. Mr. Ly Heang, Assistant to the Director of the company

Worker party:

Name: Workers' Representatives at Weaving Section

Address: Street 21, Roka Khapuos Commune, Saang District, Kandal Province

Telephone: 016 393 983

Fax: N/A

Representative:

1. Mr. Chen Sophal, leader of group 6
2. Mr. Lu Pann, worker delegate
3. Miss Mech Sokchoeun, leader of group 4
4. Miss Khon Kea, leader of group 1

5. Miss Meng Kimleang, leader of group 10
6. Mr. Lon Long, weaving section worker
7. Mr. Hak Ang, weaving section worker
8. Mr. Chhon Sophanna, weaving section worker
9. Mr. Thy Chanthoeun, weaving section worker
10. Mr. Sruoy Chanthan, weaving section worker
11. Mr. Chan Pisey, weaving section worker
12. Mr. Luch Samnang, weaving section worker

Issues in Dispute

According to the non-conciliation report, the following issue is the demand made by the workers in this case.

The worker party demanded that the company increase the piece rate of US\$0.50 for each of the seven models of PN 139. The employer party did not agree to the demand, arguing that the piece rate for PN 139 which was determined on 16 January 2006 was reasonable, and according to the calculation undertaken by the company, on average a worker could earn US\$2.28 per day.

Jurisdiction of the Arbitration Council

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); 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 Appointment of Arbitrators (Third Term) (513/05).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report number 013KBV/KN dated 3 February 2006 was submitted to the Secretariat of the Arbitration Council on 3 February 2006.

Hearing and Summary of Procedure before the Arbitration Council Article 38C

Place of hearing: Arbitration Council; Phnom Penh Center; 3rd Floor, Room 331; Bldg. A
Sothearos Blvd; Tonle Bassac; Phnom Penh.

Date of hearing:

First Hearing: 7 February 2006 (8:00 a.m. – 10:00 a.m.)

Second Hearing: 15 February 2006 (2:00 p.m. – 5:00 p.m.)

Procedural issues:

On 2 February 2006, the Office of Labour and Vocational Training of Kandal Province received a petition from a group of workers at Fortune Garment, demanding that the company improve working conditions as provided under the Labour Law. On receipt of the case, the Office of Labour and Vocational Training designated its labour settlement officer to conciliate the issue. The last conciliation took place on 2 February 2006; however, it was unsuccessful.

On 3 February 2006, the Arbitration Council received the case and the non-conciliation report of the collective labour dispute No. 013 KBV/KN, dated 3 February 2006, from Mr. Thul Neang, Chief of the Office of Labour and Vocational Training of Kandal Province. Following the receipt of the case, on 3 February 2006 the Arbitration Council issued an interim order to suspend the strike. The Arbitration Council invited the employer and worker parties for a conciliation and hearing on the issue on 7 February 2006 at 8:00 a.m. and 15 February at 2:00 p.m. Both parties were present on both occasions. On the first hearing, because the strike was still in process, which was in violation of Clause 20 of Prakas 099/04 of the Ministry in charge of Labour, the Arbitration Council could not proceed, and the case was postponed to the second hearing, contingent on the suspension of the strike. The workers suspended the strike at the order of the Arbitration Council, and they awaited the second hearing of the Arbitration Council to take place on 15 February 2006. At the second hearing, the Arbitration Council attempted to conciliate the issue in the present case; however, no agreement was reached. Therefore, the Arbitration Council will consider the issue on the basis of evidence and findings as follows:

Evidence

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council**Provided by the employer party:**

1. Power of attorney from director of company to Mr. Long Heang, dated 2 February 2006
2. Request for intervention in the strike undertaken by the workers
3. Basis for comparison of piece rate
4. Registered Internal Work Rules of company No. 059/03, dated 10 October 2003
5. Payroll for November and December 2005 and January 2006

Provided by the worker party: N/A

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report on collective labour dispute settlement at Fortune Garment, No. 013 KBV/KN, dated 3 February 2006 from Mr. Thul Neang, Chief of Office of Labour and Vocational Training of Kandal Province
2. Minute of collective labour dispute conciliation, dated 2 February 2006

Provided by the Secretariat of the Arbitration Council:

Interim Order of the Arbitration Council No. 001 ABA, dated 3 February 2006

Facts

- Having examined the documents submitted to the Arbitration Council
- Having checked the report of the collective labour dispute conciliation
- Having listened to the arguments raised by the employer and worker parties

The Arbitration Council finds that:

- Fortune Garment employs approximately 2,700 workers. The weaving section of the factory has approximately 290 workers, who demanded a piece rate increase of US\$0.50 for each of the seven models of PN 139. The workers do not work overtime at the factory.
- There are three unions at the factory; however, none of them represents the workers in this case. Thus, the workers in the weaving section do not have a union with most representative status to represent them in this case.
- The workers made a demand collectively without any representatives, asserting that it was the demand of all the workers. However, workers at the hearing did not present any evidence that they were authorized to make a demand on behalf of all workers.
- The piece rate for clothing model PN139 was determined with the participation of workers' representatives and all group leaders on 12 January 2006. The rate was set as follows:

Size of PN139	Rate in dollars per piece
10	4.60
12	4.70
14	4.80
16	4.90
18	5.00

20	5.10
22	5.20

- The workers demanded that the company increase US\$0.50 per piece on top of the agreed rate per piece. The workers contended that PN139 is difficult for them to work on, and therefore the determined rate does not enable them to earn more than the minimum wage. The workers did not provide any evidence to support their contention.
- The company used a clear method of calculation by selecting the workers' representatives and group leaders to perform a sewing trial, and discuss and agree on the piece rate prior to setting it.
- In the sewing trial conducted by 38 workers between 33 hours and 20 minutes and 113 hours and 10 minutes, only one of them, holding ID. No. T17, received US\$0.207 per hour; that is US\$1.656 per day or US\$43.056 per month. The other workers obtained, by the piece rate, more than the minimum wage of US\$45.
- As mentioned above, the workers went on strike to demand the company to increase the piece rate. After the strike, the workers returned to work on 9, 10, and 11 February 2006. The company calculated the number of pieces produced by the workers during the three days, the results as shown below:
 - a. On 9 February 2006, 253 workers finished 111.5 pieces.
 - b. On 10 February 2006, 253 workers finished 115 pieces.
 - c. On 11 February 2006, 254 workers finished 105.5 pieces. It is worthwhile to mention that it was pay day when the workers used up some of their working time to obtain their salary.

Based on the result of the calculation, on average a worker could complete 0.435 pieces per day. Because the workers weaved size 16, they were entitled to US\$4.90 per piece. Therefore, on average, each day a worker could obtain US\$2.31 or, calculated according to the monthly wage, \$60.06 in one month. At the hearing, the result of the calculation was presented to the workers, and none of them denied it. The workers did not provide any evidence to show that any worker of average skills made less than the minimum wage.

- For any worker who makes less than the minimum wage on any particular month, the employer supplements his or her wage to US\$45.
- The employer party provided evidence to show that on November 2005 two workers did not earn the minimum wage when calculated according to the piece rate: a worker holding ID No. T05 received US\$42.07 and the other worker holding ID No. B10

obtained US\$32.12. On December 2005, there was a worker who achieved US\$43.65. For each worker, the employer raised his or her wage to US\$45.

Reasons for Decision

Article 108 of the Labour Law of 1997 provides that *“For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker of average ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.”*

In 03/05 – Flying Dragon, the Arbitration Council found that once the piece rate has been set by the employer, the Arbitration Council must determine whether the employee's wage calculated on the basis of the piece rate allows the workers of average skill to earn at least the minimum wage.

Does Fortune Garment set the piece rate to allow the worker of average skills to earn at least the minimum wage required by the law?

Having heard the testimony of the worker party and the employer party, the Arbitration Council found that PN139 was difficult to work on. However, out of 38 workers who participated in the weaving trials conducted [for a duration] between 33 hours 20 minutes and 113 hours 10 minutes, only one of them, holding ID No. T17, received US\$0.207 per hour; that is US\$1.656 per day or US\$43.056 per month. The remaining workers in the weaving trial could earn more than minimum wage when calculated according to the piece rate. The Arbitration Council finds that the determination of the piece rate for PN 139 included the participation of workers' representatives and group leaders [and] the weaving trial was conducted by many workers of varying skill, including slow, average, and fast workers. The Arbitration Council determines that the practice is a reasonable method to determine the piece rate for PN 139. Therefore, the Arbitration Council concludes that the piece rate determined by Fortune allows the worker of average skill to earn at least the minimum wage.

Moreover, the Arbitration Council also notes that the company raised wages up to US\$45 to meet the minimum wage required under the Labour Law (See Clause 4 of Notice 017/2000.) Furthermore, the company calculated the piece rate after the workers returned to work on 9, 10, and 11 February 2006 to determine if the piece rate as set up was in conformity with the minimum wage. The result indicated that each worker, on average, could weave 0.435 pieces per day (not including any overtime). Because the worker was working on size 16,

they could receive US\$4.90 per piece, on average. Therefore, on average, a worker could earn US\$2.31 per day or US\$60.06 per month. Therefore, the Arbitration Council determines that the piece rate set for PN139 is not lower than the minimum wage as mandated by the law. (See 03/05 – Flying Dragon.) In November and December 2005, although a minority number of weaving workers, approximately 3%, made less than the minimum wage, the Arbitration Council found that the company increased their wage to the minimum wage as required under the law.

Therefore, the Arbitration Council determines that the demand raised by the workers to increase US\$0.50 per piece for PN139 is an interest dispute because the company had fulfilled its obligations under the law to provide the minimum wage to every worker.

In principle, as far as an interests dispute is concerned, the Arbitration Council will determine if the group of workers has the legal status to bring such dispute.

In the past, The Arbitration Council has determined that only unions with most representative status have the legal capacity to negotiate for a conclusion of a collective bargaining agreement with the company and the legal right to institute a proceeding at the Arbitration Council for settlement of an interests dispute. (See 04/03 – Ly Da, 24/03 – Top One, 06/04 Chou Hsing, 61/04 – Best Honour, 62/04 Ecent, and 09/05 – Kin Tai.) In the present case, no union with most representative status represents the worker party. Therefore, the worker party does not have a legal right to bring an interests dispute to the Arbitration Council for settlement.

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

Decision

- Decline to consider the demand raised by the workers to the company for an increase of the US\$0.50 for each of the seven pieces of PN139.

Type of Award: Non binding awards

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: Mr. Kao Thach

Signature:

Arbitrator chosen by the worker party:

Name: Mr. Ven Pov

Signature:

Chair of arbitration panel:

Name: Mr. Pen Bunchhea

Signature: