

Kingdom of Cambodia
Nation Religion King

Case number: 27/03

ARBITRATION COUNCIL

Date of award: Tuesday, January 6, 2004

ARBITRAL AWARD

Based on article 313 of the Labor Law

The employer: Standard Garment Co., Ltd, represented by Mr. Henry, Christ and Som u pisey, located at Group 13, Village Toul Kok, Toul Sangkert, Rey Sey Keo, Phnom Penh. Tel: (012) 510 966 or (023) 982 200.

AND

The employees: Khmer Union of Standard Garment Co., Ltd, represented by Mr. Chhoun Momthol, President of Cambodia Confederation of Trade Unions; Mr. Oum Vuth, Chief of Khmer Union; Mr. Hem Channa, Deputy of Khmer Union; Mrs. Meas Sootheary, secretary of union; Mr. Phorn Samnang, Assistant and member of union; Mrs. Doung Thol, Member of Union; and Mrs. Phogn Chantha, Member of Union.

Location: In the temporary factory. Tel: (012) 759 386 or (012) 658 129

Issues in Disputes

(As exists in non-reconciliation report)

1- Employees demands employer to reinstate 7 employees, leadership and active members of union.

Jurisdiction of the Arbitration Council:

The Arbitration Council, derives its power to make this Award from Section II B of Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules which form an Annex to the same Prakas.

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 unsuccessful and non-conciliation report of 17-12-2003 was submitted to the Secretariat of the Arbitration Council on 18-12-2003.

Composition of the Arbitration Panel:

Arbitrator chosen by the Employer Party: **Ms. You Suonty**

Arbitrator chosen by the Worker Party: **Mr. Tuon Siphann**

Chair arbitrator (chosen by the two arbitrators): **Dr. Sok Mathoeung**

Hearing and Evidence:

Date and place of hearing: December 24, 2003 at 14:00 pm, and December 27, 2003 at 9:00 am at Arbitration Council, Phnom Penh Center (A), Sothea Rors Blvd., Sangkat Tonle Basak, Phnom Penh.

Skill witnesses beside of the parities: N/A

Evidence that was taken into consideration by Arbitration Council as below:

- Document sent by employer:

- 1- Certificate of Standard Garment Co., Ltd registration No: 1183, dated September 22, 2003.
- 2- Sample for job application, which is like a sample of temporary employment contract.

- Document sent by employees

- 1- Application form of union registration at MOSALVY No: 666 ssx, dated December 11, 2003.
- 2- Receipt of the case of MOSALVY, dated December 11, 2003
- 3- Khmer Union statute of Standard Garment Co., Ltd and its minute on the establishment of Khmer Union at Standard Garment Co., Ltd, dated November 23, 2003.
- 4- List of elected leaders of union and the participants in the election as well as their background.

- Presentation and answer of both parties as witnesses in the hearing

Case summary

Standard Co., Ltd located at group 13, Tuol Kok Village, Toul Sanket quarter, Reusey Keo district, Phnom Penh. This company was legally established and registered on September 22, 2003, and started its operation from that date. The company employs about 300 employees. On December 15, 2003 at 8:00 am, employees went on strike demanding that the employer resolve eight issues; including the claim for reinstate of seven employees, who were dismissed by the company. At 8:30 am of the same day, the Labor Inspector from Reusey Keo comes to help resolve this collective dispute at the factory. After having a long negotiation, both parties mediated seven issues and there is only one issue that cannot be mediated as mentioned in issues in disputes at the beginning.

On December 18, 2003 Arbitration Council has received complaint from employees and employer about the issue of non-conciliation. On December 24, at 14:00 pm and December 27, at 9:00 am, AC mediated and conducted two hearings according to its procedure.

In the hearing, both parties agreed to non-binding award.

Finding of fact:

After examining a minute of mediation of collective labor disputes, and after hearing fact and evidence raised by the company and employees;

The Arbitration Council finds that:

Standards Co., Ltd, is located at Group 13, Village Toul Kok, Toul Sangkert, Rey Sey Keo, Phnom Penh. The company was established in September 2003. Today, the company employs 300 employees. A numbers of employees were hired in subsequences from the date of operating the company. Employees in the company have temporary employment contracts for three months. This contract must be filled out in their job application. During three months casual period, employees get wage of US\$35 per month. Among seven employees who were dismissed, some of them had temporary employment contracts which were terminated in December 2003, and some were

terminated in January 2004. This company is a new one that has no internal work rule and has no written strict disciplinary procedure yet.

Employees argued that on November 11, 2003, some of them have borrowed US\$10 each from employer for their expenses during the Water Festival. Some, however, did not borrow and did not receive US\$10 from employer. When they were paid for November, the company had cut US\$5, US\$10 or US\$15 from each employee, even those who had borrowed or not. At that time, employees had claimed for finding resolution, but this was not done. In the hearing the employer agreed that there was some deduction of wage from employees. Further, employer recognized that the wage deduction of employees is a technical fault of his/her cashier. Employer explained that those moneys were cut, and his/her cashier kept them in the borrowing box, but some employees did not borrow the money.

On November 12, 2003, about 300 employees went on strike because of the incorrect cash wage. The strike was started from the morning time until 2:00 pm. By that time, the company joined to resolve and gave back remaining money to employees and the company promised that it did not seek revenge from those employees.

On November 15, 2003, employees went on strike again by standing out of the factory about five minutes before entering work. Both strikes were conducted without giving prior notice to the company and without firstly using peaceful way.

Khmer Union of Standard Garment Co., Ltd, was created and their leaders were elected on November 23, 2003 in the location of Khmer Union federation. Then, Mr. Choun Momthol, president of Cambodia Confederation of Trade Unions-CCTU, met Mr. Christ and Mr. Henry. Mr. Pesey, chief of administration, was present there as well. Mr Pesey, made a suggestion to allow union representatives to meet them (Mr. Christ and Henry) to resolve issues in Standard Garment Co., Ltd. At the time being, Mr. Choun Momthol said that they agreed to meet him. When there were issues, union representatives must go to meet them to resolve disputes, but while Mr. Choun Momthol went to meet Mr. Christ and Mr. Henry, they asked him why do you come to disturb us and why don't you go for work?

Employees have answered as witness that one day a company contacted CCTU to negotiate to dismiss seven employees, and another one employee; this is the objective of

the dispute. Employees argued that " CCTU told the company that among seven employees there were three employees who could not dismiss. After hearing about this, the company agreed to keep those three but still dismissed five others. Company asked CCTU to talk to employees and then wanted to know how much money did they want if employer dismissed them. Employer has allowed CCTU to negotiate with employees during working hours outside the factory. The negotiation failed because employees claimed for US\$700 each for dismissal. The company, however, agreed to pay only US\$200 each. Employees argued again that during negotiation, Mr. Pesey, chief of administration of company, also knew about this. He, however, has responded that he would not answer anything which was related to that issue, and then he said he completely forgot every thing that happened.

Khmer Union applied for legal registration to MOSALVY on December 11, 2003 and union would go to consult or get back an application from MOSALVY on December 23, 2003. Until now, union has not yet gotten legal registration because MOSALVY did not prepare paper for the minister.

On December 13, 2003, employer dismissed seven employees. Among those seven, there were three who are union leaders, deputy union leader and secretary of the union, then another four are members of union. This dismissal was done without prior notice and without permission from Labor Inspector. After dismissing them, the company hung their pictures everywhere inside and outside the factory. Employees argued that this dismissal was a discrimination against the union. Employer argued that their temporary employment contracts of three months were terminated and employer did not know that they were leadership of union because employer never received any list of union leader from the MOSALVY. Employees argued that they already informed Mr. Christ about the union, and Mr. Pesey has also known about this union. Employees again confirmed that usually the union would officially inform about its leadership once the union gets legal registration from MOSALVY. Up to dismissal date, among seven employees, there are six who worked for the factory for two to three months and one who worked less than two months; then five of them are skilled on sewing and two are working at cutting table and another worked at storage area for fabric. Employer argued that he/she had a policy certified that her/his supervisor should warn those employees about their faults in

advance. Employer felt confident that those supervisors really warned employees about their misconduct. Employer, however, cannot show evidence and answer as witnesses clearly about what employees really were warned about; or exactly where and when, to the Arbitration Council.

Employees demand that employer reinstate seven employees with wage payment during dismissal because of her/his discrimination against union on which employer cannot base termination of their employment contract, which exceeded what the law set up. To dismiss union workers, employer must comply with Article 268 and union was protected by Article 279 of the Labor Law. Employer confirmed that he/she couldn't reinstate them because they are the people who made up problems and also made the company lose interests. If they are reinstated, there will be more employees asked to stop working for the factory. Employer agreed to pay severance wage to those seven employees according to Articles 91, 92 and 99, of the Labor Law.

REASON FOR MAKING DECISION:

- 1- Employer confirmed that when there was a dismissal those seven employees, they were in temporary employment contract period, so that employer does not have to give full reasons for explaining this dismissal. Under Article 68 of the 1997 Labor Law, AC finds that maximum temporary contract is one month for normal workers, two months for skillful workers, and three months for employees. AC finds that no employees among those seven are employees as stipulated in Article 5 of Labor Law. Reason for finding this fact is due to sewers and cutting cloth employees who perform manual labor. But, this kind of work requires training and some skill. AC understands that they are expert employees. So, their temporary employment contract should last two months.
- 2- When there were dismissed on December 12, 2003, six employees among seven had worked more than two months in which their temporary period lapsed. So, the company must provide appropriate reason for this dismissal. As for the other employee, who is still under the temporary contract, employer is not required to give full reason for dismissal. However, employer is not

allowed to dismiss any employees based on being members of union or in the activity of union, in the event those employees are working under temporary employment contract. This dismissal failed to comply with Articles 12 and 279 of the Labor Law.

- 3- Employees went on strike, failing to respect the labor dispute resolution process. Particularly, in this case, employees did not provide any prior notice about their strike as set up in Article 324 of Labor Law. Further, employees did not use every way to resolve the conflict peacefully as required by the law before conducting a strike as stipulated in Article 320 of paragraph 4 of the Labor Law. Conciliation and arbitration offer a peaceful way of labor dispute resolution which workers and employers must try to do before engaging in the strike conducted by employees did not respect the way of the process, so this was the fault of employees.
- 4- Under Article 26 of Labor Law, however, employer cannot impose disciplinary sanction against a worker for any misconduct of that employer has been aware of more than fifteen days. Employees had committed a fault because of joining strike on November 12 and 15, 2003. Employer dismissed those employees on December 13, 2003. Due to the fact that employer knew about the fault more than 15 days before the dismissal date, the argument of employer, which is based on this fault, is not appropriate.
- 5- Otherwise, Article 27 of Labor Law requires that any disciplinary sanction, which was set up by employer, must be proportional to the seriousness of the misconduct. If employees committed small fault, the proportionality requires that employer must warn employees before dismiss them. In this case, employer did not show any paper that certified clearly enough about what she/he warned those employees about before their dismissal, and if this fault still continues to exist. Further, employer did not show clear and sufficient evidence to AC concerning any fault during the 15 days before their dismissal. What employer shows perfectly in this case is that those employees often were absent and walked up and down in the factory, then had talk to other

employees. When AC recognized that those employees do committed misconduct, the employer could not:

- Show specific misconduct that was committed by employees within 15 days before dismissing them.
- Show that employer was warned those employees about consequences of their misconduct in advance.

So, AC found that the dismissal of the six employees, who completed their temporary work, was not proportional to their misconduct.

6- AC found that Article 4 of paragraph 1 of The Prakas No: 305/MOSALVY, dated November 22, 2001 stipulates that:

"Beginning when the application for registration is submitted, all workers who are founding members of a union, as well as those who voluntarily join the union during the application period, shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 days following the date of registration of the union".

In this case, union has applied for registration to the Ministry on December 11, 2003. Because all employees who were terminated on December 13, 2003 are foundation's member and member of union, they also enjoy protection like shop stewards. This means that employer should not dismiss them without the agreement from the Labor Inspector. So in the event they are working under temporary labor employment contract or not subject to it, AC found that this dismissal is not appropriate.

7- AC found that the act of employees, especially act of conducting illegal strike that lead destroyed some interest of the factory and this act must not happen again in the future. AC also found that taking a measure for disciplinary sanction at workplace is really important and establishing a basic measure and a procedure for disputes resolution for both parties is also really appropriate and necessary.

Based on the fact, legal aspect, evidence and the above reasons, AC issued its decision and awards for full collective labor dispute resolution as below:

Decision and Award

- 1- Employer must reinstate seven employees who were dismissed at the factory from date of effective award.
- 2- Employer must pay the same wage, compensation and another bonus to those seven employees as other employees received during their dismissal period.
- 3- All employees, especially those seven employees must respect internal work rule and other legal measure that are prepared by the company.
- 4- The seven employees must be considered to receive a written formal notice through the award about their misconduct in front of their employer. If employees among those seven commit other misconduct within one year starting from their reinstatement, employer will have right to dismiss them without any warnings. Based on legal aspect, to dismiss union leaders, employer must inform the Labor Inspector and must get agreement from them first. If they are dismissal, employer must prepare a letter to inform employees of the reason of the dismissal.
- 5- Until the factory has it own internal work rule, employer and employees must respect code of conduct as follows:
 - Except permission from manager, employees must be present at their workplace at all times under the factory determination.
 - If union must help employees to resolve their grievance procedure with employer, only union representative has right to use working hours to join helping for resolution.
 - Employer must allow union leaders to take two working hours a week to complete their professional job for union in the separate room of workplace.
 - Except for serious misconduct, before dismissal of any employees (except the seven employees) employer must at least:
 - Verbally warn directly those employees the first time (First misconduct)
 - Verbally warn directly those employees the second time (Second misconduct).
 - Verbally warn those employees and clearly state that if their misconduct is committed again, employer will dismiss them immediately.

- Prepare a paper clearly explaining the reason for dismissal and give the notice to those employees.
- Before conducting any strike, employees must:
 - Give at least seven days prior notice to MOSALVY, as well as Labor Inspector and also send this prior notice to employer.
 - Take part in mediation step conducted completely by Labor Inspector.
 - Join fully a dispute resolution process conducted by AC.

6- If there are any conflicts because of the award execution, and because Labor Inspector could not mediate the conflicts, then the conflicts should be sent to AC to resolve. AC decision on the conflicts must be binding award for both parties.

Signatures of Members of the Arbitration Panel

Arbitrator chosen by the employer party:

Name: Ms. You Suonty

Signature:

Arbitrator chosen by the employee party:

Name: Mr. Tuon Siphann

Signature:

Chair of Arbitrators Panel:

Name: Dr. Sok Mathoeung

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 takes effect and binds upon the parties immediately 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.