

**Kingdom of Cambodia  
Nation Religion King**

-----

**Case number: 26/03**

**Date of award: Friday, January 16, 2004**

**ARBITRATION COUNCIL**

**ARBITRAL AWARD**

Based on article 313 of the Labor Law

**The employer:** The Cambodia Sport Wear Garment Factory, represented by Mr. Liv Mann and the lawyer named Mr. Sor Samnang.

Address: Building 1533, National Road Number 2, Chak Angrei Kraum quarter, Mean Chey district, Phnom Penh.

Tel: (023) 219 716, fax: (023) 365 668

**AND**

**The employees:** The Union Worker of Progress Democracy, represented by Mr. Seng Sarom, president of the union; Mr. Yem Socheth, deputy chief of the Union; Mr. Ly Kimyin, secretary; and Ms. Kin Chhay, deputy accountant.

Address: Building 1533, National Road Number 2, Chak Angrei Kraum quarter, Mean Chey district, Phnom Penh.

Tel: (012) 639 343, Fax: N/A

**Issues in disputes**

(As exists in non- conciliation report)

- 1- Employees still demand that the company maintain the regular wage and bonus for employees who are sick and have medical certification from a state hospital. The company side does not agree to employees' request. The company keeps its position to provide wage for sick employees and comply with the internal work rules of the company.

**Jurisdiction<sup>1</sup> of the Arbitration Council:**

The Arbitration Council derives its power to make this Award from Section II B<sup>2</sup> 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.

---

<sup>1</sup> Jurisdiction (in Khmer) means the judicial power

<sup>2</sup> Art. 309 through 317 of Labor Law

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 December 5, 2003 was sent to the Secretariat of the Arbitration Council on December 15, 2003.

**Composition of the Arbitration Panel:**

Arbitrator selected by employer: **Mr. OuK Ry**

Arbitrator selected by employees: **Mr. Vong Vanna**

Chief of arbitrator selected by both arbitrators: **Mr. Kong Phallack**

**Hearing and Evidence:**

Date and location of the hearing: January 13, 2004, 8:30 am at Arbitration Council Secretariat.

Skill witnesses beside the parties: N/A

**Evidence that Arbitration Council took for consideration:**

- Documents received from conflicting parties:

- 1- The letter dated December 18, 2003 of Cambodia Sport Wear, delegating authority to Mr. Sar Samnang, lawyer of the company.
- 2- Internal work rule of the company registered by the MOSALVY, dated December 19, 1998.
- 3- Minute of the meeting dated January 2, 2004 between shop steward representative of the Cambodian Union Industrial Textile and Cambodia Sport Wear Co., Ltd.
- 4- The letter of the Union Worker of Progress Democracy asking for an extension to resolve the case number 26/03 dated January 3, 2004.
- 5- The letter of the Union Worker of Progress Democracy written on the requirement of payment for sick leave dated January 14, 2004.

- Presentation and answering for evidence of both parties.

**Case summary:**

Cambodian Sport Wear Garment Factory is located at Building 533, National Road Number 2, Chak Angrei Kraum quarter, Mean Chey district, Phnom Penh. The Cambodian Sport Wear is a garment factory. On December 2, 2003, the Labor Inspector at Mean Chey received a complaint through a phone call to resolve some collective disputes at the factory. The inspector comes to settle disputes as below:

- 1- Both parties have agreed to eight points among nine points demanded by employees.

- 2- Both parties do not agree on one issue as mentioned in the above conflicting point.
- On December 15, 2003, Arbitration Council (AC) received the official report on non-conciliation from MOSALVY. On December 22, 2003, AC opened its first hearing and then both parties asked AC to mediate disputes at the factory, but this mediation did not reach an agreement for a regular bonus for employees who are take a sick leave. Then on January 13, 2004 at 8:30 am, AC opened its hearing again.
- In the hearing both parties agreed that this award is not binding immediately to the parties.

**Fact finding:**

After examining a minute of collective dispute mediation and after listening the fact and evidence of employees;

**The Arbitration Council found that:**

The Cambodian Sport Wear is located at building 1533, National Road Number 2, Chak Angrei Kraum quarter, Mean Chey district, Phnom Penh. Today, the company employs 5181 employees. So far, employees' sick leave certified by state hospital complies with the internal work rule of the company by paying 60% for the first month and 40% for the second and third month. The internal work rule doesn't mention extra bonus for the leave. Now employees demand the regular bonus for sick leave.

**Reason for decision making:**

Employees demand bonus of at least US\$5 per month which conforms with the notification number 017 of the MOSALVY dated July 18, 2000 for their work while they are on sick leave. Employer argued that it couldn't pay this bonus because the law does not stipulate about this. Notification number 017 of the MOSALVY stipulates that "Workers who come to work regularly on regular working days of a month shall receive a bonus of at least USD5 per month". The notification, however, does not mention what to do if employees take leave because of serious sickness that prevents them from coming to work. Further there is no regulation of the Labor Law stipulates extra information on employees' rights for sick leave. The Labor Law just stipulates that, "Employees have right to suspend their employment contract (without wage) if they have medical certification from a doctor (see Article 71 paragraph 3 and Article 72 of the Labor Law). AC does not know if there is any Ministry regulation on sick leave. But, notification number 9 of the year 2001 offers a sample internal work rule which includes "sick leave" in the event there is no detailed information on the number of days for sick leave in the rule. In practice, however, the Labor Inspectors uses their own power to register internal work rules in order to insure that employers offer an appropriate number of days for sick leave to employees.

Under internal work rules of the company, for employees who take leave because of their sickness, which is certified correctly by state hospital, the company offers wages equal to 60% for the first month, 40% for second and third month, and if the leave exceeds two or three months, employer is free from paying any wage to employees. Employer, however, cannot terminate their employment contract during sick leave during the fourth, fifth, and sixth month. This internal work rule also has mentioned offering bonus for regular work to sick leave employees.

Through the negotiation on January 2, 2004 between employees and employer at the hearing of the AC, the company has agreed to offer employees who took sick leave with wage 100% for the first month, 60% for the second and third month and keep the same interest for the fourth to sixth month. This offers is exceed what the internal work rule set up.

The AC found that the company's agreement to offer interest to employees who take sick leave is much better than that set up in the internal work rules and the regulation stipulated in the 1997 Labor Law. The AC found that employees' demands for sick bonus is not reasonable. So, the AC rejects this claim, which is requested for "regular work bonus" to employees who take sick leave according to the fact.

### **Award and Order**

Based on the fact, legal aspect, evidence, and the above reason, AC decides to issue the award as below:

- 1- Employer must provide wage 100% for the first month, 60% for the second month and 40% for the third month (under an agreement dated January 2, 2004 between company and shop steward). This applies to employees who took sick leave certified correctly by state hospital.
- 2- Reject the demand of employees for "regular work bonus" for employees who took sick leave.

#### **Signatures of Members of the Arbitration Panel:**

Arbitrator chosen by the employer party:

Name: Mr. Vong Vanna

Signature: .....

Arbitrator chosen by the worker party:

Name: Mr. Ouk Ry

Signature: .....

Chair of arbitration panel:

Name: Mr. Kong Phallack

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.*

*If either party submits a valid opposition to this award either party can then make a complaint to the court or conduct strike or lock out in order to resolve this dispute.*

*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.*