

KINGDOM OF CAMBODIA
Nation King Religion

ARBITRATION COUNCIL

Case number and name: 22/05

Date of Award: 9 May 2005

ARBITRAL AWARD

Issued under Article 313 of the Labor Law

Ocean Garment

(Employer party)

And

Khmer Youth Federation of Trade Union and
Free Trade Union of Workers of the Kingdom of Cambodia

(Employee party)

Arbitration Panel

Arbitrator chosen by the employer party: **Mr. Ouk Ry**
Arbitrator chosen by the worker party: **Mr. Liv Sovanna**
Chair arbitrator (chosen by the two arbitrators): **Mr. Pen Bunchhea**

Disputing parties

Employer party:

Name: 1. Mr Mamunar Rashid, Company Director;
 2. Mr.Rath Saroeun, Administrative Chief; and
 3. Mr.Golam Saswas Chowdheery, Financial Manager.
Address: Praytea village, Chamchao, Dangke, Phnom Penh
Telephone: (855) 23 424 060 or (855) 12 968 242
Facsimile: (855) 23 424 060

Worker party:

Name: 1. Mr. Lim Meng Ann, President of Khmer Youth Federation of Trade Union,
 Ocean Garment company;
 2. Mr. Chhang Kea, Vice President of Khmer Youth Federation of Trade Union,
 Ocean Garment company;

3. Mr. Chhuy Sophoan, Secretary of Khmer Youth Federation of Trade Union, Ocean Garment company;
4. Mr. May Vathana, Officer of Khmer Youth Federation of Trade Union;
5. Mr. Sim Phally, Officer of Khmer Youth Federation of Trade Union;
6. Mr. San Phan, Officer of Khmer Youth Federation of Trade Union;
7. Mr. Eour Sam Ath, Officer of Free Trade Union of Workers of the Kingdom of Cambodia; and
8. Mr. Son Ty, President of the Free Trade Union of Workers of the Kingdom of Cambodia, Ocean Garment company.

Address: # 34, Street 265, Bang Tra Bek, Tuol Kork, Phnom Penh

Telephone: 011 975 670 or 011 754 317

Facsimile: N/A

Issues In Dispute

(In non-conciliation report)

- 1- The local union demands the company cut 1,000 riel from workers' wages in order to pay for union dues in accordance with the Prakas 305 dated on November 22, 2001.
- 2- The workers demand that the company provide 100 percent wages while the company has no work to do occasionally; and if there is no work to do for a long period of time, the company must apply the Labor Law.

Jurisdiction of the Arbitration Council

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas 99/04 on the Arbitration Council; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators (Second Term) (103/04 and 265/04).

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 Labor Law. The conciliation hearing which took place on 21 March 2005 was unsuccessful, and the non-conciliation report number 482 was submitted to the Secretariat of the Arbitration Council on 1 May 2005.

Hearing and Summary of Procedure before the Arbitration Council

Place of hearing: Secretariat of the Arbitration Council, Phnom Penh Center, Building A, Street Sothearous, Tonle Basac, Phnom Penh.

Date of hearing: 7 April 2005 (8:30 - 11:00 a.m.)
20 April 2005 (9:00 - 12.00 p.m.)

Evidence

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. The Internal Work Rules of the company registered on 10 April 2000;
2. The Statute and Memorandum of the company dated 4 March 1999;
3. Registration certificate of the company in the commercial list [dated] 18 June 1998;
4. Letter of request of registration of the Internal Work Rules of the company sent to the Labour Inspector Department on 23 February 2000;
5. A minute of the meeting between the management, the union and all the section group leaders on 11 March 2005;
6. A minute of the collective dispute conciliation on 23 March 2005;
7. A letter from the workers of Ocean Garment company asking for intervention and help with respect to their working conditions to the President of the Khmer Youth Federation of Trade Union; and
8. Summary report of non-conciliation points between the management and the Union leaders.

B. Provided by the worker party:

Khmer Youth Federation of Trade Union

1. Letter 226 of Khmer Youth Federation of Trade Union asking the company for permission for the union leader to appear in the hearing on 19 April 2005;
2. Letter 167 on the election of the Committee of Khmer Youth Federation of Trade Union in the second term to the company director on 16 March 2005; and
3. Registration certificate of the Khmer Youth Federation of Trade Union at the Ocean Garment factory dated 30 January 2002.

Free Trade Union of Workers of the Kingdom of Cambodia

1. Registration Certificate of the Free Trade Union of Workers of the Kingdom of Cambodia of Ocean Garment factory on 1 March 2001;
2. [Initiating letter setting out the union demands] to the Labour Inspector Department of the Free Trade Union of Workers of the Kingdom of Cambodia of Ocean Garment factory on 16 March 2005;
3. Minute of collective labour dispute conciliation on 23 March 2005;
4. Minute of meeting between the management, union leaders and all the group section leaders on 11 March 2005;
5. Letter 1084 from the Labour Inspector Department to the President of the Free Trade Union of Workers of the Kingdom of Cambodia of Ocean Garment factory on the recognition of union leader in the second term on 24 June 2004; and
6. Minute of collective labour dispute conciliation on 10 July 2004.

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

1. Request letter 509 for resolving the collective labour dispute of the enterprise named Ocean Garment from His Excellency Mr. Nhep Bunchin, Minister of Labour and Vocational Training dated 19 April 2005;
2. Letter 482 on report of collective labour dispute resolution at Ocean Garment on 31 March 2005 from the Labour Inspector Department; and
3. Minute of collective labour dispute conciliation on 23 March 2005.

Case Summary

Ocean Garment is located in Praytea village, Chamchao, Dangke, Phnom Penh and employs approximately 1,167 workers. On 11 March 2005, the Labour Inspector in Dangke District received a complaint from the workers in the factory about a claim for the company to apply working conditions in accordance with the Labour Law. After receiving the complaint the Labour Inspector in Dangke District mediated at the factory location and finally conciliated on 23 March 2005. As a result, there were two non-conciliation points [requiring further dispute resolution]. The two non-conciliation issues are stated above. These two non-conciliation points were sent to the Arbitration Council at the request of [both] the workers and company on 1 April 2005.

On 7 and 20 April 2005 the parties in dispute were invited by the Arbitration Council to appear at a hearing at 9:00 a.m. In the process of the Arbitration Council hearing, after asking for further information about the two issues and also conciliating, the parties reached an agreement on

Issue 1. Both parties signed this agreement on 20 April 2005, on the hearing day. Therefore the Arbitration Council considers and resolves only Issue 2 [in this Award].

Findings of Fact

- Having examined the non-conciliation report
- Having listen to the company and the employee parties as described above
- Having reviewed all the above documents

We find that:

Issue 2

1. Ocean Garment employs approximately 1,667 workers.
2. The workers demand that the company pay 100 percent of their daily wage when the company has no work occasionally or for long periods. The company stated that they will apply the procedures contained in the Labour Law although they had not done this in the past.
3. The workers stated that their claim for 100 percent wages when the company has no work occasionally or for long periods is not a claim seeking damages in the past, meaning that the claim [is in respect of] future suspensions.
4. The company argued that they will apply the procedure contained in the Labour Law. If the law requires the company pay 100 percent wages to the workers when the company has no work occasionally, the company will apply the Labour Law and provide 100 percent wages.
5. At the hearing, the Arbitration Council found that in the past when the company did not have work for the workers occasionally or for long periods, the company allowed the workers to take leave without pay and did not notify the workers or give them reasons or [state the] difficulties which the company faced [which necessitated the suspensions].
6. On 10 July 2004, the company and the workers signed a conciliation report of the Labour Inspector Department of the Ministry of Labour and Vocational Training

agreeing that "if the company does not have work for the workers occasionally the company will pay 50 percent wages."

7. After the Arbitration Council inquired and made findings about the validity of the agreement, the worker party [initially] confirmed that they still respected [the agreement] if the company paid 50 percent wages according to that agreement. The employer party stated that the company refused to accept the agreement to provide 50 percent wages to the workers, arguing that the company did not know or understand Khmer [and that] the agreement in which the company is to provide 50 percent wages is only for 11 March 2004 which was the day of a strike.
8. At the initial hearing, the worker party demanded the employer apply the agreement dated 10 July 2004. Later the worker party asked the Arbitration Council to apply the procedures of the Labour Law only. Therefore, [it appears that] the worker party rejected that part of the agreement regarding labour contract suspension.
9. The request of both parties [was that they] did not want the Arbitration Council to consider the agreement in this Award. Therefore the Arbitration Council will issue the Award according to the procedures in the Labour Law for Issue 2 without taking into account the agreement.

Reasons for Decision

Issue 2

Suspension of a labour contract must be made following the procedures of the Labour Law as set out in Article 71(11) as follows:

1. When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation this suspension shall not exceed two months.
2. The operation of the suspension must be under the control of the Labour Inspector. Generally, this means that the suspension of the labour contract must have been notified to and approved by the Labour Inspector. Therefore the Arbitration Council has to find out whether the labour contract suspension of Ocean Garment company

is lawful according to the Labour Law as defined by article 71(11) which states that: *"The labor contract shall be suspended under the following reasons: 11. When the enterprise faces a serious economic or material difficulty or any particularly 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 Labor Inspector."* At the hearing the Arbitration Council found that in the past when the company did not have work for the workers occasionally, the company told the workers to take leave without pay. Moreover the company acknowledged that the company suspended the labour contract of the workers in the ironing and packing sections occasionally without notifying the Labour Inspector or paying the workers during the suspension period. This behavior indicates that the company did not apply the procedures set out in the Labour Law appropriately as established by article 71(11). Therefore the company is responsible for paying 100 percent wages to the workers who the company has suspended occasionally or for long periods.

Because the company and the worker party rejected the agreement regarding labour contract suspension and agreed to allow the Arbitration Council to make their decision based on the Labour Law, in order to determine wage [levels] if the company has no work to do occasionally or for long periods in the future, the Arbitration Council considers only the Labour Law. The Arbitration Council considers that in cases where the company continues to apply the same [behaviour, that is] when the company doesn't have work for the worker occasionally, and the company suspends the labour contracts of the workers without providing a wage during the suspension period, this behaviour is unlawful as defined by article 71(11) (please see case 21-03 Loyal Cambodia; 46-04 M and A Cambodia; 01-04 New Point (II); 60-04 United Art). Therefore the Arbitration Council considers that the company party is responsible for paying 100 percent wages to the workers when the company suspends the labour contract. But because the worker party did not demand past damages, [only making their demand] in [respect of] future cases where the company unlawfully suspends the labour contract [in contravention of] the Labour Law, the company party has to pay 100 percent wage to the workers starting from the date the Arbitration Council issues this Award.

In cases where the labour contract suspension is lawful based on the Labour Law the workers will not be paid during the suspension period.

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

Decision

The employer must stop suspending labour contracts [in a manner] which does not follow the procedure in article 71 of the Labour Law. If [the labour suspension] does not accord with article 71(11), the employer has to pay 100 percent to the workers during the period of suspension.

Type of Award: Binding

This Award is immediately binding upon the parties because on 20 April 2005 the parties agreed to choose a binding award.

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: Mr. Ouk Ry

Signature:

Arbitrator chosen by the worker party:

Name: Mr. Liv Sovanna

Signature:

Chair of arbitration panel:

Name: Mr. Pen Bunchhea

Signature: