

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 17/04

Date of award: 08 April 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**Cheer View Textiles Cambodia Co. Ltd**

(Employer party)

and

**Coalition of Cambodian Apparel of Workers Democratic Union (CCAWDU)**

(Worker party)

**DETAILS OF EMPLOYER PARTY**

**Representative:** Ms. Lin Da, Head of Administration

**Address:** St. Wat Taingkasaing, Khum Khlar Damrei village, Kakab commune,  
Dangkor district, Phnom Penh.

**Tel:** 023 890 019 / 023 890 202

**DETAILS OF WORKER PARTY**

**Representative:** 1- Mr. Chum Chamm, a CCAWDU assistant for labor dispute;  
2- Mr. Ek Sopheakdey, a CCAWDU trainer;  
3- Mr. Ly Boravuth, a worker of Cheer View Textiles Cambodia Co. Ltd  
and a candidate for the union elections; and  
4- Mr. Huot March, a worker of Cheer View Textiles Cambodia Co. Ltd  
and a candidate for the union elections.

**Address:** #06C, St. 476, Tuol Tompung 1 commune, Chamkarmon district, Phnom  
Penh

**Tel:** 023 210 481, 023 942 143

**Email:** c.cawdu@forum.org.kh

## **ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The employees claim that the company should re-employ workers Ly Boravuth and Huot March, candidates for the union elections.
- 2- The employees claim that the employer should give those two people back pay and other damages during the labor dispute.
- 3- The employees demand that the company should stop interfering with the newly-established union.

### **JURISDICTION<sup>1</sup> OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Section II B<sup>2</sup> 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 a non-conciliation report dated 13 January 2004 was submitted to the Secretariat of the Arbitration Council on 15 January 2004.

### **COMPOSITION OF THE ARBITRATION PANEL**

- Arbitrator chosen by the employer party: **Mr. Kao Tharch**
- Arbitrator chosen by the worker party: **Mr. Tuon Siphann**
- Chair arbitrator (chosen by the two arbitrators): **Mr. Sok Mathoeung**

### **HEARING AND EVIDENCE**

**Date and place of hearing:** 30 March 2004 at 14h00 at the Secretariat of the Arbitration Council

#### **Witnesses and experts:**

Un Dara, the leader of the Union for Solidarity and Development of Workers and a worker delegate of Cheer View Textiles Cambodia Co. Ltd, is the witness for both the employees and employer.

#### **Documents and other evidence considered by the Arbitration Council as follows:**

Documents obtained from the Employer Party:

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<sup>1</sup>Jurisdiction means judicial power.

<sup>2</sup> From Articles 309 to 317 of the Labor Law

- 1- Letter of authorization from Mr. Sem Ly company for Mrs. Lin Da, the Head of Administration, providing authority to act in contributing to solve the dispute over the dismissal of the two employees, dated 10 March 2004;
- 2- Internal work rules of Cheer View Textiles Cambodia Co. Ltd;
- 3- Employment contract between Mr. Huot March and the company dated 12 May 2003;
- 4- Letter of dismissal to Mr. Huot March dated 11 February 2004;
- 5- Letter by which employees' names, IDs, Sex, work groups and fingerprints are requested in order to sue the Director for firing Mr. Ly Boravuth;
- 6- Employment contract between the company and Mr. Ly Boravuth dated 25 May 2002;
- 7- Letter of dismissal to Mr. Ly Boravuth dated 18 February 2004;
- 8- GSP (Generalized System Preference) certification 2418 C.GSP dated 06 November 2003; and
- 9- December, January and February 2004 lists of payment of Cheer View Textiles Cambodia Co. Ltd.

Documents obtained from the Employee party:

- 1- Notice letter to the company listing the candidates for the union elections in Cheer View Textiles Cambodia Co. Ltd dated 26 January 2004;
- 2- Letter of dismissal to Mr. Ly Boravuth dated 18 February 2004;
- 3- Letter about the amount of money to be paid to a worker (no name mentioned) dated 18 February 2004; and
- 4- Mr. Ly Boravuth's letters of report entitled *document* and not dated.

Documents obtained from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation:

- 1- Report on the unsuccessful conciliation at Cheer View Textiles Cambodia Co. Ltd of the Department of Labor Inspection dated 10 March 2004.

**CASE SUMMARY**

This case was forwarded by the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (hereinafter referred to as "MoSALVY") to the Secretariat of the Arbitration Council on 18 March 2004. The Arbitration [Council] officially heard it on 30 March 2004 at 14h00 at the Secretariat of the Arbitration Council.

Cheer View Textiles Cambodia Co. Ltd started its business in Cambodia in 1998 and is now employing 1,238 workers. On 23 February 2004, the Coalition of Cambodian Apparel of Workers Democratic Union (CCAWDU) filed a complaint to the labor inspection office of Dangkor district,

accusing the company of the three points described earlier. The inspection office of Dangkor district aided in the resolution of these issues until 10 March 2004. The result of this was that the two parties failed to agree on any of the three claims.

1) In January 2004, some employees of Cheer View Textiles Cambodia Co. Ltd in cooperation with the CCAWDU wrote a letter of notice of an election for a new union to the director of the company, the MoSALVY and all the employees. The letter was dated 26 January 2004. Attached thereby was a list of names of the candidates for the election, including Mr. Ly Boravuth and Mr. Huot March. The letter was sent to the company immediately after it was written. However, the employer party claimed that the employees submitted it to the Head of Administration of the company through security on 06 January 2004. The employee party recognized in the hearing that they could have given the wrong date in the letter and that actually, it was really written on 06 January 2004, *not* 26 January 2004. They stated that they sent it to the MoSALVY two days after they sent it to the employer.

Mr. Ly Boravuth started his job at Cheer View Textiles Cambodia Co. Ltd in October 1999. The employer dismissed him on 18 February 2004 for defying the internal work rules of the company. Ly Boravuth was one of the candidates for the union election.

Mr. Ly Boravuth claimed that about a week before he was dismissed, the director called him in and asked if he was at the company to work or to make trouble. "I am here to work, of course," he answered. The director then said that he would dismiss him. When Mr. Ly Boravuth asked about the reason for his dismissal, the director just said that he had broken the internal work rules, without pointing out what article(s) exactly he had violated. The company said that he must be fired, however much money it would have to spend. The employee party claimed that Mr. Ly Boravuth met with the director twice before he was sacked. At the second meeting, the employer warned him not to misbehave again; otherwise, the company would dismiss him. The employer party produced a report from that meeting. Mr. Ly Boravuth asked to take a look at the report, but the director did not give it to him and has never copied it for him.

The employer party claimed that the company dismissed Mr. Ly Boravuth for breaking the internal work rules. His Chinese team leader reported to the company director that Ly Boravuth often left from the workplace, did not concentrate on his job, did his personal work, walked up and down during working hours and interfered in the leave requests of other employees. For example, on one particular day a worker was asking for sick leave, when Mr. Ly Boravuth approached him/her and said that if he/she failed to get permission, he would help. The Chinese team leader was annoyed and reported this incident to the company director. The employer party acknowledged that the company had never warned Mr. Ly Boravuth about his misconduct in writing, as it is stated should

occur in Article 10 of the internal work rules of the company. However, before he was eventually dismissed, the company did verbally warn him twice to no longer walk up and down during working hours. The employer party also said that when he gave Mr. Ly Boravuth the second warning, he asked him to sign the report but that he refused to do so.

As a witness, Mr. Un Dara, the leader of the Union for Solidarity and Development of Workers, said that the company director on 24 January 2004, invited Mr. Ly Boravuth, Ms. Lin Da, Mr. Un Dara and three other tailoring workers to meet him and solve Mr. Ly Boravuth's issue. Mr. Un Dara claimed that Ly Boravuth would walk around the warehouse during working hours, which he said violated the internal work rules. However, he failed to clarify what exactly Mr. Ly Boravuth was doing there.

Mr. Huot March started his job with the company on 12 May 2002. He was dismissed on 19 February 2004. He was one of the candidates for the union election.

He claimed that the company on 19 February 2004, removed his ID badge, telling him that he was suspended for a period of time due to his delivery of propaganda to the workers. He was called by the company administration on Sunday that week to get paid and formally dismissed, but he did not accept it. Mr. Huot March claimed he was innocent and that the company had never warned him, neither verbally nor in writing. He mentioned that he called on the workers to support Mr. Ly Boravuth, asking for their signatures on a letter to demand the company not to fire [Ly] Boravuth. However, they did not dare to because they were scared of *mother* (their team leader); they would have signed [the letter] only if *mother* had gotten them to. As a result, Mr. Huot March at 11h45, which was not during working hours, asked *mother*, whose name is Keo Saroeun, to get the letter signed by the workers. She held on to the letter until after 12h00 when she took it to the administration. Mr. Huot March claimed that he was sent to the CCAWDU office which he thought was the ministry. A representative for the union highlighted that the letter came from the CCAWDU and the coalition would help organize the coming election for a new union.

The company party claimed that Mr. Huot March disobeyed the internal work rules as he tried to have the letter signed by workers to push the company not to fire Mr. Ly Boravuth. Mr. Huot March did this during working hours. Mr. Huot March, on the other hand, said the letter belonged to the MoSALVY. The employer party gave him a day to respond to this with acceptable reasons. If he did not, he would be dismissed. The employer party claimed that his actions constituted misconduct because it was a personal issue.

Mr. Un Dara, as a witness for both sides, said that the company director did arrive at the workplace at 12h00 that day, just like the employee party claimed.

2) The employee party claimed that they had spent a lot of money and time on making phone calls and traveling back and forth in order to get their jobs back. Financially, they depended solely on their jobs at the company. So they demanded that the employer party re-employ them, give them their salary and bonuses for the duration since they were fired until they are re-employed. In addition, the company should pay them another US\$1,200 in compensation. However, by the end of the hearing, they offered to stop demanding damages and compensation, asking only for salary and bonuses.

The employer party denied all claims.

3) The employee party claimed that the employers interfered with union work [in the following ways], by firing the candidates running for the coming election for a new union, giving more priority to the existing union than to usual employees, preventing a new union from being established, threatening Mr. Chhon Mala and Bot Nabun, not allowing Chhon Mala to work enough and candidates for the election to work overtime and being stricter than before. On 20 February 2004 at 07h25, the company changed the position of Chhon Mala, a female candidate for the union elections, [so that she] did [a little bit of] this and [a little bit of] that and had to find work to do to fill the working hours, which is a likely response of [the company] to express its dissatisfaction with her. The company's director discussed with Un Dara, the president of Worker Development Solidarity, the event taking place in the company regarding the election for a new union. The above action as presented by the workers, represents the employer's act of discrimination against the workers.

The employer party claimed nothing but denied the employee party's allegations.

**FINDINGS OF FACT:**

- Having reviewed the non-conciliation report of the labor dispute,
- Having heard the presentation of the Company and employees as described above and in the hearing records,
- Having reviewed documents as described above.

We find that:

1- On 6 January 2004, some employees of Cheer View Textiles Cambodia Co. Ltd in cooperation with the CCAWDU wrote a letter which attached a list of the election candidates including Mr. Ly Boravuth and Huot March, and informed the director of Cheer View Textiles Cambodia Co. Ltd about their intention to organize an election for a new union. The employees sent the letter to the MoSALVY two days later.

Mr. Ly Boravuth started working at Cheer View Textiles Cambodia Co. Ltd in October 1999. The employer dismissed him on 18 February 2004. He had verbally been warned twice before that time. The first warning was for him to stop his misconduct. The second warning was given on 24 January 2004. The company director invited him into his office in the presence of the Head of Administration, the leader of the Union for Solidarity and Development of Workers and certain team leaders. There, he was told not to walk here and there during working hours and to avoid possible issues. The director alleged that he had walked to the warehouse, used working hours for his personal benefit and breached the internal work rules of the company. But the director failed to state the exact articles. The company warned that he would be dismissed if he did not follow the terms of the warning. Then, he was called for the third time and told of his dismissal for violating the internal work rules. The employers did not warn him in writing.

A Chinese team leader told the company director about Mr. Ly Boravuth's walking about in the workplace and also about his duties. The employer party did not give any prior-notice about the dismissal.

Huot March started working at the company on 12 May 2002. He was dismissed on 19 February 2004. The company seized his ID card, telling him that he was to be suspended for delivering propaganda to workers. The Administrator of the company called him in on Sunday that week and made his final payment, but he refused to take the money. The company never warned him, not verbally or in writing.

Huot March had asked for workers' signatures in a letter to fight against the dismissal of Ly Boravuth, but they did not dare to sign it. At 11h45, which is lunchtime, he asked *mother* (their team leader) Keo Saroeun to have the letter signed by workers. The team leader took the letter to the Administration. The employer party did not inform him in advance about his dismissal.

The company never informed the MoSALVY about the dismissal of the two employees.

2- Since they were fired, Ly Boravuth and Huot March have spent a lot of money and time on making phone calls and traveling back and forth in order to get their jobs back. The employees still claim their wages and bonuses and have stopped their demand for damages and compensation. However, the employees failed to present a forensic accounting of the details of their loss.

3- Although the employers denied their discrimination against the candidates for the election for the new union, the Arbitration Council finds that the employee party gave a clearer presentation than did the employer party because the former gave details about the employers' discrimination while the employer side failed to give acceptable reasons for their actions towards the employees. Therefore, the Arbitration Council finds that the company's dismissal of at least two union election candidates, the giving of more priority to the existing union led by Mr. Un Dara in comparison to ordinary workers, attempting to discuss with the existing union representatives the employees' intention to set up another union and attempting to unequally apply the work rules towards those running for the new union leaders including Chhon Mala and Bot Nabun can be considered an act

of discrimination. On 20 February 2004 at 07h25, the company changed the position of Chhon Mala, a female candidate for the union elections, [so that she] did [a little bit of] this and [a little bit of] that and had to find work to do to fill the working hours, which is a likely response of [the company] to express its dissatisfaction with her. The company's director discussed with Un Dara, the president of Worker Development Solidarity, the event taking place in the company regarding the election for a new union. The above action presented by the workers is really the employer's act of discrimination against the workers.

## **REASONS FOR DECISION:**

1. Generally, to decide on this issue, the Arbitration Council needs to determine whether or not: 1- the employer party dismissed the two employees for acceptable reasons (Article 74), 2 the dismissal is appropriate for the misconduct (Article 27), 3 it was done in accordance with the procedure, 4 whether it was done with any notice (Article 75), and 5 the dismissal of the employees, who are entitled to legal protection, was approved by the Labor Inspector (Article 293 and 2001 Prakas 305).

However, in this case, we only need to determine whether the employer party got approval from the Labor Inspector for the dismissals .

Article 3 of Prakas 305 of MoSALVY dated 22 November 2001 states that "*The workers who run for a union election, like the staff delegates, are entitled to protection against dismissal. The protection lasts for 45 days before the election and ends 45 days after it if the candidate does not win the election. The union shall inform the employers about the membership by all means. The employer shall carry out this provision only once in the election for a union leader.*"

Article 4-4 of Prakas 305 provides that "*Any employer who fired an employee protected by the above provision without the approval from the labor inspector or who causes damage to him/her shall be fined under Article 373 of the Labor Law. Any action by the employer in violation of above provision shall be considered null and void. The MoSALVY shall take careful, immediate actions in its authority to help the fired worker back into his/her job (although the case is awaiting a hearing before an authorized court).*"

"A dismissal of a staff delegate or of an employee shall be approved by the labor inspector," states Article 293 of the Labor Law.

Ly Boravuth and Huot March have their names on the list of candidates running for the new union election described in a letter of the CCAWDU dated 26 January 2004 (which the employer party claimed they received on 06 January 2004). The employee party said that they sent the letter to the MoSALVY two days later.

In reference to Articles 3 and 4 of Prakas 305, Ly Boravuth and Huot March are entitled to legal protection, like staff delegates.

The employer dismissed the two people without any notice or approval from the Labor Inspector.

In addition, the Arbitration Council found that the dismissal was made without any written warning to them, which violates Article 10 of the company's internal work rules. The article requires employers to give written warning to an employee before dismissing him/her.

The dismissal therefore contravenes Article 293 of the Labor Law, Articles 3 and 4 of Prakas 305 and Article 10 of the company's internal work rules. Consequently, the employer party must reinstate the two employees to the same positions.

**2.** As described in the first point of the Reasons for Decision, the Arbitration Council found that the dismissal of Ly Boravuth and Huot March does not accord with the law. The two employees are therefore still employees of the company. The employer must give them their wages and bonuses in proportion to those they received in December 2003 because their contracts are still legally valid. The reason why the Arbitration Council chooses December 2003 as the comparator is that it is the month the employee party informed the employers about the election for the new union.

In addition to this, the employee party claimed damages. However, they failed to present detailed documents to prove their losses. And in the hearing, they offered not to claim [said] damages.

**3.** Articles 12, 279 and 280 of the Labor Law prohibit any discrimination against union establishment and participation. "*Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal,*" states Article 279. "*Acts of interference are forbidden,*" provides Article 280, "*Within the meaning of the present article, acts of interference are primarily measures tending to provoke the creation of worker organizations dominated by financial or other means, on purpose to place these organizations under the control of an employer or an employers' organization.*" Also, Article 12 of the Labor Law forbids acts of discrimination against union-related activities.

The employer's act of dismissing the two candidates standing for the new union election, giving the existing worker union led by Un Dara more priority than ordinary workers, attempting to discuss with the existing union representatives the employees' intention to set up another union and attempting to unequally apply the work rules towards those running for the new union leaders including Chhon Mala and Bot Nabun proves that the employer party discriminated against new union establishment and candidates running for the union election and violates Articles 12, 279 and 280 of the Labor Law. Therefore, the employer party must stop their favourable bias towards the existing union and discrimination against the CCAWDU.

Based on the given reasons, the employees in this case have the right to damages for the discrimination of their employers. However, because they did not claim it and failed to present evidence about the amount they lost, the Arbitration Council does not make an order on this point.

Based on the above reasoning and laws, as well as [principles of] equity, the Arbitration Council decides:

### DECISION

- 1- ***Cheer View Textiles Cambodia Co. Ltd must pay Ly Boravuth and Huot March their basic salary, the salary for their overtime work, piece rate, and other bonuses, using the salary and bonuses they got in December 2003 as the basis, from the day of dismissal to the day of re-employment. Any demand for damages by the employee party must be rejected.***
- 2- ***Cheer View Textiles Cambodia Co. Ltd must stop any act that affects the workers' process of setting up the new union in the company.***

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: Mr. **Kao Tharch**

Signature: .....

Arbitration chosen by the employee party:

Name: Mr. **Tuon Siphann**

Signature: .....

Chair of Arbitration Panel:

Name: Mr. **Sok Mathoeung**

Signature: .....

*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.*