

KINGDOM OF CAMBODIA

Nation Religion King

Case number: 25/03

ARBITRATION COUNCIL

Date of Award: Monday December 29, 2003

ARBITRAL AWARD

Based on Article 313 of the Labor Law

Employer Party: ADVANCED INDUSTRY Co., Ltd having Mr. Huang Yu Liu as Director

Address: Building No. 215 St. 164 Sangkat Tek Laak 2, Khan Toul Kok, Phnom Penh.

Telephone: (855) 23 882 967/ 011 875 711 Fax: (855) 23 883 974

AND

Employee Party: KHMER YOUTH UNION having Mr. Lim Meng Eang as President; Mr. Ouch Phalla,

Union Secretary; Mr. Meng Mean, Shop Steward; Mr. Neak Sreng, Shop Steward

Assistant

Office Address: Sangkat Tek Thla, Khan Reussey Keo, Phnom Penh.

Telephone: (855) 16 804 118/ 011 975 670/ 011 622 963

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

1. The employees demanded that the employer increase their regular-attendance bonus to US \$5.00 per month and demanded the company for back pay for the previous bonus.
2. The employees demanded that the employer pay them US \$2.00 for employment seniority.

Jurisdiction¹ of the Arbitration Council:

The Arbitration Council derives its power to make this Award from Section II B² of Chapter 12 of the 1997 Labor Law; the Prakas on the Formation of the Arbitration Council (No. 338, of December 11, 2002) and the Rules on the Arbitration Council Procedure.

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. However, that conciliation was unsuccessful and a non-conciliation report dated December 03, 2003 was sent to the Secretariat of the Arbitration Council on December 15, 2003.

Composition of the arbitration panel:

Arbitrator chosen by the employer party: Mr. Mar Samborana

Arbitrator chosen by the employee party: Mr. Tuon Siphann

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

Hearing and Evidence:

Date and place of hearing: December 18, 2003 at 14.30pm, Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonle Bassac, Phnom Penh.

Expert witness : none

Evidence considered by the arbitration panel is as follows:

-Received from the employer party:

- 1- Certificate of registration of Advanced Industry Co., Ltd. No. 1057 dated June 31, 1995.
- 2- Prakas No. 131 dated February 12, 2002 of the Ministry of Industry, Mines and Energy.
- 3- Sample of short-term employment contract.

-Received from the employee party:

1. The Company 's internal work rules registered at MoSALVY No. 044 dated July 16,1997.

-Presentations and testimony of the parties during the hearing.

Summary of the Case:

The Advanced Industry Co., Ltd. is located in Building No. 215 St. 164 Sangkat Tek Laak 2, Khan Toul Kok, Phnom Penh. Advanced Industry Co., Ltd. is an investment company producing as hand

¹ Jurisdiction (in Khmer) means the judicial power

² Art. 309 through 317 of Labor Law

made imitation jewelry of all kinds. This company was established and registered legally in 1995 and started running its business in 1996. The company employs 138 employees. On November 28, 2003 the Office of Labor Inspection of Khan Toul Kok received a complaint regarding a collective labor dispute from the employees of the Advanced Industry Co., Ltd. On December 02, 2003 the labor inspectors of Khan Toul Kok went directly to the company premises to solve this collective labor dispute, with the following results:

1. Both parties agreed with each other on 12 points out of the 14 points demanded by the employees.
2. The parties failed to reach agreement on two points as described in the issues in dispute.

On December 08, 2003, the Arbitration Council received the complaint from the employees and employer on these non-conciliation points. On December 15, 2003, the Arbitration Council received an official non-conciliation report from MoSALVY. On December 18, 2003, at 14.30pm the Arbitration Council held a mediation and conducted a hearing in accordance with its formal procedures.

At the hearing both parties agreed that this award is non-binding for the parties.

Fact finding:

- After reviewing the non-conciliation report of the collective labor dispute; and
- After having heard the testimony of the parties and evidence from the employer and employee parties;

The Arbitration Council finds that:

The Advanced Industry Co., Ltd is located in Building No. 215 St. 164 Sangkat Tek Laak 2, Khan Toul Kok, Phnom Penh. This company was established in 1995 but started its business operations in 1996. This company produces all kinds of imitation jewelry in the form of un-finished products for export to foreign countries where the products are finished.

Today the Company currently employs 138 employees. The number of employees has increased from year to year.

Previously, employees worked for a probationary period of between 1 and 5 months, at which point the employees would then become permanent. Today the maximum duration of the probationary period has been decreased to 4 months. During the probationary period the employee receives wage

of US \$38.00 per month. Once becoming a permanent employee, the employee is paid a wage of at least US \$45.00 per month.

The employer has applied a policy of giving its employees a regular-attendance bonus of US \$2.00 per month for several years. This bonus is given under several conditions, including that the worker not come late to work by more than 15 minutes per month and that the worker not fail to come to work at anytime, either with or without the employer's permission.

Previously, all these employees have never demanded nor received the employment seniority bonus which is now being demanded.

Reasons for decision:

1. **Issue 1:** The employees demanded a regular-attendance bonus of US \$3.00 in addition to the US \$2.00 that they receive monthly, to make US \$5.00 in total per month as set out in Notification No. 017 of MSALVY dated July 18, 2000. The employer party argued that it could not give US \$3.00 more because (1) the company is small and earns little profit; (2) no law sets out that the company must pay its employees the regular-attendance bonus of US \$5.00; and (3) Notification No. 017 does not apply to Companies that make imitation jewelry. However, with the assistance of the Arbitration Panel's mediation, both parties have discussed with each other and agreed voluntarily during the hearing that both employer and employee parties agree to give and accept an additional US \$2.00 bonus per month which in total makes US \$4.00 per month. Both parties have also agreed that this US \$4.00 bonus is effective from January 01, 2004. Therefore the Arbitration Panel finds that this agreement is considered as valid and official.
2. **Issue 2:** In relation to this issue the employees demanded that the employer pay a seniority bonus as set out in Article 5 of Notification No. 017 dated July 18, 2000 of MoSALVY. Article 5 of this Notification defines that the bonus for employees who have worked for one or more years is as follows: An employee who -
 - has worked for over one year should receive a seniority bonus of US \$2.00 per month;
 - has worked for over 2 years should receive a seniority bonus of US \$3.00 per month;
 - has worked for 3 years should receive a seniority bonus of US \$4.00 per month; and
 - has worked for 4 years should receive a seniority bonus of US \$5.00 per month.

The employer party argued that this notification does not apply to the imitation jewelry sector and that the company always makes little profit. However the company intends and is able to give the employees a seniority bonus starting from January 01, 2004 as follows:

- An employee who has worked for over 3 years by December 31, 2003 will receive US\$2.00 per month;
- An employee who has worked for over two years (between two and three years) by December 31, 2003 will receive US \$1.00 per month; and
- An employee who has worked less than two full years by December 31, 2003 is not entitled to receive this bonus.

The employee party argued that the request of the employer could not be accepted and they asked the Arbitration Council to apply Notification No. 017.

The Arbitration Panel finds that Notification No. 017 of MSALVY dated July 18, 2000 applies to a company that is a textile, garment and footwear factory or enterprise, but it does not apply to an imitation jewelry company. This notification was made focusing on all factories and enterprises in the garment, textile and footwear sectors in Cambodia, and excludes other production factories or enterprises which are similar to garment or footwear factories such as factory or handicraft making imitation jewelry and so on.

However, in accordance with Article 312 paragraph 2 of the 1997 Labor Law, the Arbitration Council has the power to review the case and to resolve all labor disputes by using the principle of equity. In this specific case, the Arbitration Council finds that Notification No. 017 dated July 18, 2000, comprises a common principle that can be applied, following the principles of equity in every production factory or enterprise that has working conditions similar to garment, textile or footwear factories and enterprises.

The Arbitration Council has the power to decide disputes regarding future interests based on equity. In this case, the Arbitration Council finds that Advanced Industry Co., Ltd., which produces imitation jewelry, should give a seniority bonus to its workers who have been employed for more than one year in a similar amount to the seniority bonus received by employees in the garment, textile or footwear factory and enterprises. The reasons that the Arbitration Council found that the company must give these equitable benefits are as follows:

- The employees of this company work under similar working conditions to the employees in the textile, garment and footwear factories and enterprises.
- The employees of this company work under a long-term probationary period - previously from one month to a maximum of five months, now decreased to a maximum of four months. This maximum four or five-month probationary period is longer than the probationary period of employees in other enterprises or establishments.
- During the probationary period, the employees only received a wage of US\$38.00 per month; this amount is less than the wage of employees at other enterprises and establishments (maximum = 3 months).
- During the hearing the employer party argued that they could not follow the demands of the employees because the company gained little profit. Following the request of the Arbitration Panel, the company party promised to give the Arbitration Panel evidence to support this argument by Monday 22 December 2003 at the latest. However the Company did not submit its balance sheet documents to the Arbitration Council as promised, so that the Arbitration Council could consider its profits. Failure to give the documents without reasons led the Arbitration Panel reasonable to conclude that the company gained more profit than the amount reported in the hearing.
- The skills of employees with long experience at work are also increased. Therefore it is fair for employees to receive more benefit than before.
- Giving the employees a seniority bonus would benefit the employer with loyalty and paying attention on work performance of employees.
- So that it is fair for parties, the employer and employees should get a compromise, which does not entirely apply Notification No. 017.

Based on the facts, law, evidence, the principles of equity and the above reasons the Arbitration Council decides and orders a comprehensive solution to this collective labor dispute as follows:

1. The employer shall pay the employees a regular-attendance bonus of US \$4.00 per month commencing from January 01, 2004 (as agreed by both parties).
2. The employer shall pay the employees a seniority bonus from January 01, 2004 as determined by the following:

- a. When their employment has lasted for at least one year employees are entitled to receive a seniority bonus of US\$1.00 per month.
- b. When their employment has lasted for at least two years, employees are entitled to receive a seniority bonus of US\$2.00 per month i.e. US\$1.00 for the first year plus US\$1.00 for the second year.
- c. When their employment has lasted for at least three years, employees are entitled to receive a seniority bonus of US\$3.00 per month i.e. US\$1.00 for the first year plus US\$1.00 for the second year plus US\$1.00 for the third year.
- d. When their employment has lasted for at least four years, employees are entitled to receive a seniority bonus of US\$4.00 per month i.e. US\$1.00 for the first year plus US\$1.00 for the second year plus US\$1.00 for the third year plus US\$1.00 for the fourth year.

The seniority bonus payment above is effective from August 01, 2000 and on.

Signatures of Members of the arbitration panel:

Arbitrator chosen by the Employer Party:

Name: Mar Samborana

Signature:

Arbitrator chosen by the Worker Party:

Name: Tuon Siphann

Signature:

Chair of arbitration panel:

Name: Kong Phallak

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.*