

KINGDOM OF CAMBODIA
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THE ARBITRATION COUNCIL

Case number and name: 16/06-L.A.

Date of Award: 23 March 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Sin Kim Sean**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: L.A. (CAMBODIA) GARMENT PTE LTD.

Address: Sangke Angleung village, Tekthla commune, Reyseykeo district, Phnom Penh

Telephone: 023 880 389 or 012 766 871 Fax: 023 995 208

Representative:

- Mr. Huy Saovanrith Administration Manager

Worker party:

Name: Coalition of Cambodian Apparel W.D.U (C.CAWDU) and Workers Democratic Union at L.A factory.

Address: #6C, Street 476, Toultompong commune, Chamkamorn, Phnom Penh.

Telephone: 012 709 509

Representatives:

1. Mr. Kong Atith Official of C.CAWDU;
2. Mr. Yem Yeun Vice President of Cambodian Apparel W.D.U at L.A company;
3. Mr. Sem Sophea Union Activist of Cambodian Apparel W.D.U at L.A company;
4. Ms. Sek Navy Union Activist of Cambodian Apparel W.D.U at L.A company;
5. Ms. Sou Lida Union Activist of Cambodian Apparel W.D.U at L.A company.

ISSUES IN DISPUTE

(In the non-conciliation report)

Pursuant to the non-conciliation report, the following non-conciliated issue is the demand made by the worker party in this case:

The workers demand that the company retain attendance bonus during a strike which occurred on 16, 17, 18 and 20 February 2006; but the company stated that the company would not provide attendance bonus on strike days.

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 on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 513 dated 19 April 2005 (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 hearing was unsuccessful and the non-conciliation report of L.A. company number 288 dated 28 February 2006 was submitted to the Secretariat of the Arbitration Council on 1 March 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL

Place of hearing: The Arbitration Council; building "A"; Sothearos Blvd; Tonlebasac; Chamkamorn; Phnom Penh.

Date of hearing: 9 March 2006 (at 2:00 p.m. to 4:00 p.m.).

Procedural issues:

L.A. (CAMBODIA) PTE LTD. is located at Slang Anleng village, Tek Thla commune, Resey Keo district, Phnom Penh. The company employs approximately 4,500 workers. On 16 February 2006 approximately 4500 workers went on strike, led by C.CAWDU, demanding that the company improve 14 issues related to working conditions. After learning that there was a strike, on the same date until 20 February 2006, an official from the Labour Dispute Department of the Ministry of Labour and Vocational Training came to conduct a conciliation with respect to the 14 issues. As a result, 13 issues were successfully conciliated, leaving only one unsuccessfully conciliated. The non-conciliation issue above was sent to the Arbitration Council on 1 March 2006. After receiving the case, the Arbitration Council summoned the employer and the workers parties to appear in an arbitral hearing on 6 March 2006 at 2:00 p.m. .

On the hearing date the Arbitration Council asked for additional information relevant to the dispute and attempted once again to conciliate the issue. but no agreement was reached on this issue. Thus, the Arbitration Council will consider this non-conciliation issue based on the procedures in the Labour Law.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Letter of delegation of authority dated 9 March 2006 from Director of the company to Mr. Huy Saovanrith;
2. Legal memo of the company dated 4 March 2006 defending its argument;
3. Commercial Registration statute of L. A Company dated 31 November 2003;
4. Collective Bargaining Agreement made between the company and workers of L.A Company that C.CAWDU union registered at the Minister of Labour and Vocational Training No. 023 K.K.B.V/AK/VK. dated 14 March 2005;
5. Internal Work Rules of the company registered No 072 K.B.V/AK. dated 17 September 2004;
6. Certificate of commercial registration No 599 PN.NTK dated 29 April 2004;
7. Information letter to the Minister of Labour and Vocational Training from the company in respect of the dismissal of four workers dated 14 February 2006;
8. Petition and thumbprints of some workers to support the four dismissed workers dated 21 January 2006 for persuading workers to go on strike.

B. Provided by the worker party:

1. Legal memo of C.CAWDU dated 7 March 2006 defending their arguments;
2. Registration letter of C.CAWDU's union in the Company dated 3 December 2004;
3. Statute of C.CAWDU's union of the Company dated 8 February 2005.

C. Provided by the Ministry of Labour and Vocational Training [*MoLVT*]:

1. Letter No. 203/K.K.B.V MoLVT dated 9 March 2006 from H.E Nhep Bunchin, Minister of Labour and Vocational Training requesting the resolution of the collective labour dispute at L.A. company;
2. Report of labour dispute resolution of L.A Company No. 288 K.K.B.V/ AK/ VK from Mr. KoY Tepdaravuth, Director of the Labour Dispute Department dated 28 February 2006;
3. Minute of the collective labour dispute resolution dated 20 February 2006.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter inviting, No. 090 dated 2 March 2006, the worker party to appear at the hearing;

2. Letter inviting, No. 089 dated 2 March 2006, the employer party to appear at the hearing.

FACTS

- Having examined all documents submitted to the Arbitration Council;
- Having listened to both parties' arguments
- Having checked the report of labour dispute resolution.

The Arbitration Council finds that:

- L.A. (CAMBODIA) PTE LTD is located at Slang Anleng village, Tek Thla commune, Resey Keo district, Phnom Penh. The company employs approximately 4,500 workers.

- On 16 February 2006 at 5:00 p.m. the workers in building L.A. 2, consisting of about 400 workers, went on strike to support four workers. [These workers dismissed were] named Mr. Kea Sim (C.CAWDU Vice President at the company), Nhel Kimline (C.CAWDU Secretary), Min Saren (Activist of Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC)), and Mr. Chhom Sokha (Activist of FTUWKC). The employer separately met those workers for the purpose of paying them their termination benefits, but the four workers refused to accept their termination and their termination payment, [then they] went back to do their job. The worker party argued that the company's security guard rushed to catch up and prevented the four workers from doing their job. At that time there was one pregnant worker who fell down and was sent to the hospital immediately [because of serious injuries]. Seeing this about 400 workers in L.A.'s building 2 went on strike to support the four workers. The workers went on strike to support the four workers because of the dismissal; also the rushing to catch up and preventing the four union leaders from doing their job was not correct and was unfair.

- The company party said that it sent information about the dismissal of the four workers to the Ministry in charge of Labour already. Regarding the attendance bonus, [the non-payment here] is the right of the company because there is no legal requirement [to pay] and during the strike the company's financial situation worsened, owing to the goods being transported by air.

- All the workers including the four union leaders who were dismissed returned to work on 21 February 2006.

- During the strike both parties agreed that the company did not hire other workers to replace the strikers or send goods out of the factory [to be worked on by other workers].

- The workers and C.CAWDU commenced the strike without notifying the company or Labour Inspector in advance or organising an election before going on strike.

REASONS FOR DECISION

Article 332 of the Labour Law (1997) states that a strike suspends the labour contract. During a strike, the allowance for work is not provided and the salary is not paid. But Article 334 states that if the employer during a strike recruits new workers to replace the workers who joined the strike, [the employer] must pay a salary to the striking workers for the duration of the strike.

In this case the Arbitration Council finds that the company did not hire new workers or transport the goods out of the factory.

According to Article 324 of the Labour Law, before going on strike the workers must notify at least seven working days [in advance of the strike] to the employer. However the workers commenced their strike on 16 February 2006 after they had learned that there were four workers dismissed by the company on the same day. According to Article 320, paragraph 4 of the Labour Law: *“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 at L.A. factory went on without trying all peaceful means for settling the dispute in accordance with Article 320 paragraph 4 because the workers went on strike before [exercising] the [dispute resolution] procedures of negotiation, conciliation and arbitration [at the Arbitration Council] which is a body to peacefully resolve labour disputes.

Thus the strike of the workers at L.A factory did not follow legal procedures; for example there was no lawful prior notice or attempt at peaceful methods for settling the dispute before conducting the strike.

The same Article 333 of the Labour Law prohibits the employer from imposing any sanction on striking workers. Such prohibition is fully effective when a strike follows legal procedures. If the workers do not follow the law, they will not be fully protected under the law. Therefore when the workers argue that it is not in accordance with Article 333 of the Labour Law to deduct the attendance bonus of US\$5 from the workers who joined the strike which did not follow the [procedures set out in] Chapter 13 of the Labour Law, the Arbitration Council cannot extend the full scope of protection for workers who failed to follow the legal procedures set out in Chapter 13.

Thus the Arbitration Council denies the workers' demand for the attendance bonus and/or salary during the strike. See 04/03-Lida Garment; 08/04-Wash Concept; 15/04-Lucky Zone; 16/04-Yada Printing; 25/04-Standard Garment; 47/04-Dai Young; 56/04-Hui Ying; 111/04-Sun Shiny; 03/05-Flying Dragon; 12/05-P&E; 38/05-Fortune Garment.

Furthermore, the Arbitration Council notes that Article 332 of the Labour Law provides that *“A strike suspends the labour contract. During a strike the allowance for work is not provided and the salary is not paid. The worker shall be reinstated at the end of the strike.”* The meaning of this article is that workers are not entitled to a wage during a strike period. Even if

the strike is legal under the Labour Law, the workers are not entitled to a wage during the strike period. (See 22/04-Raffles Le Royal).

At the hearing the worker side said that the employer rushed to catch up to the four union leaders, among those workers there was one pregnant worker who was seriously injured and was then sent to the hospital immediately. The company also recognized that such incident was true. The workers demanded justice in respect of this issue by suggesting that the Arbitration Council help settle this issue too. According to Article 312 of the Labour Law which states that *“The Arbitration Council has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, that are direct consequence of the current dispute. ..”*. Thus the Arbitration Council does not have the jurisdiction to examine this demand for justice for the workers over the dispute of rushing and causing the pregnant worker to fall down

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

DECISION

- 1. Reject the workers’ demand for attendance bonus for February 2006 because of the strike which took place on 16, 17, 18, 20 February 2006.

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: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kimsean**

Signature:

Chair of Arbitration Panel:

Name: **Pen Bunchhea**

Signature: