

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 14/04

Date of award: April 05, 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

June Textile Company

(Employer party)

AND

Khmer Youth Federation of Trade Union in June Textile

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representative: Mr. Albert Teoh, Administration Manager and Mr. Duch Sam Ang,
Administration Assistant.

Address: Russian Blvd, Sangkat Tek Thla, Resey Keo District, Phnom Penh.

Tel: 023 883 338 Fax: 023 881 238

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representative: 1- Mr. Nov Titha, KYFTU staff
2- Mr. An Sakhan, KYFTU staff
3- Mr. Mom Sareun, Local Union President
4- Mr. U Chanthy, Local Vice Union President
5- Mr. Yeun Butheurn, Secretary of the local union

Address: #58, Street 265, Tek Thla, Toul Kok, Phnom Penh

Tel: 011 975 670 Fax: N/A

ISSUES IN DISPUTE:

(In non-conciliation report)

The non-conciliation issue sent by the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation to the Arbitration Council to resolve is as stated below:

1- The workers in the mechanics section demanded that the company increase their wages by US\$20 for each worker.

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 establishment of the Arbitration Council (No. 338, dated December 11, 2002).

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. However, the conciliation was unsuccessful. The non-conciliation report dated February 20, 2004 was submitted to the Secretariat of the Arbitration Council on March 05, 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Ouk Ry
Arbitrator chosen by the worker party:	Mr. Koy Neam
Chair arbitrator (chosen by the two arbitrators):	Mr. Sar Sovann

HEARING AND EVIDENCE:

Date and place of hearing: March 24, 2004 at 10:30 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- Statute and Memorandum of Understanding of the company;
- 2- Certificate of Value Added Tax;
- 3- Certificate of Business license;
- 4- The Prakas of the Ministry of Industry and Mines;
- 5- License to invest;
- 6- The crucial issues for the mechanics;
- 7- Payroll for the years 2001, 2002 and 2003.

Provided by the employee party: N/A

A non- conciliation report from the Labor Inspectors.

Minutes of the hearing.

CASE SUMMARY:

June Textile Company is located at Russian Blvd, Tek Thla, Resey Keo, Phnom Penh. The company started its business in 1994 and employs about 5000 workers, divided into many sections based on the requirements of the company.

The workers in the mechanics sections in the company made demands on 7 issues related to working conditions, benefits and rights, and suggested that the KYFTU negotiate to resolve these issues with the company through a letter dated December 11, 2004. All the workers' demands from the mechanics section were sent to the Labor Inspectors on January 12, 2004. A conciliation was conducted by the Labor Inspectors from the Ministry of Social Affairs, Labor, Vocational Training, and Youth Rehabilitation (MoSALVY) on February 20, 2004 in June Textile Company. The conciliation hearing was successful on 6 of the 7 issues and there was one unsuccessful issue. The issue was an increase of US\$20 in the wage of each worker per month because they thought that they have been working for a long time for the company and have never had a wage increase because the company discriminates against them for joining as KYFTU members and does not respect the Labor Law which states that "The same task must receive the same wage". During the hearing the employer side agreed to increase a part of the wage of the employees but not to increase the basic wage; it means that the monthly attendance bonus would be increased from US\$10 to US\$15. However the employees did not agree with this offer because this offer was not certain; it was dependant on the supervisor because the supervisor is the person who evaluates the workers' tasks before providing an attendance bonus. The conciliation on this issue was not successful and MoSALVY sent this case to the Arbitration Council to resolve.

The Secretariat of the Arbitration Council invited both parties to appear at the Arbitration Council, bringing along with them all necessary documents and supporting evidence to defend their demands on March 17, 2004 at 8h:00AM.

FINDINGS OF FACT:

- After having examined the minute of the conciliation of the collective labor dispute and having listened to the account from the parties; the employer and the employees.

The Arbitration Panel finds that:

- 1- The wages of the workers in June Textile are calculated on a daily rate of US\$2;
- 2- There is no clear payroll for basic wages, according to the answer from the employer;
- 3- Increases in the workers' basic wage are based on task evaluation by the supervisor based on skill, work experience and work performance;

- 4- The basic wage of the workers in the mechanics section (about 30 workers) has not been increased for many years because there has been a failure to regularly evaluate work performance because the supervisor has changed every year.
- 5- Workers in the mechanics section demanded that the employer increase their wage, but not by US\$20 as in their first claim.

REASONS FOR DECISION:

The workers in this case said that they have the right to demand an increase in their wage in accordance with the principle of equal wages as mentioned in Article 106 of the Labor Law. They added that it is fair to receive a wage increase based on their skill.

Article 106 of the Labor Law states that "For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age". When reading this Article together with a clause which refers to general discrimination in Article 12 of the Labor Law, this means that wages must be equal without discrimination based on origin, sex, age, union membership, if those workers are working under the same working conditions, and have the same professional skill and the same outputs.

To succeed in a demand involving discrimination relating to wage increases in accordance with Articles 12 and 106 of the Labor Law, the employees must give detailed information about whether they receive lower wages than other workers based on sex, union members, age or origin. For example women workers who want to demand equal wages in accordance with Article 106 of the Labor Law should give evidence that they receive lower wages than their male colleagues for the same tasks.

The workers' side in this case alleged that they were discriminated against because of their union membership and because the outcome is that members of other unions receive higher wages than them. However they did not provide clear or detailed information that could be considered as specific evidence regarding the discrimination issue. Further the Arbitration Council understands the argument that wages could be not offered equally because they depend on professional skill and output of work performance of each worker; even though those workers have the same seniority and training. Thus the workers' demand regarding discrimination cannot succeed.

The other argument from the workers is that they are entitled to a wage increase because when they started working for June Textile Company each worker did not have any skills but later after spending time a while working for the company and training, those workers have

the skills and competency to perform their job better than before. Responding to the above argument, the employer pointed out that the company has a policy to increase the wages of employees based on the outcome of their task evaluations made directly by each supervisor from each section every year and that the workers who have problems are not entitled to wage increases because they already receive more money than the minimum wage referred to Notification number 17/2000 of MoSALVY and:

- A- Those workers still lack skill and need to be trained more;
- B- Those workers do not respect the internal work rules of the company;
- C- Those workers received the attendance bonus already for motivation;
- D- Increasing the wages of those employees could make the other 5000 workers in the company demand this as well; and
- E- Other companies may blame June Textile Company if the company increases wage without having any support.

The employees' side argued that their group consists of about 30 workers; they have never had a direct task performance evaluation from their supervisor because the supervisor has been changed every year. The company recognized that this had actually happened.

Thus the employees did not provide satisfactory evidence to support their demand to increase wages¹ and the Arbitration Council finds that June Textile Company's policy is to increase wages based on a yearly work performance evaluation. But in the case of workers in the mechanics section, the Arbitration Council finds that the employer did not evaluate work performance correctly because the supervisor has often changed. Therefore the Arbitration Council finds that it is reasonable for the employer to apply her/his policy and to evaluate the workers' performance. Then the employer could consider a wage increase for the workers based on the outcome of the evaluation. In addition, to be fair in the evaluation, the Arbitration Council finds that it is appropriate for the employer to provide the employees first with the evaluation criteria form before conducting an evaluation.

Other issues:

In accordance with clause 43 of the Prakas on the Arbitration Council no. 338 dated 2003, an arbitral award that resolves a collective labor dispute take the place of a collective bargaining agreement which is effective for one year. Both parties can review or change all the clauses according to mutual agreement by both parties and neither of them could conduct a strike or lock out to renew or change an existing collective bargaining agreement (see Article 321 of the Labor Law). The Arbitration Council will respect all provisions of a collective bargaining

¹ Extra evidence provided by the employees to clarify their demand about the benefits of wage increases could include detailed information comparing wages in the factory, a previous model of wage increases, an increase in the cost of living, higher capacity and production by the workers.

agreement and will not issue its arbitral award to amend or change a collective bargaining agreement that is properly made and still in effect (see case no. 11/04-CAMS).

DECISION:

The Arbitration Council releases its decision as below:

- 1- Deny the union's demand based on Article 106 of the Labor Law to get equal wage for the same task.
- 2- The employer must arrange a payroll for the workers in the mechanics section by dividing a level of classification and a ladder of each classification.
- 3- A work performance evaluation of workers in the mechanics section must be done regularly based on criteria that will be printed out for the workers at the beginning of each period of time and at the end of each period of time the employer must evaluate their work performance.
- 4- The employer must keep all documents related to each worker's tasks in the mechanics section in a file for reference later on.
- 5- This arbitral award does not settle an interests dispute and does not replace a collective bargaining agreement.

Signatures of Members of the arbitration panel:

Arbitrator chosen by the employer party:

Name: Ouk Ry

Signed:

Arbitrator chosen by the worker party:

Name: Koy Neam

Signed:

Chair of Arbitration Panel:

Name: Sar Sovann

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.