

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 12/05

Date of award: 1 April 2005

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

P & E Company (Cambodia) PTE, LTD.

(Employer party)

AND

Worker's Union at P & E

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representative: 1- Ms. NG MEY LEE, Administration Manager;
2- Ms. MG BEE SIA, Sale executive;
3- Mr. Chem Rith, Administration staff; and
4- Ms. Hong Lemhour, Interpreter.

Address: #3, Russian Blvd, Teuktla commune, Reseykao district, Phnom Penh.

Tel: 011 566 868

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representative: 1- Mom Thorn, KYFTU staff;
2- Srey Chinda, Local union president at P&E company;
3- Sao Samnang, Union secretary at P&E company; and
4- Out Sinat, Assistant to the union at P&E company.

Address: #3, Russian Blvd, Teuktla commune, Reseykao district, Phnom Penh.

Tel: 012 658 129

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The workers demand that the company reinstate female worker named Seung Leanghuy.

- 2- The workers demand that the company pay wage and attendance bonus during strike.

JURISDICTION OF THE ARBITRATION COUNCIL:

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council No.099, dated April 21, 2004; the Prakas on the Nomination of Arbitrators dated 26 April 2004 and the Prakas No.103, April No.265 of July 13, 2004 and the Arbitration Council Procedural Rules (which form an Annex to the Prakas No.099 dated 21 April 2004).

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 Labor Law. But at the conciliation process the parties did not agreed to each other and the non-conciliation report number 362/MoLVT/AK dated 10 March 2005 was submitted to the Secretariat of the Arbitration Council on 14 March 2005.

COMPOSITION OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:	Mr. Ing Sothy
Arbitrator chosen by the worker party:	Mr. Liv Sovanna
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE:

Date and place of hearing: 17 March 2005 at 14:30 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:

Provided by the employer party:

- 1- Company certificate number 2421/MoC dated 27 November 1995;
- 2- Internal work rules dated 5 June 2001 and registered on 26 June 2001;
- 3- Labor contract dated 17 September 2004 between the company and Ms. Seung Leanghuy.
- 4- Notice dated 2 March 2005 of the company;
- 5- Notice dated 3 March 2005 of the company; and
- 6- Letter from Yi Hong (Cambodian garment industrial) company dated 2 March 2005.

Provided by the employee party:

- 1- Certificate of registration number 368 dated 24 October 2002 of the union of workers of P&E Company;
- 2- Statute of union of workers at P&E knitting dated 19 June 2002;
- 3- Labor contract signed between the company and Ms. Seung Leanghuy dated 17 September 2004; and
- 4- Record of vehicle license plate that transported goods out from the factory.

Received from Ministry of Labour and Vocational Training (MoLVT):

- 1- Non-conciliation report on collective labor dispute number 362/MoLVT dated 10 March 2005 from labor inspectors; and
- 2- Minute of collective labor dispute conciliation dated 2 March 2005.

Presentation and witnesses from employees and employer in the hearing.**Both parties decided to choose non-binding award at the hearing.****CASE SUMMARY:**

P&E Company is located at #3, Russian Blvd, Tektlar commune, Reseykao district, Phnom Penh and employs 220 workers in the printing and knitting business.

On 1 March 2005 the employer informed Ms. Seung Leanghuy about the termination of her labor contract. The union had asked the company to renew Ms. Seung Leanghuy' s labor contract because she was supported by many workers. The employer failed to inform the union in time, so on the afternoon of 2 March 2005 87 workers in the printing section commenced a strike. The labor inspector at Reseykao came to conciliate the collective labor dispute and 11 of 13 issues were successfully conciliated. The two non-conciliation issues were sent to the Arbitration Council by letter from the Labor Inspection Department dated 10 March 2005.

The Arbitration Council invited the parties to appear at a hearing on 17 March 2005 at 2:00 p.m. at the Secretariat of the Arbitration Council in order to proceed with arbitration to resolve the remaining issues. In the hearing the Arbitration Council encouraged both parties to continue to negotiate in order to reach an agreement through the conciliation method. However both parties did not reach agreement with each other and could not successfully conciliate the issues. Thus the Arbitration Council makes its decision as follows:

FINDINGS OF FACT:

- Having examined the non-conciliation report on collective labor disputes;
- Having listened to both parties in the hearing; and
- Having checked the above documents

We find that:***1st issue:***

The female worker named Ms. Seung Leanghuy commenced work in the factory in the printing section in June 2004 as a probationary worker for three months and then signed a six month labor contract as a regular worker for the period 17 September 2004 to 17 March 2005.

On 1 March 2005 (16 days before the end of the contract) the company notified the female worker named Ms. Seung Leanghuy about her termination because her contract was ending and the company had redundant staff.

The worker's union in the P & E factory met the administration staff to ask for renewal of Ms. Seung Leanghuy's labor contract because there were many workers supporting her and they intended to conduct a strike. Without any result on 2 March 2005, 87 workers of the printing section went on strike to support Ms. Seung Leanghuy even though she was not yet a union member.

The union said that the reason for this dismissal is that Ms. Seung Leanghuy is knowledgeable about the Labor Law and usually helps resolve problems for the workers and the union considered that this termination was an act of discrimination against Ms. Seung Leanghuy.

As for the employer party, it said that the termination of Ms. Seung Leanghuys's fixed duration contract was because the company has a lack of work and the company intended to reduce workers as a consequence. In addition the employer said that in the factory there were only two workers who have signed fixed duration contracts and those workers were likewise dismissed. (The union did not object to the employer's argument.) Thus the employer alleged that this termination was not discrimination. The employer promised to compensate Ms. Seung Leanghuy all amounts owed in accordance with the law.

2nd issue:

On 2 March 2005 at 2:30 to 3 March 2005, 87 workers in the printing section went on strike. The employer had issued a notice on 2 March 2005 ordering the workers to return to work on

3 March 2005. [The employer said that s/he] would pay their bonus but would not give half a day's wages for the afternoon of March 2nd. On 2 March 2005 when there was a strike there were two vehicles, number plates D 1218 Phnom Penh 2 and D 9736 Phnom Penh 2, which transported goods from the factory to Den Printing in order to have work done there. On day three [of the strike] the workers still refused to go back to work. On 3 March 2005 the employer issued another notice asking the workers to go back to work on 4 March 2005. On March 4th the workers agreed to go back to work.

The workers demanded the company pay their wage and attendance bonus during the strike because the company transported goods to Den Printing factory to have work done there in contradiction to Article 334 of the Labor Law.

However the employer argued that the decision regarding the transportation of goods to Den Printing factory to have work done there was made by the owner because the owner was concerned about not finishing work on time as a purchase order was scheduled. Moreover P & E factory is not the owner of that factory; it is subcontractor from Yi Hong (Cambodia) Garment Industry.

REASONS FOR DECISION:

1st issue:

Does the termination of Ms. Seung Leanghuy constitute an individual labor dispute or a collective labor dispute?

According to chapter 12, section 2 of the Labor Law the Arbitration Council does not have jurisdiction over individual labor disputes, but the Arbitration Council finds that the Labor Inspectors and the Minister in charge of labor have a duty to decide whether the dispute is an individual dispute or a collective dispute before sending it to the Arbitration Council. Generally, the Arbitration Council follows the decision of the Labor Inspectors and the Minister in charge of Labor who have sent the dispute to the Arbitration Council for continued resolution, unless there is a clear objection (10/03-Jacqsintex, 02/04-Cambodiana and 07/05-Coca Cola).

In this case the Arbitration Council agrees with the Minister's decision that the issue regarding the termination of the labor contract of the worker named Seung Leanghuy is a collective labor dispute because this dispute meets the three conditions of a collective labor dispute as mentioned in Article 302. The three conditions are as below:

A- A collective labor dispute is any dispute that arises between one or more employers [and a group of their workers].

B- The issue is about working conditions, the exercise of the recognized rights of a professional organization or regards relations between employers and workers.

C- The dispute could jeopardize the effective operation of the enterprise.

In relation to the termination of Ms. Seung Leanghuy's labor contract the Arbitration Council finds that condition A, B, and C above are fulfilled based on the following reasoning:

- Condition A is fulfilled because this issue was made as a complaint by the union who is the worker's representative. The union is an organization representing a group of workers. Thus the condition that a collective labor dispute must involve a group of workers was fulfilled when the union filed the complaint.

- Condition B is fulfilled because this issue, of a worker's termination, relates to the relationship between the employer and the employees. In the hearing the Arbitration Council found that Ms. Seung Leanghuy always helps the workers to settle their demands instead of those workers individually having to deal with the employer.

- Condition C is fulfilled because this dispute jeopardizes the function of the company's operation by reason that the workers may conduct a strike or take other industrial action over this issue. In the hearing the employer and the workers' representatives agreed that there were many workers who were involved in the strike to support the demand that the company not dismiss Ms. Seung Leanghuy.

Thus the Arbitration Council agrees with the decision of the Minister of Labor and the director of the Labor Inspection Department who decided that this dispute is a collective labor dispute and sent to the Arbitration Council for continued resolution of the dispute.

The workers still demand the company reinstate Ms. Seung Leanghuy. But the employer said that Ms. Seung Leanghuy's contract was due to end. In prior cases involving demands for reinstatement, the Arbitration Council has considered whether the employer complied with legal procedures and whether there is any evidence of discrimination (See 02/04-Hotel Cambodiana; 17/04-Cheer View and 95/04-ASD). In this case this demand involved two points as follows:

(1)- Has the termination of Ms. Seung Leanghuy's contract, which is a fixed duration contract, been terminated with prior notice in accordance with the law?

Article 73 paragraph 1 of the Labor Law states that "A labor contract with specific duration normally terminates at the specified ending date." Article 73 paragraph 5 of the labor law states that "If the contract has a duration of more than six months, the workers must be informed of the expiration of the contract or of its non-renewal ten days in advance."

In this case the female worker, Ms. Seung Leanghuy signed a contract with the employer on two occasions: a probationary contract lasting three months and a fixed duration contract lasting six months that ended on 17 March 2005. The employer provided notice about the termination of her labor contract, which she signed on 1 March 2005. The notice period lasted 16 days (from 1 March to 17 March 2005 which was the end of the fixed duration contract of Ms. Seung Leanghuy).

Thus the Arbitration Council finds that regarding the termination of [Ms. Seung Leanguy's] labor contract, the employer did provide notice in accordance with the Labor Law (Article 73 paragraph 5).

(2)- Is the dismissal of Ms. Seung Leanghuy's fixed duration contract discriminatory or not?

Article 12 of the Labor Law states that the employer shall not discriminate against workers based on membership in a workers' union or on the exercise of union activities; [such factor may not] be the reason for a decision to terminate an employment contract. Additionally, Articles 279, 282 and 293 also prohibits discrimination against worker delegate, union members and leaders.

In this case the Arbitration Council finds that [Ms. Seung Leanghuy's] termination does not involve discrimination because Ms. Seung Leanghuy is not a union leader or a member of the union and there were only two workers in the P&E factory who had signed fixed duration contracts (including Ms. Seung Leanhuy) and their [employment was terminated when their] contracts ended. Further, the union recognized also that the company really has no work because some sections were temporarily suspended. Therefore the Arbitration Council finds that the termination of Ms. Seung Leanghuy was not discriminatory.

2nd issue:

87 workers in the P&E factory went on strike for one-and-a-half days without giving notice in accordance with Article 324 of the Labor Law. During the strike, the employer transported goods with 2 vehicles to another factory to have work done there. The workers demanded that the attendance bonus and wages should be paid for the period of the strike because the company had transported goods out to Den Printing factory to have work done there.

The Arbitration Council finds that the transportation of goods out of the factory could not happen unless there was an agreement with the employer. Even though the employer alleges that the transportation of goods was the owner's decision because the owner was concerned about not finishing the work on time as per the purchase order and based on the letter from Yi Hong (Cambodia) Garment Industry, the Arbitration Council still finds that the employer is responsible for the transportation of goods to Den Printing to complete the work. However, for the reasons described below, the Arbitration Council concludes that the striking workers are not entitled to wages and bonus during strike.

According to Article 332 of the Labor Law, the labor contract is suspended when there is a strike. "A strike suspends the labour contract. During a strike, the allowance for work is not provided and the salary is not paid." And Article 334 states that if during a strike the employer recruits new workers to replace the workers who went on strike, the employer must pay wages to the workers during a strike.

In prior cases the Arbitration Council found that the transportation of goods out of the factory may be equal to a recruitment of workers to replace strikers (see 04/03-Lida Garment). In some cases the transportation of goods out of the factory, in order to have other workers do that work, will make the strike ineffective and undermine the purpose of the strike, which is to put pressure on the production line of the factory and make the employer focus on resolving the workers' demand. In some cases the Arbitration Council has concluded that the workers shall receive wages during the strike; unless the strike conducted by the workers did not follow the [lawful] procedures like providing notice and exhausting all peaceful methods for settling the dispute before conducting the strike (See 15/05-Lucky Zone).

According to Article 324 of the Labor Law, before conducting a strike, the workers must provide at least seven calendar days notice in advance. In fact, the workers in P & E Company failed to provide notice. According to Article 320, paragraph 4, the right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out. But in fact the strike did not exhaust all peaceful methods to settle the dispute as required under Article 320, paragraph 4 because the workers went on strike before the arbitration process, which is [conducted at the Arbitration Council] an institution to resolve labour disputes peacefully.

Thus because the strike did not follow the procedures the demand for wages during the strike cannot be accepted. It is noted that Article 334 of the Labor Law can apply provided that the workers conduct a strike through the procedures of the law as mentioned in chapter 13 of the Labor Law.

Similar to this, Article 333 of the Labor Law prohibits the employer from imposing any sanctions against striking workers. This prohibition is fully effective unless the strike does not follow the [lawful] procedures. If the workers do not follow the law, they cannot hope to receive benefits from the law. Hence, the deduction of the attendance bonus by the employer is not a sanction and is not prohibited by Article 333 of the Labor Law when the strike did not follow the [lawful] procedures (see 04/03-Lida Garment).

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

DECISION:

1. Reject the workers' demand that the company reinstate Ms. Seung Leanghuy.
2. Reject the workers' demand for wages and attendance bonus during the strike for the workers who joined the strike in the P&E factory on 2 March 2005.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signed:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signed:

Chair of arbitration panel:

Name: **Ang Eng Thong**

Signed:

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.