

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 14/06-Zheng Yong company

Date of Award: 22 March 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyum**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Tan Try**

DISPUTING PARTIES

Employer party:

Name: Zheng Yong Factory Co., Ltd.

Address: National road number 5; Toul Sangke commune; Resey Keo district, Phnom Penh

Telephone: (855-23) 430 657

Fax: 023 430 193/430 194

Representative:

1. Mr. Lim Vanna Representative attorney
2. Mr. David Chhaynava Zheng Yong's representative.

Worker party:

Name: Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) at Zheng Yong garment factory

Address: # 28B, street 222, Beoung Rang commune; Daun Penh district, Phnom Penh.

Telephone: (855-12) 935 496

Representative:

1. Mr. Sea Bunsong President of FTUWKC at Zheng Yong factory;
2. Mr. Seng Ken Vice President of FTUWKC at Zheng Young factory;
3. Mr. Chhun Aun Labour dispute official of FTUWKC at Zheng Young factory;

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|----------------------|---|
| 4. Mr. Thy Chinda | Worker's representative at Zheng Young factory; |
| 5. Mr. Seng Chamreun | Worker at Zheng Young factory; |
| 6. Mr. Pun Da | Worker at Zheng Young factory; |
| 7. Mr. Chhan Vichith | Worker at Zheng Young factory; |
| 8. Mr. Sam Sophat | Worker at Zheng Young factory; |
| 9. Mr. Sos Sopheap | Worker at Zheng Young factory. |

ISSUES IN DISPUTE

(in non-conciliation report)

According to the minute of the non-conciliation report, the following issues constitute the workers' demand in this case.

- 1- The workers demand the company to pay increased wages to piece-rate workers in the cutting section when the Chinese Chief of Section orders them to cut more pockets. But the employer said that this is a duty of the workers in the cutting section [and therefore] the company does not [feel the] need to calculate an increased wage.
- 2- The workers demand that the company not transfer the warehouse workers to work in another section. But the employer party said that transferring workers from one section to another section is the company's right.

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 99/04 on the Arbitration Council; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas 513/05 on the Appointment of Arbitrators (Third Term).

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. However the conciliation was unsuccessful and the non-conciliation report No. 264/MoLVT dated 24 February 2006 was therefore submitted to the Secretariat of the Arbitration Council on 27 February 2006.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd, Tonle Bassac, Chamkamorn, Phnom Penh.

Date of hearing:

- First hearing on 10 March 2006 (8:00 a.m. to 12:00 p.m.)
- Second Hearing on 16 March 2006 (8:00 a.m. to 11:00 a.m.)

Procedural issues:

On 7 February 2006, the Labour Dispute Department appointed a skilled official to have a meeting in order to conduct a conciliation between the employer and the employees at Zheng Young factory. [As a result] five of seven issues were successfully conciliated. The workers' representative maintained their demand with respect to the two non-conciliation issues above. The conciliator tried their best to conciliate the issues, but the parties in dispute could make an agreement on the issues. Thus, these non-conciliation issues were sent to the Arbitration Council on 27 February 2006.

After receiving the case, the Arbitration Council invited both the employer and workers sides to appear in a first hearing held on 10 March 2006 at 8:00 a.m. Both parties were present on the arbitral hearing date. The Arbitration Council attempted to conciliate the issues but could not resolve [the case through conciliation]. The Arbitration Council ordered the parties to provide more evidence related to the case and the arguments which were raised by them in the hearing, before 16 March 2006.

The Arbitration Council invited both parties to appear at a second hearing on 16 March 2006 at 8:00 a.m. Both parties were also present [at this hearing]. In the hearing the Arbitration Council invited witnesses to clarify the parties' arguments and some facts. Witnesses from the workers' side were present on the arbitral hearing date.

EVIDENCE**Witnesses and experts:**

Witnesses from the workers' side:

1. Ms. Sun Seap Worker (Piece rate recorder)
2. Ms. Hay Sinet Worker (Piece rate recorder)
3. Ms. Oung Heang Worker (Piece rate recorder)

Witnesses from the employer's side: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

- Statute of Zheng Yong factory Co., Ltd dated 24 March 1997;
- Business license numbered Inv-327/97E dated 11 April 1997 of Zheng Yong factory;
- Internal Work Rules of Zheng Yong factory;
- Letter from Zheng Yong company dated 22 November 2004 sent to the Director of the Labour Inspection Department for the request of registration of the collective

bargaining agreement between the Zheng Young company and the representative of the Cambodia Federation of Independent Trade Union (CFITU) which has most representative status;

- Letter from the Labour Inspection Department dated 10 January 2005 requesting the registration of the collective bargaining agreement of Zheng Young company;
- Delegation letter from the Director of the company dated 25 February 2006 to Mr. David Chhaynava, the company's representative;

B. Provided by the worker party:

- List of 12 cutting section piece rate workers' names ;
- Salary of the 12 cutting piece rate workers in 2004, 2005 and the first and second months of 2006;

C. Provided by the Ministry of Labour and Vocational Training:

- Report no. 264/MoLVT dated 24 February 2006 on the resolution of the collective labour dispute at Zheng Young factory Co., Ltd;
- Minute of the collective labour dispute resolution dated 7 February 2006;
- Minute of the report no. 263/MoLVT/LID dated 24 February 2006 addressed to His Excellency Minister of Labour and Vocational Training;
- Note no. 047/MoLVT dated 20 February 2006 from the Labour Dispute Department of the Ministry of Labour and Vocational Training addressed to the Arbitration Council.

D. Provided by the Secretariat of the Arbitration Council:

- Letter of invitation to the hearing to the worker party, No. 088/SAC, dated 1 March 2006;
- Letter of invitation to the hearing to the employer party, No. 087/SAC, dated 1 March 2006;
- Letter of invitation to the second hearing to the worker party, No. 110/SAC, dated 14 March 2006;
- Letter of invitation to the second hearing to the employer party, No. 104/SAC, dated 13 March 2006;
- Letter no. 111/SAC dated 14 March 2006 addressed to the Director of Zheng Yong company requesting additional documents.

FACTS

Zheng Yong company is located at National road #5, Toulasangke commune; Reseykeo district, Phnom Penh and employs 1,800 workers.

- Having examined the report of the collective labour dispute conciliation;
- Having listened to the arguments of both representatives of the employer and employees;
- Having reviewed documents and evidence received from the employer and employees.

The Arbitration Council finds that:

First issue:

- The 12 workers who made the demand in respect of the first issue consist of four Chiefs of Cutting Section and eight polishing and cutting cloth workers. The following are the names of the 12 workers (called list A):
 - Mr. Oul Samath
 - Mr. Thy Chinda
 - Mr. Sos Sopheap
 - Mr. Hor Chandarith
 - Mr. Soung Than
 - Mr. Ek Channa
 - Mr. Seng Chamroun
 - Mr. So Sphath
 - Mr. Oung Veasna
 - Mr. Pon Da
 - Mr. Samrith Puthipor
 - Mr. Chorn Vicheth

Situation before October 2005

- The 12 workers above have not signed written contracts with the company;
- Since the commencement of work the workers in the cutting section have had a duty to cut fabric to use to make pants every day and to cut one table's worth of white pockets every three days.
- Since the commencement of work the workers in the material laying section have a duty to lay out cloth for pockets' every day and lay out fabric for the white pockets at a rate of one table's worth every three days.
- The work to cut/lay one table of white pockets takes an average of one hour.
- The 12 workers have worked according to piece rate calculation which means they earn approximately US\$60 - US\$300 [per month].
- The task involving white pockets used to be the responsibility of the workers of the cutting section (cutting/those that lay out, the fabric of the pockets).

Situation after October 2005

- The piece rate workers in the cutting section have a duty to lay one table's worth of white pockets every day.
- The work to cut/lay one table's worth of white pockets takes an average of one hour.
- The workers who are paid a monthly wage do not lay out the fabric for the white pockets any longer.
- The piece rate fee did not change.
- The wage earned by the 12 workers did not change much, but the workers are tired and work harder than before.

Second issue:

- The workers demand that they not be transferred [from one section to another] in the future.
- In the past there was a [practice] of transferring but there was no discrimination
- The slower workers may be transferred because this may harm the company's production line.

REASONS FOR DECISION

Reason for first issue:

The piece rate workers in the cutting section demand that the company calculate additional wages when the Chinese Chief of the cutting section order the workers to cut more pockets. In comparison, the employer said that this is the cutting section workers' duty, so therefore the company does not need to calculate more wages. In respect of this point, the Arbitration Council finds that there are 12 workers in the cutting section who have had their wages calculated according to the quantity of the product. [The 12 workers] demand additional wages if the company asks them to cut more pockets. This issue has occurred [in the past] when the 12 workers have routinely cut one table's worth every three days and each time this work has taken one hour on average to cut the pockets, [but] the company did not include [this product] into the quantity of products for the calculation of wages. During the time [of this practice] the workers who have been paid on a monthly basis are also [called upon] to help to lay out the fabric for white pockets. The result is that the workers can only lay out the fabric for the white pockets in the amount of one table's worth every three days.

Article 65 paragraph 3 of the Labour Law states that, "The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labour regulations even if it is not expressly defined".

Thus even though there is no written contract, the routine of the work existed for many years before October 2005. The Arbitration Council [therefore] finds that the employees and the employer made a verbal agreement [that the 12 workers would] be paid by piece rate and the 12 workers would have a duty to work on the laying out and cutting of the white pockets [at a rate of] one table's worth every three days, [where] one table takes an hour on average.

From October 2005 there has been a new Chinese supervisor who arrived from overseas and later changed the management policy which ordered that the 12 workers were to lay out and cut one table's worth [of white pockets] per day (in which one table takes an average of one hour) and that this would not be calculated as part of the piece rate fee for the workers. The manager also stopped the workers who received a monthly salary from doing the laying out and cutting of the white pockets any more. This means that before October 2005 the 12 workers spent one hour per day laying out and cutting the white pockets without payment of the piece rate fee. [In comparison] after October 2005 [the workers] spent an average of one hour per day laying out and cutting white pockets and this work was excluded from the piece rate fee. Even though the changed [policy] does not affect the workers' minimum wage, this practice makes the workers work harder than before and they become tired and lose time [and energy] to cut the clothes relevant to the piece rate fee. Logically, work undertaken over eight hours must produce [a larger] quantity of products than those produced in seven hours. Therefore the changed policy does make the workers lose some opportunity to receive the wages they deserve when calculating their payment with respect to the quantity of products in each month.

The Arbitration Council recognizes the power of the employer to manage [the enterprise] in order to ensure a profitable production line. However the Arbitration Council considers that all new policies and orders should not unilaterally affect the status of the labour contract.

Notice number 017 states that, "...Pieceworkers (those who sew to receive coupons) shall receive wages based on the work they have performed-...". This means that when the employer asks the workers to do more work without counting coupons, this makes the workers lose time that they could use to work to obtain more coupons.

Therefore the Arbitration Council finds that the employer did change the labour contract unilaterally from laying out/cutting one table's worth of white pockets every three days to one table's worth every day.

According to principles of contract, the contract may not be changed, unless there is an agreement from both parties (Article 22 of State-Decree 38/88 and also see 29/04-Top World Garment).

In this case the workers and the employer did not agree to any changed terms or an amount of new work.

Based on the above reasons, the Arbitration Council finds that in order to retain the benefits of both parties, the employer must calculate extra wages for the extra hour that the employer orders the 12 workers to lay out and cut the white pockets. This amount of payment can be paid following the formula as follows:

Average wage per hour multiplied by the number of hours the workers must cut more pockets per month set by the employer:

$$\text{Wage per hour} = \frac{\text{The average wage per month}}{\text{The number of working hours per month}}$$

Reason for second issue:

The workers demanded that the company not transfer workers from the workshop section to another section. The employer said that transferring workers from one section to another is the right of the employer. At the hearing the employees argued that there was a transfer that led to a loss of workers' benefits but the workers did not make a specific claim related to an alleged past wrong, thus this demand relates to a future demand and [the Arbitration Council] cannot predict when it might occur and what the specific facts might be. Because this is a demand related to [hypothetical] future [facts], the Arbitration Council cannot make a decision on this issue.

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

DECISION

1. Order the employer to calculate additional wages for the working hours of the workers ([included] in the List of names "A") who have cut pockets, according to the following formula:

Average wage per hour multiplied by the number of hours the workers must cut more pockets per month set by the employer

$$\text{Wage per hour} = \frac{\text{Average of wage per month}}{\text{Number of working hour per month}}$$

2. Reject the workers' demand not to transfer workers from the workshop section to another section.

Type of Award: Non binding award

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: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair of Arbitration Panel:

Name: **Tan Try**

Signature: