

KINGDOM OF CAMBODIA
Nation Religion King

Case number: 21/03
Date of Award: 08-12-2003

ARBITRATION COUNCIL

ARBITRAL AWARD
Based on Article 313 of the Labor Law

Loyal Cambodia Limited
AND
Khmer Youth Federation of Trade Union
(the "employee party")

Details of employer party:

Representative : Por Kong
Address : #34, St.289, Sangkat Beng Kork 2, Khan Tuol Kok, Phnom Penh.
Telephone : (855-23) 881 608 , Fax : (855-23) 881 186.

Details of employee party:

Representative: 1- Yun Rithy , President of KYFTU,
2- Long Sophat , President of Khmer Youth Union in Loyal Company.
Address : #158E0, St.564, Sangkat Beng Kork 1, Khan Tuol Kok, Phnom Penh.
Telephone : (855-11) 975 670.

Issues in dispute: (as set out in the non-conciliation report)

1. The workers claim to have permanent nurse during working hours and overtime, and to have enough medicines in infirmary.
2. The workers claim to get their salaries regularly.
3. The workers claim the company to deduct every month 1000 riels from their salaries for the union's fee.
4. The workers claim that the company maintains order at the time of payment of salaries.
5. The workers claim the company to reimburse them for unused annual leave of the year 1997.

6. The workers claim the company to provide them the wage for overtime and food allowance in every week or every two weeks.
7. The workers claim reimbursement:
 - a- \$5.00 deducted towards employment card,
 - b- \$15.00 to \$30.00 deducted for deposit.
8. The workers claim the employer to pay full salaries when there is no work to be done.

Jurisdiction of the Arbitration Council:

The Arbitration Council derives its power to make this Award from Section II B¹ of Chapter 12 of the 1997 Labor Law (Labor code); the Prakas on the Arbitration Council (No. 338, of 11 December 2002) and the Arbitration Council Procedural Rules.

An attempt to conciliate the collective dispute which is the subject of this Award was made in accordance with Chapter XII Section 2A of the Labor Law. That conciliation hearing was unsuccessful and non-conciliation report dated November 05, 2003 was sent to the Secretariat of the Arbitration Council on 11-11-2003.

Composition of the arbitration panel:

Arbitrator chosen by the employer party: Mr. Mar Samborana

Arbitrator chosen by the worker party: Mr. Liv Sovanna

Chaired arbitrator (chosen by the above two arbitrators): Mr. Kong Phallak

Hearing and Evidence:

Date and place of hearing: December 02th 2003 at 14.00pm, Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

Witness and experts: none

Documentary and other evidences considered by the arbitration panel are as follows:

Received from employer party:

¹ Art. 309 through 317 of Labor Law

1. Registration Certificate of Ministry of Commerce No.2473 dated November 30, 1995.
2. Letter of power delegation of the company to Mr. Por Kong and Ms. Ly Hean dated November 18, 2003.
3. Job application form of worker Sean Kim dated May 23, 2001.

Received from employee party:

1. Letter of Khmer Youth Union in Loyal Company dated December 23, 2002.
2. List of workers who agree to deduct their salaries for union's fee dated November 18, 2003.
3. Forms asking to be members of Khmer Youth Union: 49 forms.

Summary of the Case:

Loyal Cambodia Company situated at #34, St.289, Sangkat Beng Kork 1, Khan Tuol Kork, Phnom Penh, has employed 420 workers. On October 03, 2003 the labor inspector in Khan Tuol Kork received a complaint from the workers of Loyal Cambodia Company. On October 13, 2003 the labor inspector in Khan Tuol Kork went to resolve this collective dispute in the factory but the company didn't join the conciliation. On October 16, 2003 the inspector invited the employer to join the conciliation at the labor inspection department but the employer didn't join again. On November 28, 2003 the inspector invited the employer for the last time and the employer nominated his representative to join the conciliation at the labor inspection department. The results of this conciliation were:

1. Both parties reached agreement on 3 points out of 11 points.
2. Both parties failed to reach agreement on the remaining 8 points mentioned above.

On November 18, 2003 at 14:00, the arbitration panel conducted first conciliation for these 8 points. On November 25, 2003 at 14:00 the arbitration panel continued the conciliation and started first hearing. On December 02, 2003 at 14:00 the arbitration panel heard the case for second occasion.

During the hearing, both parties agreed to have a **Binding Award**.

Findings of Facts:

- After the review of conciliation minutes of collective labor dispute
- After having listened to the company and the employee sides as described above and in the minute of the hearing
- Having reviewed the documents mentioned above

We have found out that:

1. **The agreement of both parties on issue No. 1 through issue No. 6:**

Both parties had discussed and agreed with each other on the issues from No. 1 to No. 6 during the conciliation by the Arbitration Council. So the Arbitration Council feels that there is no need to discuss the issues No. 1 to No. 6 in this Award.

2. Issue 7:

- A.** The workers demand that the company repay the amount of \$ 5, which the company deducted from the workers' wages in order to issue the workbook. The representative of the company acknowledged that they do deduct \$ 5 from workers' wages to cover the costs of medical examinations and the workbook. But the workers claimed that the cost of the medical examination and the workbook is the responsibility of employer.
- B.** The workers demand that the company repay amounts in the range of \$15 - \$30 deducted from workers' salaries when workers commenced employment, which is called a deposit. The company accepts that they did indeed deduct \$15-\$30 as a deposit so as to ensure that the employees continued their employment with the company and the company [stated that they] would pay this money back to workers at the end of their employment contracts. However in case a worker discontinued the job within 3 months the company would not repay this money.

According to the workers the money that was deducted should be paid back to the workers because the workers who started work from the beginning of 2002 did not have this deposit deducted. The representative of the company accepted that the company had cut \$10 each month from the 1st through to the 3rd month of employment starting in the year 2000 until May 2001 and it was then reduced to \$5 per month starting from June 2001 until December 2001. The employer provided the Arbitration Council with a model agreement whereby employees agreed to such deductions at the commencement of their employment. The practice of deducting a deposit was discontinued at the beginning of 2002 until present.

3. Issue 8:

The workers demand that the company pay their full basic wage at times when the company does not have work for them to do but still requires them to come to the factory and prove their attendance. In the past wages were only paid at 50% on such occasions. The company responded by claiming that the company requires the workers to present themselves everyday so that if there is work to do the workers can return to work quickly. In such instances when the company does not have work for the workers to do the company is happy to pay 50% of the workers' salaries as a consideration for workers who regularly present themselves for work and wait until there is work to do. The workers' representative said that this requirement causes the workers to waste time traveling to and from workplace, which means that the

workers cannot find other work on those days. The employer responded by explaining that because the business is passing through difficult phase and that they do not have many orders they cannot always provide work to the workers and that up to now they have had the practice of suspending the contracts of some workers who do not have work to do and agreed to pay them 50% of salary for waiting for work. The workers maintain their objection to this practice.

Reasons for decisions (law):

1. **For issue No. 1 to No. 6:** Both parties discussed and agreed during the conciliating process of the Arbitration Council. Therefore the Arbitration Council feels that there is no need to give reasons for decision No. 1 to No. 6 included in the Award.
2. **For issue No. 7:**
 - A- According to (1) the Award made by the Arbitration Council in the case No. 02/03, Chou Sing Garment Co. Ltd, decided on 21 May 2003, (2) Article 247 (c) of (1997) Labor Law and (3) Joint Prakas No. 09 SALV dated January 19 1994 on Medical Check up for Cambodian Nationals and Foreigners who come to work in Cambodia, the employer is obliged to pay for employee's pre-employment medical check.

Article 7 of the Joint Prakas states that:

“The cost of the employee's medical examination shall be paid by owner of the enterprise, as determined in Article 5 above, in accordance with the actual case.”

In the current case, the Arbitration Council does not consider any reason to move away from this interpretation of the law. According to the Labor Law, the Council finds that the employer cannot make deductions from the employee's wages to cover the cost of medical examination.

According to Article 32 of the Labor Law (1997) every person of Cambodian nationality working as a worker for any employer to get wage is required to possess a workbook. Thus the workbook is the property of the worker who must possess the one in order to be employed. On the basis of this reasoning the Arbitration Council finds that the individual worker should pay the cost of the workbook.

According to the Notification # 13 issued by MOSALVY dated 29th May 1997 the price of a workbook is set at 1,500 Riel for the application form and 1000 Riel for stamp duty, in total 2,500 Riel. Thus the official cost to a worker for a workbook and medical check up shall not exceed 2,500 Riel. The practice of the company of deducting \$5 from each worker for the

workbook and the medical check up is not proper, thus the Arbitration Council finds that the company must repay 17,500 Riel (\$5 minus 2,500 Riel) to each worker from whom the \$5 was deducted in the past for workbook and medical examination.

B- In this case we find that employees have signed written agreements allowing the deduction of a deposit from their wages during the probationary period. The result of such agreements, however, is that the employer is paying workers less than the minimum probationary wage (\$40) as set out in MOSALVY Notification #17 of 2000. Accordingly, agreement to deduct such deposits is null and void under Article 13 of the Labor Law because the contents of the agreement do not comply with the Labor Law and as such are against public policy. Therefore this type of agreement is not in conformity with the Labor Law or the regulations/Prakas to implement this law.

Further the Arbitration Council notes that Articles 126 - 129 of the Labor Law contain a strong presumption against any wage deduction. In the circumstances of the current case the Arbitration Council will not allow a wage deduction that does not provide any clear benefit to the employee concerned. So the Arbitration Council finds that the deductions of \$15-\$30 deposits from workers' wages were improper and should be repaid in full with interest as well. However, owing to failure of the employee to include this demand for interest or damage in the complaint the AC does not order the employer to repay the employee with the amount of deposits together with interests or damages.

3. **Issue 8:**

The last demand made by the employees is that the employer pays the full basic salary to the employees even if there is no work.

According to Article 71 (7) and (11): The employment contract shall be suspended with reasons as follows:

- (a) *(Art. 71 (7): Temporary layoff of a worker for valid reasons in accordance with internal regulations;*
- (b) *(Art. 71 (11): When the enterprise faces a serious economic or material difficulty or any particular unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector.*

Thus, the Labor Law states clearly on the suspension of employment contract. With respect to this case, Article 71 of the Labor Law allows the employer to suspend the employment contract complying with the following ways:

- a. Through the internal rules of the company, Article 71 (7); or
- b. Through the supervision of the labor inspector when the operation at the enterprise is suspended following Article 71 (11).

Since the company has not provided the Arbitration Council with a copy of its internal rules, the Arbitration Council cannot find whether or not the employer is properly suspending employment in accordance with Article 71(7); moreover, the company has not provided evidence whether or not the labor inspector had supervised the suspensions, thus the Arbitration Council cannot find that there was a proper suspension in accordance with Article 71(11).

If in the future the company does comply with Article 71 of the Labor Law in suspending the employment contract this will mean that:

- (a) the employee does not have to go to work; and
- (b) the employer does not have to pay the employee wages (in accordance with Article 72 of the Labor Law).

If the contract is properly suspended in accordance with Article 71 and the employer wants employees to present themselves for work during the period of suspension the AC finds that agreeing to pay 50% of the basic salary in return for the employees presenting for work may be acceptable.

If however, the employer does not suspend the employment contracts in accordance with Article 71 then the employer must pay wages in full to employees in accordance with the employment contract.

Based on above reasons as to facts and law as also the principles of equity, the Arbitration Council decides to issue the Award as follows:

Decision and orders:

1. The employer shall supply medicines, materials, bandages and drugs sufficiently for keeping in the infirmary and shall apply the safety measures for employees when there is work-related accident or sickness to the workers during overtime work. This includes the responsibility of the employer to take the employee who suffers from the accident to hospital and all necessary costs for taking to hospital shall be borne by the

- employer. This measure is to be in force within 2 weeks commencing from the date of this Award.
2. The employer shall pay the employee wages regularly and not later than the 10th of each month.
 3. The employer is to deduct 1000 Riel from employees' wages who are union members upon the direct request in writing of the employee concerned through the union.
 4. The employer is to take measures to maintain good order at the time of payment of wages from the date of the issue of this Award.
 5. The employer shall pay compensation for the unused annual leave in 1997 to the employees concerned. The delivery of the above cash is to be made within three weeks after the date of issue of this Award.
 6. The employer shall pay wages for overtime and food allowance to employees every two weeks.

For the other 2 demands the Arbitration Council decides to order:

7. The employer is directed to repay the amount equal to \$ 4 plus 1500 Riel to each employee from whom the \$ 5 deduction was made by the employer to cover the costs of workbook and medical examination. The employer is to repay the \$15 to \$30 to all from whose wages the deductions were made by employer in the past. The employer shall announce the list of names of such employees to whom the amount as directed is to be repaid and the amount payable to them. In case an objection occurs from the union over the correctness of the list, the company is to find a third person who is neutral and impartial with the approval of the union or worker representative in order to verify the correctness of the list. All expenses of such third person shall be the responsibility of the employer. The employer shall repay all money to the employees not later than 15th January 2004. The employer shall repay the money as directed above to the former workers [from whom such deductions were made] as well. The employer shall send an invitation to all former employees who are eligible to receive this money on their last known addresses so that they can come to receive the money within a period of 2 months commencing from the date of the letter.
8. The employer shall continue paying the wage in full to all employees irrespective of the fact whether there is work for them to do or not, unless the employment contract is suspended in accordance with Article 71 [of the Labor Law]. In case of such suspension if the employer wants the employees to present for work during the suspension of the employment

contract the employer may pay wages of 50% of the basic salary in return for being present for work and waiting for work.

Signatures of Members of the arbitration panel:

Arbitrator chosen by the employer party:

name: Mar Samborana

Signed

Arbitrator chosen by the employee party:

name: Liv Vanna

Signed

Chair of arbitration panel:

name: Kong Phalak

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.