KINGDOM OF CAMBODIA
NATION KING RELIGION

THE ARBITRATION COUNCIL

Case number and name: 18/06-GHG

Date of Award: 31 March 2006

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

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

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTING PARTIES

Employer party:

Name: GHG (Cambodia) Ltd.

Address: Prek Tea Village, Sangkat Steung Meanchey, Khan Mean Chey, Phnom Penh

Telephone: 012 944 482 / 012 903 104

Fax: N/A

Representative:

1. Mr. Hel Sokha, Administrator of GHG (Cambodia) Ltd.

Worker party:

Name: Cambodian Industrial Union Federation (CIUF) and local union of CIUF at GHG (Cambodia) Ltd.

Address: No. 60A, Street 386, Sangkat Boeung Keng Kang III, Khan Cham Karmon, Phnom Penh

Telephone: 012 580 912 / 011 978 8 034

Representative:

1. Mr. Hem Punlok, Vice President of CIUF
2. Mr. Ly Veng Secretary of CIUF
3. Ms. Suon Chanthy Vice President of local union of CIUF at GHG (Cambodia) Ltd.
4. Ms. Soeun San Secretary of local union of CIUF at GHG (Cambodia) Ltd.

5. Ms. Voay Bopha Workers' Representative at GHG (Cambodia) Ltd.
6. Ms. Ngin Sothary Worker at GHG (Cambodia) Ltd.

ISSUES IN DISPUTE

According to the non-conciliation report, the following issues make up the demands made by the workers in this case:

1. The workers demanded that the company build a day-care center; the company agreed to provide the day-care center, but did not have the ability to hire a baby-sitter to work in the center.
2. The workers demanded that the company allow them to wear shoes into the workplace. The company did not agree to the demand.
3. The workers requested that the company pay to the workers who take maternity leave the holiday payment and other perquisites as mandated according to the law. The company agreed to pay 50 percent of the minimum wage.
4. The employer demanded that the company pay the casual workers the wages and perquisites as it paid the regular workers. The company paid the casual workers according to the number of days they worked, as it considered them casual workers.
5. The workers demanded that the company take responsibility for a female worker named Gnin Thavry who had a work-related accident on 29 December 2005. The company did not consider the incident as work-related as the incident resulted from the playing between the victim and another worker, whom the company had dismissed.
6. The workers demanded that the company allow the quality control section to take a 15-minute break every two hours. The company did not make a decision on this request, but wishes to decide on the issue with the management later.

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 99/04; the Arbitration Council Procedural Rules which form an Annex to the same *Prakas*; and the *Prakas* on the Appointment of Arbitrators 513/05 (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. The conciliation hearing was unsuccessful, and the non-conciliation report No. 331 KKBV/AK/VK, dated 6 March 2006, was submitted to the Secretariat of the Arbitration Council on 6 March 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khan Cham Kar Mon, Phnom Penh

Date of hearing:

- **First Hearing:** 14 March 2006, 2:00 p.m. – 5:00 p.m.
- **Second Hearing:** 27 March 2006, 2:00 p.m. – 4:00 p.m.

Procedural issues:

On 7 February 2006, the Department of Labour Disputes received a petition from the workers at GHG (Cambodia) Ltd. demanding that the company improve working conditions as mandated under the Labour Law. Following the receipt of the case, the Department designated a labour dispute settlement officer to conduct a series of conciliations, and the last conciliation took place on 17 March 2006, with two issues being successfully conciliated out of [an initial] eight issues. The remaining non-conciliated issues were referred to the Arbitration Council on 6 March 2006. After receiving the non-conciliation report, the Arbitration Council summoned the parties to attend a hearing on 14 and 27 March 2006 at the hearing room of the Arbitration Council. During the arbitration process, the parties further agreed on Issues 1, 4, 5 and 6. Therefore, the Arbitration Council will entertain only the remaining non-conciliation issues 2 and 3.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Power of attorney from the Director of GHG (Cambodia) Ltd to Mr. Hel Sokha, dated 14 March 2006
2. Standard application form for casual workers
3. Internal Work Rules of GHG (Cambodia) Ltd. registration No. 029 SKBY.AK, dated 25 March 2004
4. Standard employment contract of GHG (Cambodia) Ltd.
5. Announcement of the start of enterprise registration No. 174 SKBY.AK, dated 22 April 2004
6. Minute of the collective labour dispute conciliation, dated 22 March 2006

Provided by the worker party:

1. Certificate of registration of local union of CIUF at GHG (Cambodia) Ltd. No. 866 KKBV/VK, dated 30 December 2005
2. Statute of CIUF registration No. 866 KKBV/VK, dated 30 December 2005
3. Minute of the collective labour dispute conciliation at GHG (Cambodia) Ltd., dated 30 May 2005
4. Minute of the collective labour dispute conciliation at GHG (Cambodia) Ltd. 28 July 2005
5. Minute of the collective labour dispute conciliation at GHG (Cambodia) Ltd. 17 February 2006
6. Minute of the collective labour dispute conciliation Golden Highway dated 27 July 2004
7. Letter No. 013 SSUK/06 dated 7 February 2006 of CIUF to Head of Department of Labour Disputes regarding the complaint against the Director of GHG (Cambodia) Ltd. on the ground of declining to settle the dispute through the appointment letter of the CIUF
8. Appointment letter of CIUF to Director of GHG (Cambodia) Ltd. dated 24 January 2006
9. Letter of discharge from hospital for Ngin Sothary, dated 12 January 2006
10. Payment receipt of Ngin Sothary issued by Municipal Hospital No. 21 dated 12 January 2006
11. Payment receipt of Ngin Sothary issued by Municipal Hospital No. 22 dated 12 January 2006
12. Petition of local union of CIUF to the President of CIUF, dated 9 January 2006
13. Issues in demand of the workers at GHG (Cambodia) Ltd.
14. Petition of Ngin Sothary to CIUF

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

1. Letter 263 KKBV dated 17 March 2006 from His Excellency Nhep Bunchin, Minister of Labour and Vocational Training, regarding the request for settlement of collective labour dispute at GHG (Cambodia) Ltd.
2. Report on collective labour dispute settlement at GHG (Cambodia) Ltd. No. 331 KKBV/AK/VK of Mr. Koy Tepdaravuth, Head of Department of Labour Disputes, dated 6 March 2006
3. Minute of collective labour dispute conciliation dated 17 February 2006

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing No. 097 LKA, dated 9 March 2006
2. Letter of invitation to the employer party to attend the hearing No. 096 LKA, dated 9 March 2006
3. Letter of invitation to the worker party to attend the hearing No. 131 LKA, dated 23 March 2006
4. Letter of invitation to the employer party to attend the hearing No. 130 LKA, dated 23 March 2006

FACTS

GHG (Cambodia) Ltd is located at Prey Tear Village, Sangkat Steng Meanchey, Khan Meanchey, Phnom Penh. This company employs approximately 500 workers.

- Having examined the report of the collective labour dispute conciliation
- Having listened to the arguments raised by the parties
- Having reviewed the supplementary documents

The Arbitration Council finds that:

Issue 2

- Since 2003 when the company first started its operation, workers were allowed to wear shoes into the workplace.
- In 2004, the exact time of which was not specified, the company requested the workers not to wear shoes into the campus of the factory but allowed the workers to wear their shoes at their respective workplace, the reason for which is that the practice could avoid making the workplace and the cloth placed on the floor dirty. The workers did not agree to the request of the company and consequently went on strike, which led the company to allow the workers to again wear shoes into the workplace.
- On 8 November 2005, the company re-located to the present address. The company adopted a policy which requires that the workers take off their shoes, hold them when entering the workplace, and then putting them back on at their respective worksite.
- The worker party asserted that so far there had only been one worker who injured his/her foot from stepping on a button, but did not present specific evidence to show the identity of that worker, or when the accident happened, or how severe the injury was. Moreover, the worker party did not offer any other testimony or evidence to

prove that there were any other accidents at work that resulted from the fact that they were not allowed to wear shoes into the workplace.
- The employer party stated that walking with shoes on in the workplace had made the floor and cloth placed on it filthy.

Issue 3

- The workers demanded that the company pay women who take maternity leave 50 percent of their wage and other perquisites, including overtime pay.
- As a practice, the company provides 50 percent of the minimum wage of US$45, no matter what the actual wage of the worker is, and seniority bonus.
- The workers requested that the company implement the practice that they demanded from now on.

REASONS FOR DECISION

The workers demanded that they be allowed to put their shoes on within the working campus; that is within the building. However the company requested that the workers hold their shoes when entering the building.

Article 2(2) of the Labour Law reads that "Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc, under the supervision and direction of the employer."

The AC has previously considered Article 2 to mean that the ER has the right and authority to manage and to lead human resources in the company if the management and authorization is under the law. (See 28/04-Raffles Grand Hotel D'Angkor; 49/04-Ho Hing; 03/05-Flying Dragon; 15/06-Xing Tai.)

The Arbitration Council finds that the management of the workplace is the right of the company, and, in this case, that right to manage includes implementing a policy that prohibits workers from wearing shoes in the campus of the factory but only at their respective workplaces. Further, the Arbitration Council finds that the employer's policy is reasonable: if the workers are allowed to wear their shoes into the workplace, it will make the floor and the cloth placed on it very dirty.

In this case, the workers alleged that the current practice places the safety of the workers at risk, for example, foot injury caused by needles, slipping, and electric shocks, etc. However, there was no specific evidence to reflect that there were accidents or even the threat of

accident attributed to this policy. If the workers find any actual or potential safety problem, the workers must report it to the company so that it can look into the problem and find a solution to it so as to prevent further safety problems.

Because the company has the management right to implement this policy, a solid reason for forbidding the workers to wear shoes into the workplace and the workers have failed to present any persuasive argument against the policy or evidence of accidents in the workplace caused by this policy, the Arbitration Council decides to reject the demand made by the worker in this issue.

Issue 3

The workers demanded that the company provide the women who take maternity leave with 50 percent of their wage and perquisites, while the company [currently] provides only 50 percent of minimum wage and other bonuses, excluding the attendance bonus, overtime payment, and Sunday payment.

Article 183 of the Labour Law stipulates that: "During the leave discussed in the preceding Article, women are entitled to half of their wage, including perquisites, to be paid by the employer." However, the Article does not clarify the meaning of "half of their wage, including perquisites." Article 103 states that:

"Wage includes, in particular:

- Actual wage or remuneration;
- Overtime payments;
- Commissions;
- Bonuses and indemnities;
- Profit sharing;
- Gratuities;
- The value of benefits in kind…
- Amount of money paid by the employer to the workers during their disability and maternity leave…"

Article 103 of the Labour Law elaborates what is included in wages; however, part of the Article includes amounts of money during maternity leave as wages. The interpretation of Article 183 depends on Article 103; however, Article 103 refers back to Article 183, which makes it circular.

Nevertheless, looking into the purpose of the Labour Law in relation to wages during maternity leave, we find that the Labour Law recognizes the rights of women during their maternity leave by maintaining their work, mandating that they are given light work for a certain period following their maternity leave, and one hour per day during working hours for breast-feeding for a period of one year after the delivery of their child. (See Articles 182 and 184 of the Labour Law.)

Moreover, Article 46 of the Constitution states that "…A woman shall not lose her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits."

According to the above reasoning, the Arbitration Council finds that during her maternity leave a woman is entitled to 50 percent of her average monthly wage each month for the period of the three months of her maternity leave. The average monthly wage is calculated by adding up the twelve months of wages preceding the maternity leave, and dividing by twelve. Therefore, a woman who takes maternity leave for a period of three months is entitled to an amount of money equaling her average monthly wage divided by two and times three (three months).

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

DECISION

1. Reject the demand made by the workers to wear shoes upon entering or exiting the workplace.
2. Order the employer to provide the workers who take maternity leave with an amount equaling to 50 percent of the average monthly wage for a period of three months.

Type of Award: *Non-binding*

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.

<u>SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:</u>

Arbitrator chosen by the employer party:

Name: Ing Sothy

Signature: ....

Arbitrator chosen by the worker party:

Name: An Nan

Signature: ....

Chair of Arbitration Panel:

Name: Ang Eng Thong

Signature: ....