

KINGDOM OF CAMBODIA
Nation King Religion

Case number: 14/03
Date of Award: 03-10-2003

ARBITRATION COUNCIL

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

Employer party : Chusing Garment (Cambodia) Co.Ltd
Representative : Ms. Chang Vuoch Chhy, accountant manager.
Address : St. National Road 6A, Sangkat Prek Leap, Khan Ressey Keo, Phnom Penh.
Telephone : (855-23) 365 898.....Fax : (855-23) 365 899

AND

Employee party :

- 1- Cambodian Worker's Right Union : Mr. Chhin Sony (Union's leader) and his members.
Address : #482, Sangkat Prek Leap, Khan Ressey Keo, Phnom Penh.
Telephone : 012 798 221
- 2- Dharmacrat Union of Chusing : Miss. Sem Srey (Union's leader) and his members.
Address : #76, St. National Road 6A, Sangkat Prek Leap, Khan Ressey Keo, Phnom Penh
Telephone : 012 650 353
- 3- Legalist Worker Union : Mr. Noun Chan Theurn (Union's leader) and his member.
Address : St. National Road 6A, Sangkat Prek Leap, Khan Ressey Keo, Phnom Penh.
Telephone : 011 669 462

Issues in dispute: (as set out in the non-conciliation report)

1. The workers' claim for the employer to dismiss the following managers:
 - a. *Si Kun He* and *Chhin Khang Miing* (also know as The Gecko) for the reason that these two individuals were involved in a fight at the factory; and
 - b. *U Poleang* because he pulled at the shirt of an employee and roughly snatched her ID card.
2. The workers' claim for the employer to:
 - a. Give prior notice of the piece rate;
 - b. Increase the piece rate; and
 - c. (not) force the workers to meet the factory's production targets.
3. The issue of the factory's decision to reduce the wage and responsibilities of *Koy Bonyeun* from \$65 to \$45 (per month).

Jurisdiction of the Arbitration Council:

The Arbitration Council derives its power to make this Award from Section II B of chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules which form an Annex to the same Prakas.

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. That conciliation hearing was unsuccessful and non-conciliation report dated September 12, 2003 was submitted to the Secretariat of the Arbitration Council on 15-09-2003.

Composition of the arbitration panel:

Arbitrator chosen by the employer party: Mar Samborana

Arbitrator chosen by the worker party: Vong Vanna

Chair arbitrator (chosen by the two arbitrators): Sa Sovan

Hearing and Evidence:

Date and place of hearing: Monday 29th September 2003 (14.00 – 19.00), Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

Witness and experts : none

Evidence:

Provided by employer party :

1. Payroll of 3 months : June, July, and August 2003.
2. Internal rules of the company promulgated on 08 January 1999.
3. Employment contract between Mr. Si Kun He and the company dated May 02, 2003.
4. Employment contract between Mr. Chhing Khang Miing and the company dated May 02, 2003.
5. Employment contract of Mr. Koy Bunyin dated September 13, 2003.
6. Record of serious mistakes of the worker named Phave Sophany dated November 15, 2002.
7. Warning letter to the workers named Maryna, Mar Sophal, Tok Sok Ros, and Sem Srey Ny and warning letter in Chinese language to Si Kun He and Chhin Khang Miing dated July 29, 2003.
8. Minute of warning of the worker named Yan Kongkear from the police station of Prek Leap dated July 24, 2003. He was accused of threatening to fight the security staff of the factory.

Provided by employee party :

1. Copy of the piece rate calculation of employees for May 2003.
2. List of employees who asked to dismiss U Poleang and Si Kun He. This letter has no date.
3. A joint complaint of Cambodian Workers' Rights Union, Legalist Union of Chusing and Dharmacratic Workers' Union to labor inspection post of Khan Ressey Keo dated August 29, 2003.
4. Minute of meetings between Cambodian Worker's Right Union and the company dated 07/07/2003, 22/07/2003, 02/08/2003, and 06/08/2003. These meeting were organized in the office of Chusing Garment company (Cambodia) Co.Ltd.

Summary of the Case:

The dispute has been in progress since July 03, 2003 and both parties, the employees represented by the 3 unions and the company represented by Ms. Chang, have tried to resolve this dispute in the office of the company as mentioned in the minutes dated 07/07/2003, 22/07/2003, 02/08/2003, and 06/08/2003. Because of the failure to find a resolution, the 3 unions submitted a complaint to Labor Inspection Post of Khan Ressey Keo on 29/08/2003. The labor inspector of Khan Ressey Keo made a conciliation on this collective dispute on 04/09/2003. However there are 3 points on which both parties cannot reach an agreement as set out in the non-conciliation report dated 04/09/2003.

This case was submitted to the Arbitration Council on 15/09/2003.

The Arbitration Council conducted a hearing of this case on 29/09/2003 at 9.00.

In the hearing, both parties decided to choose **Non Binding Award**.

Facts:

After considering the minute of non-conciliation of the collective dispute and having heard the testimony of the parties and having considered the documents listed above, Arbitration Council finds that:

Re: Issue 1

- a. The Chinese manager in charge of cutting and stores, Mr Si Kun He, had a physical fight with another Chinese employee called Chhin Khang Miing (also know as The Gecko) who is the head of the marking section in the factory on 25 July 2003. The employer stated that they already issued a letter of warning both employees regarding their fighting in the factory on 29 July 2003. The representative of the employee claimed that there was discrimination on the basis that when Khmer employees make a small mistake it is classified as serious misconduct and they employees are dismissed without compensation. However, the employer claimed that there was no discrimination, but rather the employer also warned Khmer employees who committed errors as evidenced by various letter of warning which were issued to workers who continued to work with the employer. As for Chinese employees who committed errors, they were issued with the same sort of letters of warning. In these circumstances the Arbitration Council does not find sufficient evidence of discrimination.
- b. Mr U Poleang, a Chinese employee who is responsible for production management snatched an employee's ID card on 13 August 2003. The employer explained that on the evening in question the employee was trying to leave the factory in the wrong queue contrary to the internal rules and that Mr U Poleang was responsible for ensuring that the the workers left the factory in an orderly fashion which ensured safety because there are many workers in the factory. At this time Mr U Poleang attempted to take a ID card from a worker in order to give that worker a warning, but the worker resisted and thus the snatching of the card occurred. The worker claimed that Mr U Poleang grabbed the shirt of the employee and snatched her ID card roughly which caused an injury to the employee. But the employer responded that there was no injury. The Arbitration Council finds that even though this action of the employee was against the rules

Re: Issue 2

To date the employer has not provided the employees with a schedule of piece rates. The reason for this as explained by the employer is that the employer gives this information only to the section leaders and that if the workers wish to know this information then they need to enquire with the section leaders. However, the workers explained that they never knew what the piece rate was and never saw a schedule of piece rates in advance and that if they ever asked the company then the company never provided this information until the end of the month when their monthly total were announced. The employees raised the problem that they were not paid by the hour, but at a piece rate, and therefore the company should not force

them to meet production targets, by warning or instructing workers who have low production. The employer explained that if a worker sows 50 – 60% less than normal this can lead to a breakdown in production as other workers will have no work to go on with causing a reduction of their incomes and a fall in production for the whole factory. If a worker produces 10 – 20% less than normal the company never instructs or warns them. Finally the employer claimed that they would try to set piece rate appropriately and to provide the employees with the piece rate in advance.

Re: Issue 3

The representative of the employer informed the Arbitration Council that the employer and Mr Koy Bunyuen had reached a resolution of this issue already, namely that the employer would maintain the salary and duties of Mr Koy Bunyuen on the basis that he agreed to respect the internal rules of the company in accordance with their letter of 13 September 2003.

Reasons for Decision:

1. With regard to Issue 1 we refer to the award of the Arbitration Council in Case #04/03 (Lida Garment) in which the Council found that Article 65 of the Labor Law provides that the employment contract is a contract which arises out of the employment relationship between employee and employer. Thus generally speaking it is only the parties to the contract who can terminate the contract. This means that hiring or firing and employee is a right of the employer who is a party to the employment contract.

Even though the actions of the two Chinese employees, Si Kung He and Chhin Khang Miing could be considered serious misconduct in accordance with Art 35 (e) of the (employer's) internal rules and Article 83(2)(4) of the Labor Law, The Arbitration Council finds that these provisions do not impose upon an employer the obligation to dismiss any employee. These articles only refer to the right of the employer to dismiss without giving notice or paying severance pay. It is also significant that, according to Article 26 of the Labor Law this right is lost if the employer does not act within 7 days of becoming aware of the serious misconduct. Article 25 of the of employer's internal rules supports this conclusion too. In this case the employer has warned Si Kung He and Chhin Khang Miing already by letter of 29 July 2003 in accordance with Articles 25 and 35 of the Internal Rules.

If a worker were a dangerous type of person posing a health and safety risk to other workers, the Arbitration Council could issue an award which orders an employer to transfer or, in a most serious case, dismiss that employee. In the circumstances of this case, however, the Arbitration Council did not find evidence that proves that the 3 managers in question were persons of the above type. Thus the workers' claim for the employer to dismiss the managers, Si Kung He and Chhin Khang Miing and U Poleang, does not have sufficient legal basis for the Arbitration Council to for the Arbitration Council to transfer or dismiss these managers.

2. (a) Prior notice of the piece rate: The employer agrees to provide the employees with a schedule of the piece rates and any amendments to this schedule in advance. The Arbitration Council notes that the advance provision of such a schedule is required in accordance with Article 112 (a) of the Labor Law.

(b) Increase in the piece rate: According to Article 108 of the Labor Law the wage for task work or piece work must be calculated so as to allow a worker of average ability working normally during regular hours to earn a wage at least equal to the minimum wage. The Arbitration Council does not find that this provision determines the rate at which the piece rate must be set rather it concerns the calculation of the wage.

Looking at the wage earned by workers at this factory the Arbitration Council finds that the wages paid to workers were equal to or greater than the minimum wage as required by law even if the amount as calculated on the basis of the piece rate was less than the minimum wage. Thus the employer was complied with the provisions of the law which required it to pay the minimum wage, and as such there is insufficient legal basis for the workers to demand the employer raise the piece rate.

According to Chapter 6 of the Prakas on the Arbitration Council, however, the Arbitration Council has the power to make awards regarding interests disputes. The workers' request to raise the piece rate so that it produces a wage above the minimum wage is an interests dispute. In order to support such a claim the workers need to show evidence as to why they should receive a raise in the piece rate which would lead to pay in addition to the minimum wage. In this case the employees did not provide sufficient evidence as to why they should receive an interests based wage increase.

(c) Forcing workers to meet production targets: It is the prerogative of the employer to set reasonable production targets which a worker of usual ability can meet in an 8 hour day with a reasonable amount of rest. The full time working hours of a worker should no exceed 8 hour per day and 58 hours per week as stated in Article 137 of the Labor Law. The employer cannot force the workers to work overtime. Overtime work must be on a voluntary basis according to Prakas #80 dated 01 March 1999. If workers agree to work overtime then they should be paid at 50% more than normal for these hours and if the overtime work is a night or during the weekly day of then the rate should be 100% more than normal as set out in Article 139 of the Labor Law. If an employee fails to meet reasonable production targets, the employer could correct them or warn them on the basis of poor performance.

Decision & Orders:

1. To reject the claim of the workers to dismiss the three managers, Si Kun He , Chhin Khang Miing, and U Poleang, but to order the employer to warn and educate these employees so that the behavior in question does not happen again. (by agreement)
2. Order the employer to:
 - a. To provide the employees with a schedule of piece rates and to provide employees with advance notice if these rates change;
 - b. Calculate the piece rate reasonably; (by agreement)
 - c. Not to force the workers to work overtime and if the workers work overtime to calculate their pay in accordance with the law.
3. As agreed to maintain the duties and salary of Mr. Koy Bunyuen at US\$65 per month.

Signatures of Members of the arbitration panel:

Arbitrator chosen by the employer party:

name: Mar Samborana

Signed

Arbitrator chosen by the worker party:

name: Tuon Siphann

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.

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