

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 15/05

Date of award: 6 April 2005

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

Wing Tai 2

(Employer party)

AND

Dhama Thparktay Federation Union (DTFU) and Union of DTFU at Wing Tai 2

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representative: Mr. Long Phally, Administration Manager

Address: Building 1782, National Road No. 5, Toul Sangke commune,
Russeykeo district, Phnom Penh.

Tel: 012 652 234 023 428 927 Fax: 023 428 669

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives: 1- Mr. Ngourn Bunarith, Vice President of DTFU;
2- Mr. Rem Bora, Adviser to DTFU;
3- Mr. Soy Sophea, President of DTFU at Wing Tai 2;
4- Ms. Yom Sokchinda, Vice President of DTFU at Wing Tai 2; and
5- Miss. Ngek Sinet, Secretary of DTFU.

Address: Samky village, Russeykeo commune, Russeykeo district, Phnom
Penh.

Tel: 011 755 390

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The workers demand that the company offer an attendance bonus of \$5 to the workers when they are sick.
- 2- The workers demand 18 days of annual leave per year. If the company has no work it must pay 100% of wages to the workers.

- 3- The workers demand that the company provide pills (three times a day) to the sick workers when they ask for at least two days [leave].
- 4- The workers demand that the company transfer the Khmer supervisor (of group F) from the group.
- 5- The workers demand that the company pay seniority [bonus] in 2002 when the director of the company authorized 5 days off due to no work and this director had deducted the workers' annual leave of five days.

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 21 April 2004; the Prakas on the Nomination of Arbitrators No.103 dated 26 April 2004; the Prakas No.265 dated 13 July 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 labor dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labor Law. But during the conciliation process the parties did not agree and a non-conciliation report number 306/MoLVT/AK dated 1 March 2005 was submitted to the Secretariat of the Arbitration Council on 15 March 2005.

COMPOSITION OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:	Mr. Ouk Ry
Arbitrator chosen by the worker party:	Mr. An Nan
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE:

Date and place of hearing: 24 March 2005 at 8:00 a.m. at the Secretariat of the Arbitration Council.

Witnesses and Experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:

A- Documents provided by the employer party:

- 1- Internal Work Rules of the company;
- 2- Business license.

B- Documents provided by the employee party:

- 1- An appointment letter to negotiate with DFTU at Wing Tai 2 dated 13 September 2004.
- 2- A letter from the Labor Inspection Department number 019/MoLVT/AK dated 6 January 2005 recognizing new union leaders.
- 3- A letter from DFTU at Wing Tai 2 sent to the President of DFTU dated 3 March 2005.
- 4- A letter from DFTU at Wing Tai 2 sent to the Director of Wing Tai 2 dated 3 March 2005.

C- Documents received from the Minister of Labor and Vocational Training (MoLVT):

- 1- A report from the Labor Inspection Department dated 25 February 2005.
- 2- A report from the Labor Inspection Department sent to the Minister of Labor and Vocational Training dated 1 March 2005.
- 3- A letter from the Minister of Labor and Vocational Training dated 14 March 2005.

D- Presentation and witnesses from the employees and employer at the hearing.

E- Both parties decided to choose a non-binding award at the hearing.

CASE SUMMARY:

The Wing Tai 2 company is located at building 1782, National Road No. 5, Touloungkhae commune, Russeykeo district, Phnom Penh. The company consists of 1350 workers. On 14 February 2005, labor inspectors from Russeykeo district received a complaint from the workers demanding that the company apply proper working conditions in accordance with the Labor Law. After receiving the complaint the Labor Inspectors of Russeykeo district went to resolve the disputes by conciliation on 16 February 2005. The last conciliation held on 25 February 2005 was not successful in respect of the workers' five demands.

The five non-conciliation points are stated in the Issues in Dispute, above. This case was sent to the Arbitration Council on 15 March 2005. The Secretariat of the Arbitration Council invited both parties to appear at a hearing on 24 March 2005 at 8:00 a.m.

During the Arbitration Council process the parties reached an agreement on four of the five non-conciliation issues. The conciliated issues were the 2nd, 3rd, 4th, and 5th points.

Thus the Arbitration Council [need] resolve only the 1st issue where an agreement was not reached.

FINDINGS OF FACT:

- Having examined a minute of collective labor dispute's conciliation;
- Having listened to both parties in the hearing;
- Having checked other relevant documents

We find that:

In the past when the workers took sick leave the company provided wages to the workers in accordance with the internal work rules of the company, but the company did not provide the attendance bonus (\$5 per month) to the workers if the sick leave did not relate to a work-related accident or work-related illness. The workers demand that the company pay the \$5 attendance bonus to workers who take sick leave that is certified clearly by a doctor's certificate unless the illness is not a work-related illness or a work-related accident.

REASONS FOR DECISION:

The workers demand that the company pay the attendance bonus of \$5 when the workers take sick leave with a proper doctor's certificate. Notification 017/00 of MoSALVY dated 18 July 2000 states that "Workers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month". The main issue that the Arbitration Council has to decide is whether when the workers take sick leave and have authorization from the employer, should [the employer] consider that they have come to work regularly or not in that month.

The Arbitration Council has considered this issue in previous cases (See case #62/04-Ecent and case #63/04-Shine Well). In those cases, the Arbitration Council found that Notice 017 does not specify what happens when workers take sick leave and are unable to come to work. In addition there is no other regulation or provision of the Labor Law providing extra information on workers' rights in relation to sick leave and if they are entitled to get an attendance bonus or not.

Moreover, the parties in dispute also provided the internal work rules of the company to be considered, but the internal work rules did not mention [anything] about the attendance bonus when the workers take sick leave.

According to the meaning of attendance bonus, the Arbitration Council noted in previous cases that it is a bonus to motivate or reward the workers who come to work regularly in a full month without taking leave or a rest for an invalid reason. But the principle behind the Labor

Law on the provision of the attendance bonus as mentioned in Notice No. 017/MoSALVY as well as the Labor Law does not intend to discipline workers who take leave with proper authorization.

The Arbitration Council finds that if the worker loses their entire \$5 attendance bonus because they take sick leave with proper authorization in any time of the month, it is unfair for the workers because it is not [for the reason of] their misconduct that they could not come to work regularly, but because of illness. When the employer authorizes sick leave, the employer recognizes that the absence is not due to the misconduct of the worker. However, if it is a requirement that the employer provide the attendance bonus of \$5 for times that workers take sick leave, this is not fair for the employer who loses its own benefit during the time of the workers' sick leave.

Because the notice of MoSALVY does not clearly resolve this issue, the Arbitration Council takes consideration of principles of equity by allowing the employer to deduct the attendance bonus in proportion to the number of work days that the workers take authorized leave in each month.

Therefore, to be consistent with the previous cases, the Arbitration Council finds that the company must provide an attendance bonus in proportion to the number of workdays the worker works in each month [minus the number of workdays] the workers take with proper authorization. (See case #62/04-Ecent and case #63/04-Shine Well). If the factory works 26 days each month, then the proportion of the attendance bonus that corresponds to one day is: $\$5 / 26 \text{ days} = \0.19 . So, for each day that a worker is absent due to authorized sick leave, the company can deduct \$0.19 from the monthly attendance bonus of \$5.

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

DECISION:

Order the company to provide an "attendance bonus" to the workers who take sick leave with proper authorization in proportion to [the number of] workdays on which the workers come to work.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signed:

Arbitrator chosen by the worker party:

Name: **An Nan**

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.