

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 26/04

Date of award: 22 May 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

CAMBODIA SPORTSWEAR MFG CO., LTD.

(Employer party)

AND

**UNION OF WORKERS FOR PROSPEROUS DEMOCRACY OF
CAMBODIA SPORTSWEAR MFG CO., LTD.**

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representative: Mr. Sar Samnang, lawyer

Address: #1533, National Route 2, Sangkat Chak Angre Kroum, Khan Mean
Chey, Phnom Penh.

Tel: 012 879 772

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

1. Mr. Seng Sarom, President of the Union,
2. Mr. Ly Kim Yin, Union Secretary,
3. Mr. Kin Chhay, Union Activist,
4. Mrs. Kin Chhay, Union Activist,
5. Mr. Khun Phatt, Union Member,
6. Mrs. Mom Chansrey, Union Member,
7. Mrs. Tek Bunnoeun, Union Member,
8. Mrs. Sok Engly, Union Member,
9. Mr. Tep Veasna, Union Member,
10. Mrs. Koy Hau, Union Member

Address: #1305 National Route 2, Chak Angre Kroum, Khan Mean Chey,
Phnom Penh

Tel: 012 398 198

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- Employees demand that the company pay Mrs. Heng Sorphorn the wages according to the achieved piecework, USD119, which she has submitted to the company.
- 2- Finishing workers in the A1 and F6 Buildings demand that the company increase the proper piecework rate.
- 3- The workers demand that the company increase the monthly salary for finishing workers.
- 4- The workers of store, cleaning, material-giving and swimming-clothe departments demand the company increase their wages.
- 5- Casual workers or floating workers, who are employed or have been employed by the employer, await to abide by the Arbitral Award.

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 6 May 2004 was submitted to the Secretariat of the Arbitration Council on 6 May 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Kao Thach
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE:

Date and place of hearing: 13 May 2004 at 2:00pm at the Secretariat of the Arbitration Council.

Witnesses and experts: N/A

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

Provided by the employer party:

- 1- Letter of the company requesting an urgent order from the Arbitration Council to force strikers to return to work, dated 6 May 2004.
- 2- Company Internal Work Rules, dated 19 December 1998.
- 3- The letter, dated 12 May 2004, authorising lawyer Sar Samnang to represent the company in the hearing.
- 4- The list setting the price rates for workers.
- 5- Mrs. Heng Sorphorn's resignation letter, dated 14 May 2004.

Provided by the employee party:

- 1- The letter, from April and May 2004, with the fingerprints of the more than 3000 employees of Sportswear Factory and Supertech supporting Mr. Seng Sarom to negotiate a collective bargaining agreement in order to fix minimum wages.
- 2- The report on the demand of wage increment dated 6 May 2004.
- 3- Company's Internal Work Rules dated 19 December 1998.
- 4- The report relating to Mrs. Heng Sorphorn, dated 6 May 2004.
- 5- The employees' clarification letter dated 4 May 2004.
- 6- Mr. Seng Sarom's letter describing the employees' demands, dated 30 April 2004.

Received from MoLVT:

- 1- The non-conciliation report on the collective dispute resolution dated 6 May 2004.
- 2- The guideline of MoSALVY dated 6 May 2004.
- 3- The note of MoSALVY dated 6 May 2004.

Presentation by employers and employees in the hearing.

The two parties decided in the hearing that: THIS AWARD IS NOT IMMEDIATELY BINDING.

CASE SUMMARY:

- 1- Cambodian Sportswear Mfg Co., Ltd. employs 5140 workers. On 3 May 2004, almost 3000 of workers went on strike to demand the company to improve some working conditions and pay the owing wage to Mrs. Heng Sorphorn.

From 3 to 5 May 2004, the labor inspectors went to the company in order to help reconcile the dispute. As a result, nine amongst fourteen issues were conciliated.

On 6 May 2004, the Arbitration Council received the case from MoSALVY and held its hearing on 13 May 2004.

2- Presentation by employees

On 9 May 2004, Mrs. Heng Sorphorn's supervisor, i.e. the supervisor of the first line team, reported to the Manager of the company that she got more wages because she cheated by adding more achieved piecework. The manager asked her for more clarification then let her return to work without judging. The day after, the manager asked her for clarification again but with the presence of the union representative. At the time, the manager said she committed serious misconduct leading to her dismissal. With this result, the union representative asked for more evidence for the misconduct. Then the manager said the company would not pay her wages, unless she [could] prove that she did not make the mistake, but lent her USD50. In fact, the Chinese supervisor brought some piecework from other departments to add to Mrs. Heng Sorphorn's because she did more than the tasks she was assigned to until she earned up to USD119. When finding that she got more wages than she was entitled to, the company accused her of cheating. According to the Chinese supervisor's arrangement, once there was no work for her to do, she was assigned work in other departments such as correction, iron, cut and design departments. Nowadays, the Chinese supervisor has stopped working in the company. The Khmer supervisor and other workers did see that the Chinese added some piecework to hers. So far, a lot of workers would often perform different tasks as did Mrs. Heng Sorphorn, but no problems arouse. Later with the staff's support and clarification, the company said Mrs. Heng Sorphorn did not commit serious misconduct but performed the role she was not assigned to and submitted the pieces late.

Mrs. Heng Sorphorn's dispute over the submitted piecework is common for all workers because this problem has often taken place. In April, Mrs. Heng Sorphorn worked overtime for many hours. This means that, not all of the piecework for each worker is recorded on that day, the worker may keep some back and submit it later with other completed piecework. Hence, the amount of piecework varied from one month to the next.

So far there have been union and worker claims for wage increases. The employer orally agreed to review the wages based on seniority. As a result, the employer increased the salary of USD3 or USD5 to some workers but not to others. When the union asked for it, he said he would review it again. But until now, the company has not increased the salary; some old workers get a lower salary than the new ones. The

workers had suspicion that there was discrimination and the company does not treat them equally.

There are some employees working for the company from one to six months but still with the status of floating workers. The employees confirmed that there were at least 19 floating workers, according to the confirmation by the employer during the conciliation process presided over by the labor inspector. These workers work from eight to ten hours, six days a week, and are not allowed to take leaves except during the Khmer New Year, for one week. The workers said that at the beginning, the employer told them they would get at least USD45 a month, but in fact they only got USD41, 42 or 43 a month. The workers demand that the company hire them as regular workers and pay the portion of the salary under the minimum wages.

3- Presentation by the employer

The employer said the union's present name was different from the one registered with MoSALVY and that registered union was destroyed by the new federation. Thus, the union registered with the MoSALVY no longer exists and Mr. Seng Sarom cannot represent the employees by using the label of the union president.

The employer said Mrs. Heng Sorphorn worked slowly and mostly could not complete the amount of piecework required for the minimum wage. The company always added some amount to hers to reach the minimum wage. It was unbelievable to the company, once the company found that she could achieve the amount of piecework to earn USD119, because it was too much for her. Therefore, the company only paid her based on the amount of piecework for her real role. The company recognized that the Chinese did give her some amount of piecework but at most USD10 or 15 only, not as much as USD50 or 60. Anyway, the company says it is an individual dispute. Therefore the company should be allowed to deal directly with Mrs. Heng Sorphorn. The company requested to settle this issue through the conciliation process by the labor inspector. Moreover, Mrs. Heng Sorphorn accepted and already received the wages of USD75 from the company on 12 May 2004.

There are only seven floating workers in the cleaning department. Mr. Sar Samnang does not know the exact number of the total floating workers. Regarding this issue, the company will read the law and abide by it. When finding that the floating workers meet the conditions required by the law, the company will hire them full time as insisted.

FINDINGS OF FACT:

- Having examined the report on the collective dispute reconciliation
- Having listened to employee and employer parties
- Having checked the above documents

We find that:

The Chinese supervisor did bring some piecework from other departments to add to Mrs. Heng Sorphorn's in order for her to help do. Mrs. Heng Sorphorn did accomplish the job and submit the achieved piecework to the company, equal to USD119. The company did not pay this amount to her. Instead, the company accused her of committing serious misconduct and wanted to dismiss her, but later found that she did not commit serious misconduct and agreed to pay her only USD75 based only on the piecework she accomplished for her real role.

At least nine workers have already been working for the Sportswear Company for one month to six months, but the company still regards them as floating workers. These workers work from eight to ten hours and six days a week. They have never been allowed to take any leaves except during the Khmer New Year, for one week. The employer promised to give these floating workers the monthly salary of USD45, but now they get only USD41, 42 or 43 a month.

REASON FOR DECISION:***1st issue:* Reasons for the issue relating to the wage payment based on the achieved piecework:**

When the hearing commenced, the employer side protests that Mr. Seng Sarom does not have the legal right to represent the employees in the dispute settlement because Mr. Seng Sarom's union's present name is different from the one registered with MoSALVY. Furthermore, the employer claims that Mr. Seng Sarom is no longer the president of the union because the federation destroyed Mr. Seng Sarom's union and the employer does not recognize this union anymore.

The Arbitration Council finds that this union was formed by the employees, not by the federation. The union, whose president is Mr. Seng Sarom, registered with the MoSALVY as required by the law. The federation cannot and does not have the right to destroy the union representing the employees, especially after the registration. Moreover, there are more than

3000 fingerprints giving the rights to Mr. Seng Sarom to represent them for the negotiation with the employer side. Therefore, Mr. Seng Sarom, as the president of the union, does have the right to represent the employees.

Art. 5 of the Internal Work Rules of Sportswear Company provides that wages are divided into three types: per month, per day and per piecework.

The workers confirm that Mrs. Heng Sorphorn achieved the piecework, which is equal to USD119.

The employer says that he recognizes that the Chinese supervisor did give the piecework to Mrs. Heng Sorphorn to complete but does not believe that she can achieve this amount. The employer recognizes that this achieved piecework does equal USD119 but doubts that someone cheated by adding achieved piecework.

The Arbitration Panel finds that Mrs. Heng Sorphorn does accomplish the piecework, which is equal to USD119. The Law orders the employer to pay his employees the wages, based on the agreement and the amount of achieved piecework.

The Arbitration Council finds that the Chinese supervisor is a manager, whose role and duty is to monitor employees' work activity for the sake of the employer. It is not misconduct for Mrs. Heng Sorphorn or other workers to complete the tasks given by him even though the given tasks are not in conformity with her or other workers' roles. Therefore, she and other workers are not responsible for this kind of arrangement, but it is the company's responsibility. The workers' roles are just to comply with the supervisor's orders. The company recognized that the achieved piecework she gave to the company belongs to the company. Therefore, the company must pay Mrs. Heng Sorphorn an amount of USD119, her achieved piecework, unless the company can prove that she cheated. Regarding other workers, the company must pay them according to their achieved piecework too, unless the company proves they cheated.

The Arbitration Council decided not to issue a decision on this matter due to Mrs. Heng Sorphorn's absence without valid reason during the hearing and a letter sent to the Arbitration Council by the company, one day after the hearing, saying that Mrs. Heng Sorphorn accepted the wage offered and resigned from the company because of her health problems..

2nd issue: Reasons for the issue relating to the floating workers

Article 9 of the Labor Law provides that casual workers (floating workers, used by the company) are those who are contracted to perform a specific work that shall normally be completed within a short period of time or perform a work temporarily, intermittently and seasonally.

Article 10 of the Labor Law provides that casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately.

Article 166 of the Labor Law, third paragraph, provides that for jobs that are not performed regularly throughout the year, a worker is considered to have met the condition of continuous service if he works an average of 21 days per month.

The Arbitration Council finds that floating workers in Sportswear Company have worked from one month to six months. They work from 8 to 10 hours a day and six days a week. It can be said that the floating workers relevant to the dispute work from 48 to 60 hours a week and more than 21 days a month. Moreover, they work continuously except for a seven day leave during the Khmer New Year. The workers confirm that the employer orally promises to pay them USD45 a month. Hence, based on the work duration per day, per week and per month, 1- these floating workers are not casual workers as provided by the Article 9 of the Labor Law; 2- these floating workers are regular workers according to Article 166 of the Labor Law; and 3- the employer must provide them with the same rights and other benefits, such as minimum wage, as regular workers in accordance with the Article 10 of the Labor Law.

Thus, the employer must change their current status to the regular worker status. But there are two conditions to meet in order to become a regular worker: 1- work for the company at least two months consecutively; and 2- work at least 21 days a month for two months. The company must accurately pay its workers in accordance with the achieved piecework, overtime rates and monthly bonus principles.

With regard to Issues 2, 3 and 4, related to the interest issues, the employee party requests a negotiation with the employer party for a Collective Bargaining Agreement.

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

DECIDES :

1st :

- 1- Decide not to issue an Arbitral Award on Mrs. Heng Sorphorn's demand to the company to pay her USD119.
- 2- Order the company (from now onward) to pay workers based on the amount of achieved piecework without taking into consideration that the achieved piecework is in conformity with the given roles.

2nd :

- 1- Order the Sportswear Company to hire floating workers, who have worked for the company for at least two months consecutively and 21 days a month, with the status of regular workers.
- 2- Order the company to pay all floating workers the wage portion under the minimum wage from the first month of work.
- 3- Order the company to pay all floating workers the bonus of USD5 a month from the first month of work.
- 4- Order the company to pay all floating workers overtime wages, according to the rate set by the law, for the portion over 48 hours a week.
- 5- The company must pay wages for issues No. 2, No. 3 and No. 4 to all mentioned workers a week after this award takes effect.

3rd :

- 1- Order the employer and the employees to negotiate, no longer than 6 months, in order to elaborate a Collective Bargaining Agreement for issues No. 2, No. 3, No. 4 and other interests
- 2- Both parties must meet each other and negotiate, during the working hours, at least two hours per week, in an appropriate place within the company.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:

Name: Kao Thach

Signed:

Arbitrator chosen by the worker party:

Name: Tuon Siphann

Signed:

Chair of arbitration panel:

Name: Ang Eng Thong

Signed:

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 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.