

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 25/04

Date of award: 25 May 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

STANDARD GARMENT FACTORY

(Employer party)

AND

KHMER YOUTH UNION FEDERATION

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representative:

1- Mr. Sar Samnang

Address: Sangkat Tuol Sanke, Khan Resey Keo, Phnom Penh

Tel: 012 879 772 Fax: N/A

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representative:

1- Mr. Mai Vathana

Address: Sangkat Tuol Sanke, Khan Resey Keo, Phnom Penh

Tel: 011 975 670 Fax: N/ A

ISSUES IN DISPUTE:

(In non-conciliation report)

1. The employees demand that the employer maintain the wage and bonus of USD5 for the workers going on strike on 10 April 2004 and on 27 April 2004. However, the employer could not afford to do so, and instead wished to comply with the Labor Law.

JURISDICTION OF THE ARBITRATION COUNCIL :

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labor Law (1997); the Prakas on the establishment of the Arbitration Council No. 338, dated 11 December 2002; the Prakas on the Arbitration Council No. 099, dated 21 April 2004; the Arbitration Council Procedural Rules that form an Annex to the same Prakas; and the Prakas on the Nomination of Arbitrators No.103, dated 26 April 2004.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was successful in one of three issues, with two unsuccessful issues. The non-conciliation report dated 30 April 2004 was submitted to the Secretariat of the Arbitration Council on 5 May 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Hem Hour Narith
Arbitrator chosen by the employee party:	Mr. Venn Pov
Chair arbitrator (chosen by the two arbitrators):	Mr. Kong Phallack

HEARING AND EVIDENCE:

Date and place of hearing: 14_May 2004 from 2:00-5:00pm at the Arbitration Council Secretariat.

Witnesses and experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW :

Provided by the employer party:

- 1- Certificate of Business Registration, dated 6 October 2003.
- 2- Internal Prakas No. 003 on monthly bonus of USD5, dated 27 November 2004.
- 3- Announcement No. 16, dated 10 April 2004.
- 4- Report on collective dispute conciliation, dated 28 April 2004.
- 5- List of workers participating in the conciliation process, dated 28 April 2004.
- 6- Workers' 10- point demand letter.
- 7- Clarification of employer representative in the hearing.

Provided by the employee party:

- 1- Announcement No. 16/ 2004, dated 10 April 2004.

- 2- The Union's letter No. 150, dated 14 May 2004, on the election of the Khmer Youth Union's Commission for Standard Garment Factory.
- 3- The Union's letter No. 144, dated 13 May 2004, on the Request for workers' participation in the hearing of the Arbitration Council.
- 4- Clarification of the union representative and workers in the hearing.

CASE SUMMARY:

The employees demanded that the company maintain the wage rate and bonus of USD5 for the regular work of the employees who went on strike on 10 April 2004 and [again] on 27 April 2004. The employer refused to pay the wages and bonus, and instead maintained it would comply with the Labor Law. There was a failed attempt at conciliation by the Labor Inspector on 27 April 2004. A non-reconciliation report was submitted to the Arbitration Council on 5 May 2004. On 14 May 2004 at 2:00pm, the Arbitration Council heard the case with both parties in attendance. During the hearing, the Arbitration Council requested more detail and conducted a conciliation, but this failed, so the Council resumed the hearing on the same day.

We find that:

- 1- The company does not have internal work rules because it has only been in existence for 5 or 6 months.
- 2- The company complies with the announcement of MoSALVY No. 17, dated 18 July 2000.
- 3- The company gives a bonus of USD5 to punctual workers, but any worker who comes to work later than 10 minutes per month will not receive the USD5 bonus.
- 4- The Union does not have a registration certificate, but it has a list of the seven newly elected committee members from the election on 24 April 2004.
- 5- The workers went on strike on April 10, 2004 and [again] on April 27, 2004. The workers argued that they did not intentionally plan to strike, but the nine dismissed workers blocked their entry to work. Both parties agreed that there had not been any seven day prior notice of the strike.
- 6- The representative of the Khmer Youth Union said the Union had not led the workers on the strike.
- 7- The Union and workers said that the employer had not recruited any new workers during the strike.
- 8- The workers agreed not to demand the wage during the strike period, but insisted on receiving the regular work bonus of USD2.50. The employer refused to give the bonus because he applied the rule that if the employees arrive at work 10 minutes late per month, they will not receive the bonus.

REASONS FOR DECISION:

According to Article 332 of the Labor Law, dated 13 March 1997, the strike suspends the labor contract. During the strike, work is not performed and the salary is not paid. However, according to Article 334, if the employer recruits new workers during the strike to replace the strikers, the employer has to pay the strikers' wages for the strike period.

In this instance, the employer did not recruit any new workers, so the salary should not be paid. Additionally, the employees ceased demanding payment of the wage during the hearing. Regarding the USD5 bonus, the Arbitration Panel finds that the employer, as a rule, pays the regular bonus, with the 10-minute rule as a condition. Because of the two-day strike, the employees are deprived of the bonus. Therefore, the company has a right to deny the pay.

Further, Article 333 of the Labor Law cannot be applied in this case. This Article prohibits the employer from giving any sanction to the employees for participating in the strike. However, in previous cases, the Arbitration Council found that prohibiting the employer from punishing employees as stipulated in Article 333 is allowed as long as the strike is staged in conjunction with the law. In the Lida Garment case No. 04/03 the Arbitration Council decided:

Article 333 prohibits any form of sanctions by an employer against striking workers, the prohibition is fully effective only if such strike is organized in compliance with the Law. If workers do not comply with the law, they cannot expect to benefit from its full protection. Accordingly while it may be considered an improper sanction in the sense of Article 333 to withhold the \$5 attendance bonus from workers who participates in a strike in compliance with Chapter XIII, the Arbitration Council will not extend such protection to employees who have failed to follow the Chapter XIII procedures.

In this case, both parties agreed that there is no prior notice (as stated in Article 324 of Labor Law). So, since the strike is against the procedure stipulated in Chapter 13 of the Labor Law and Article 333 has not been applied, all the employees lose their right to the USD5 bonus for May. (See the Lida Garment case No. 04/03, Wash Concept case No. 08/04, Lucky Zone case No.15/04, and Yada Printing case No. 16/04).

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

DECISION:

The Arbitration Council makes its decision as follows:

Rejects the employees' demand for wages and bonus.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: Hem Hour Narith

Signed:

Arbitrator chosen by the worker party:

Name: Venn Pov

Signed:

Chair of arbitration panel:

Name: Kong Phallack

Signed:

This Award will become binding after 8 days of the date of notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

If either of the parties legally lodges an opposition, the party can file a lawsuit with the provincial-municipal court or go on strike or lock-out.

This Award is immediately binding upon the parties if the parties have agreed as such in writing before the notification of the Award, or if the parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.