



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 23/07- Jung Min

Date of Award: 21 March 2007

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: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **Jung Min Cambodia APL**

Address: Morl Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh

Telephone: 012 942 120 Fax: N/A

Representative:

1. Mr. Phuong Revit Administrative Officer

Worker party:

Name: **Cambodian Industrial Union Federation and local CIU at Jung Min Factory**

Address: Morl Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh

Telephone: 016 396 287 Fax: N/A

Representative:

1. Mr. Lou Sak President of CIUF
2. Mr. Sam Soeung Officer of CIUF
3. Mrs. So Vy President of local CIU at Jung Min Company
4. Mrs. Phoeun Sinuon Vice President of local CIU at Jung Min Company

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The Head of group and a group of 69 (sixty nine) repairers demand that the company increase their salary by US\$5 (five US dollars) per month. The company, on the other hand, asserts that the issue should be brought for discussion with the company management first.
2. In cases where workers have an accident when they commute from home to work or from work back home, the workers request that the company take responsibility for medical [costs]. The company states that if workers have an accident in the factory, the company agrees to be responsible for all expenses but if it is when workers are commuting from home to the factory or from the factory back home, the company does not agree to be responsible for the expenses.
3. The workers demand that the company consider workers in the sanitation section to be full-right workers and to receive benefits provided by the Labour Law. The company does not agree to the demand.
4. The workers demand that the company send workers to have periodical and special medical checks once every year (and that all expenses be the responsibility of the employer). The company does not agree to the workers' demand.
5. In relation to voluntary overtime work, in cases where a worker has an important personal commitment and cannot do the overtime work, the workers request that they be able to leave at 4:00 p.m. without having to ask permission from person to person. The company requires that workers ask permission in three steps: head of group, head of section and head of production.

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. 099 dated 11 May 2006 (Fourth 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. 174 K.K.B.V/AK/V.K dated 26 February 2007 was submitted to the Secretariat of the Arbitration Council on 27 February 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 9 March 2007 (From 2:30 p.m. to 4:30 p.m.)

Procedural issues:

On 23 January 2007, the Department of Labour Disputes received a complaint by CIUF who demands that the company improve working conditions in accordance with the Labour Law. Upon receipt of this complaint, the Department of Labour Disputes assigned an officer to handle this labour dispute. The last conciliation was held on 7 February 2007 with the result that six of 11 issues were successfully conciliated. The remaining five non-conciliated issues were referred to the Secretariat of the Arbitration Council on 27 February 2007.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the workers at the factory to attend a hearing and conciliation in respect of the five non-conciliated issues on 9 March 2007 at 2:30 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further conciliate the five remaining non-conciliated issues. However, none of the issues were resolved through conciliation. During the hearing the worker party requested that the Arbitration Council not consider their demand if the Council found that the demand was an interests dispute and that [they wished] the Arbitration Council to only consider disputes about rights. Therefore, in this award, the Arbitration Council will consider [the issues] based on evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party:

- Certificate of registration of the local CIU at Jung Min Factory, dated 6 April 2005
- Certificate of most representative status of the local CIU at Jung Min Factory, dated 18 November 2005
- Internal Work Rules of Jung Min Company, dated 5 August 1999

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

- Report of the collective labour dispute resolution at Jung Min Company by the head of the Department of Labour Disputes, No. 174 K.K.B.V/AK/VK, dated 26 February 2007
- Minute of the collective labour dispute conciliation No. 028 K.K.B.V, dated 7 February 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No.088 KKBV/AK/VL/LKA dated 6 March 2007 to invite the worker party to attend the hearing.
- Invitation letter No.089 KKBV/AK/VL/LKA dated 6 March 2007 to invite the employer party to attend the hearing.

FINDINGS OF FACT

- Having reviewed documents that the parties submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by the representatives of the worker party and the employer party

The Arbitration Council finds that:

Jung Min Company is located in Morl Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh and it employs 1,200 workers. CIU, the complainant in this case, has most representative status.

Issue 1: The workers demand a wage increase of US\$5 for the head of group and a group of 69 repairers.

- The workers claim that 69 workers demand that the company increase their wage by US\$5 per month.
- During the hearing, the workers and the employer stated that the company has already increased the wage of 65 repairers by US\$5 and that there were only four workers whose wage had not been increased as their wages were already high.
- The workers stated that among the four workers, three of them are mechanics and one is a welder. They demand that the company provide an increase of US\$5 each month as per the other workers based on Notification No. 745 K.K.B.V dated 23 October 2006 and based on the reason that the company has increased wages for the head of group and other repairer groups.
- The workers assert that the four workers' wages range from US\$80 to US\$180 per month. The four workers are:
 1. Khuon Sophea, ID 520 who receives US\$80 per month

2. Kong Vibol, ID 510 who receives US\$130 per month
 3. Mao SETHA, ID 505 who receives US\$140 per month
 4. Cheng Chhun, ID 524 who receives US\$100 per month
- The worker party requests that the Arbitration Council not consider this demand, that the company provide an increase of US\$5 for the remaining four workers, if the Arbitration Council finds that this demand is an interests dispute.

Issue 2: The workers demand that the company take responsibility for workers' medical treatment in cases of accidents when they travel from home to the factory and from the factory back home.

- The representative of the employer asserts that Jung Min Company does not have a policy which [provides that the employer will take] responsibility for medical expenses for workers who have an accident outside the factory even where the accident happens along the way when the workers commute to work or back home.
- In the hearing, the worker party stated that about three or four months ago, a female worker in group 8 had a motorbike accident, which resulted in her breaking one of her legs. [This accident occurred] about 200 meters away from the factory, when she was on the way back home after working overtime. The accident was not intentionally caused by the worker. The union demanded that the company help pay for medical treatment [for the worker] because it this was a work-related accident, based on Article 248 of the Labour Law. The union stated that they had submitted a police report and receipt of treatment expenses to the company but the company did not agree to pay for the treatment. The union has not submitted this document to the Arbitration Council [].
- The workers added that, in addition to the one worker in group 8, there were another three workers while driving their motorcycle [to work] got into an accident at 6 a.m. They demanded that the company pay for the treatment expenses too because this accident was not intentionally caused by the workers. The company stated that it was aware that the three workers hit a dog which caused the accident, but the company would not pay for the treatment expenses because the accident happened outside the factory.

Issue 3: The workers request that the company consider the workers from the sanitation section as regular [workers] and [therefore] receive benefits according to the Labour Law

- The workers mention that there are five workers in the sanitation section who have been working for more than two years but have not been considered full-right workers (regular workers). The five of them are:

1. Bat Sam Art, ID 292 who commenced work on 21 July 2003
 2. Keo Savien, ID 301 who commenced work on 16 April 2003
 3. Khann Vanna, ID 1794 who commenced work on 13 December 2004
 4. Oeu Thach, ID 296 who commenced work on 12 December 2003
 5. Ou chin, ID 3577 who commenced work on 28 May 2005
- These sanitation workers receive US\$50 per month and the same benefits as other regular workers but they do not receive annual leave and the company does not consider them as regular workers.
 - The company asserts that there is such a problem as raised by the workers. The company considers the workers in this section as Special Contract Workers; therefore the company does not consider them as regular workers because they are unskilled.
 - The workers and the employer stated that the five workers work eight hours per day, 26 days per month and do overtime work like other regular workers.
 - The workers stated that because these workers from the sanitation section receive benefits like regular workers, except for provision of annual leave, this dispute concerns only the right to annual leave.

Issue 4: The workers demand that the company send workers to have periodical and special medical checks once a year (and that all expenses are the responsibility by the employer)

- The employer representative mentions that Jung Min Factory requires workers to have a medical check only once, i.e., when they are recruiting workers. The company has never required workers to go and have a periodical and special medical check.
- The worker party stated the same thing and that so far the Labour Physician has never required the company to send their staff to have periodical and special medical checks. Each time they come to conduct an inspection, the Labour Physician requires the employer to send only those workers who have never had a medical check to have a check up.
- The workers claim that according to Article 247 of the Labour Law and joint Prakas No. 09 S.K.A, dated 19 January 1994, they are entitled to periodical and special medical checks once a year because they have to work with chemical substances such as fabric. The workers mention that a worker contracted tuberculosis after working for five years for the company but the workers did not state where the infection was contracted.
- The employer mentioned that it cannot send workers to have a periodical and special medical check if the Labour Physician does not require such a medical check.
- The workers concur with the employer that the periodical and special medical check is conducted only when there is a requirement by the Labour Physician; that the

scheduling for workers to have a periodical and special check is the role of the Labour Physician. The workers mentioned that they make this demand in order to have the Arbitration Council issue an order to the Labour Physician to come to the company to schedule the company to send them to have a periodical and special medical check.

Issue 5: In respect of overtime work, the workers demand that the company allow workers to go home without asking for permission from one person to another person, when workers have an important personal commitment.

- The employer representative stated that workers at Jung Min Factory should stop working at 4:00 p.m. if there is no overtime work.
- The company mentions that it practices four hours overtime on Tuesday, Wednesday and Thursday. On Monday and Friday, it works two hours [overtime] a day.
- The workers stated that when they have a personal commitment and do not want to do overtime work, they cannot go home without asking for permission. If they do not want to do overtime work, they have to ask permission from the company at 4:00 p.m., a time determined by the company, and it falls on the time when they should be able to leave their work. It is difficult for the workers to ask for permission because they have to ask from the head of group then from the head of section and then from the head of production. If they do not obtain permission from the three people, security will not allow them to leave [the factory]. If a worker insists on going without permission, s/he will have a problem with the company when s/he returns to work. The workers mention that it is difficult for them to find the head of production because s/he always leaves from her/his workplace at 4:00 p.m. in order to avoid workers who come to ask permission from her/him. The workers request that if they are busy and unable to do the overtime work, they should ask permission from the head of group alone, not up to three people as is currently practiced.
- The representative of the company does not object to these assertions by the workers but the representative mentions that the company cannot allow workers to ask permission from the head of group alone, they must ask permission from the head of group, the head of section and the head of production because work in the company processes in a production line, so if a worker is missing, it will interrupt the production process.
- The workers mention that normally they have to ask permission 30 minutes in advance which means that they have to ask at 3:30 p.m., before the end of the workers' working hours, if they do not want to work overtime. However, in the last three or four months, the workers have to ask for permission at 4:00 p.m. instead. The company does not object to what the workers raised.

- The workers also assert that so far three workers have been fired because they did not do overtime work and went home without permission. The company did not object to this claim.

REASONS FOR DECISION

Issue 1: The workers demand a wage increase of US\$5 for the head of group and a group of 69 repairers.

Based on the above facts, in this issue there are only four workers who continue to demand that **the employer increase their wages by US\$5**. The reason that the four workers continue the demand is based on Notification No. 745 K.K.B.V, dated 23 October 2006 regarding the new minimum wage and based on the point that the employer has already increased wages for other workers. Therefore, the Arbitration Council will consider this issue as follows:

Notification No. 745 provides for the minimum wage for workers in the field of garment, textiles and footwear. Based on this Notification, regular workers should receive a minimum wage of US\$50 per month and this is in effect from 1 January 2007. This [Notification] adds US\$5 to the minimum wage provided by Notification 0147 S.K.B.Y, dated 18 July 2000. One point in Notification 745 states, *“At the end of the probationary period, a regular worker receives the minimum wage of US\$50 per month.”*

In this case, the four workers receive a wage higher than the minimum wage which is only US\$50 per month.

Therefore, based on the above mentioned Notification 745, the four workers are not entitled to the increase of US\$5 and the employer is not obliged to increase the workers' wages by US\$5.

However, in the hearing the worker representative raised that the employer has increased the wages of the 65 [other] workers and thus their wage should also be increased. Regarding this issue, the Arbitration Council considers that in each enterprise or company, the employer has the right to manage work and make decisions on policies which includes the right to set workers' wages if the management and decisions are conducted in accordance with the law and are reasonable (see [Arbitral] Awards 06/06-M&V, Issue 1 and 108/06-Trinunggal Komara, Issue 1). In this case, the employer's decision to increase wage for the 65 workers is not contradictory to the Labour Law.

In addition, the Labour Law states that work of the same conditions should receive the same wage. Article 106 states, *“For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age.”*

In previous Arbitral Awards, the Arbitration Council considers that if there are differences in professional skill or output, these differences can be tied to determining wage levels and can be a reason for a difference in the wages of the workers (see [Arbitral] Award 68/04-City New, Issue 2).

In this case, the Arbitration Council finds that the positions of the four workers are different from the other workers who have already received the increase in wages. The four workers already receive the maximum wage level set by the employer, but the other workers did not receive such wages. The four workers are [also] a different type of worker from the other workers and they use skills which produce a different output as well.

Based on this, the Arbitration Council determines that the four workers are not entitled to a wage increase pursuant to Article 106.

The Arbitration Council considers that the workers' demand that the employer increase their wages by US\$5 is beyond what is provided by the law and thus it is a demand about interests. Therefore, the Arbitration Council will not consider this issue.

Issue 2: The workers demand that the company be responsible for medical treatment [costs] for workers in cases of accident when they travel from home to the factory and from the factory back home.

The employee party demanded that the employer be responsible for the medical costs and retention of wages for time off associated with accidents that happen to workers on the commute to and from work.

Article 248 of the Labour Law, paragraph 2 states, “...*Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be work-related accidents as long as the trip was not interrupted nor a detour made for a personal or non-work-related reason.*”

Clause 4, paragraph 2 of Prakas 243 issued on 10 September 2002 states, “*The accident, which occurred to a worker during his/her journey from his/her residence to the workplace, from the workplace to wage payment office and vice versa, without detour to other places for personal interests or required by the work, shall also considered as the work-related accident.*”

In this case, one worker in group 8 broke her leg about three or four months ago when she traveled back from work and another three workers had an accident when they were traveling to work. During the hearing, the company acknowledged that the workers did have an accident on their commute to or from work. Thus, based on Article 248 mentioned above, the Arbitration Council considers that these accidents should be considered to be work-related accidents.

Article 249 of the Labour Law states, *“Managers of enterprise are liable for all work-related accidents stipulated in the Article above.”*

Article 254 of the Labour Law states, *“Victims of work-related accidents shall be entitled to medical assistance (benefits in kind, medical treatment and medicament as well as hospitalization) and to all surgical assistance and prostheses deemed necessary after the accident.”*

However, in this case, the company did not pay for the treatment expenses for those workers, claiming that these accidents were outside the factory. The Arbitration Council considers that the employer’s argument is not proper [in law] because work-related accidents may occur both inside and outside of the factory when workers commute straight from their home to work or come back without stoppage or detour to another place for personal benefit besides that required by work. In this case, the employer acknowledges that the workers had an accident when they were traveling from their home straight to work (in the case of the motorbike accident) and when going back home (in the case of the broken leg) without stoppage or detour to another place for personal benefit or that required by work. The workers also did not intentionally cause the accidents.

Therefore, the employer is responsible for the expenses related to the treatment needed for the four injured workers. What treatment expenses should the employer pay to the injured workers?

Clauses 7 and 8 of Prakas 243 SKBY dated 10 September 2002 oblige the employer to provide support for the medical treatment and care of the victim during time spent in the hospital including treatment during the time of injury or when there is a relapse. [The employer should also] provide support after the injury has been treated, in the case of victims of work-related accidents which lead to periodical disability or permanent disability or after there is proper confirmation from an official doctor with agreement from the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.

In this case, the workers have already given receipts [of the medical expenses] to the company, thus the employer must pay the treatment fee amount to the workers in accordance with the costs borne by the injured employees (as evidenced by receipts).

Issue 3: The workers request that the company consider the workers in the sanitation section to be full-right workers and that they receive benefits according to the Labour Law

The worker party demands that the sanitation workers receive annual leave benefits just like regular workers.

Article 166, paragraph 1 of the Labour Law states, *“Unless there are more favorable provisions in collective agreements or individual labour contracts, all workers are entitled to*

paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.”

Article 9 of the Labour Law states, *“In accordance with the stability of employment, it is distinguished:*

- *regular workers*
- *casual workers, who are engaged to perform an unstable job.*

Regular workers are those who regularly perform a job on a permanent basis.”

In this case, as stated by the workers and the employer, the five workers have been working in the factory for more than two years and they work eight hours per day, 26 days per month like those workers who have been classified “regular workers”. This means that these workers *regularly perform a job as sanitation workers on a permanent basis. Thus, based on the article mentioned above, five of them are regular (full-right) workers.*

In the hearing, the workers and the employer stated that the five workers also work overtime like regular workers and receive US\$50 salary and benefits like other regular workers but they do not receive annual leave.

The Arbitration Council considers that all five workers are regular workers; thus they are entitled to receive annual leave like workers in other sections.

Therefore, the employer must classify the five sanitation workers as regular workers and provide annual leave in accordance with Article 166 of the Labour Law.

Issue 4: The workers demand that the company send workers to have a periodical and special medical check once a year (and that all expenses are the responsibility of the employer)

The employees demand that the Labour Physician attend [the factory] to conduct an inspection at Jung Min Factory to schedule a time for the employer to send workers to have periodical and special medical checks.

The Arbitration Council notes that it has jurisdiction to consider collective labour disputes. Therefore disputes which do not fit within the definition of “**collective labour dispute**” fall outside the jurisdiction of the Arbitration Council.

Article 302 of the Labour Law defines “collective labour dispute” as, *“A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness.”*

Based on Article 302 as mentioned above, the Arbitration Council considers that the workers’ demand that the Labour Physician attend Jung Min Factory to schedule a time for periodical medical checks is not a collective labour dispute because this dispute is not a

“dispute that arises between one and more employers and a certain number of their staff”. Rather, this demand relates to a dispute between the workers and the Labour Physician. The demand is, therefore, outside the jurisdiction of the Arbitration Council and it cannot therefore consider this issue in dispute. Thus, the Arbitration Council decides to decline to consider the demand.

Issue 5: In respect of overtime work, the workers demand that the company allow workers to go home without asking for permission from one person to another person, when workers have an important personal commitment.

Article 4 of Prakas 80 SKBY, dated 1 March 1999 states, *“An arrangement for overtime work shall be based on a willingness which means the owner or manager of an establishment shall not coerce or discipline the workers or employees who are not willing to work overtime.”*

In this case, if the workers finish working their eight hours and they are busy and do not want to do overtime work, they need to ask permission from the head of group, the head of the section and the head of production. It is difficult for workers to ask for permission from the head of production.

The Arbitration Council considers that the current management system in Jung Min Factory is very strict and creates an obstacle for workers to freely decide if they do not want to do overtime. This system coerces workers to do overtime work which is contradictory to the Labour Law and Prakas 80/99.

Therefore the employer should stop this practice and allow workers to go home freely if they do not want to work overtime.

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

DECISION

1. Decline to consider the workers’ demand that the employer increase wages of four workers by US\$5 [the wages of] whom the company has not increased.
2. Order the employer to reimburse treatment expenses to the four workers who have been injured [in work related accidents] according to the receipts provided to the employer by the workers.
3. Order the employer to consider the five sanitation workers as regular workers and provide annual leave for these workers like other regular workers.
4. Decline to consider the demand that the company send workers to have periodical and special medical checks once every year.
5. Order the employer to allow the workers to go home without asking for permission, if they do not want to work overtime.

Type of Award: Non binding awards

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: