

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 30/06 - Sport Wear**

**Date of Award: 18 May 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ing Sothy**  
Arbitrator chosen by the worker party: **Tuon Siphann**  
Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

**DISPUTING PARTIES**

**1. Employer party:**

Name: Cambodia Sport Wear MFZ Ltd.

Address: #1533, National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey

Telephone: 012/011 879 772, 023 425 020 Fax: 023 365 668

Representative:

1. Mr. Sor Samnang      Company's lawyer

**2. Worker party:**

Name: National Industry Federation Textile Union of Cambodia of Sport Wear Company

Address: #1533, National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey

Telephone: 012 736 270, 012 629 759

Representative:

1. Mr. Tol Phanmoeung      President of the National Union Federation of Cambodian Workers
2. Mr. Leang Sophea      Vice-President of the National Union Federation of Cambodian Workers
3. Mr. Nhel Pheap      Secretary of the National Union Federation of Cambodian Workers
4. Mr. Thi Seap      President of the National Industry Federation Textile Union of Cambodia

5. Mr. Leng Sokchea Vice-President of the National Industry Federation Textile Union of Cambodia
6. Mr. Rath Sovannarin Treasurer of the National Industry Federation Textile Union of Cambodia
7. Mr. Khun Ieng Staff delegate
8. Mr. Sat Savath Staff delegate
9. Mr. Sorn Bunthoeurn Staff delegate
10. Ms. Heng Srey Worker
11. Ms. Tep Oeurn Worker
12. Ms. Chamroeun Sun Worker

### **ISSUES IN DISPUTE**

[In Non-Conciliation Report]

The workers demand that the company increase the piecework rate at the finishing section because, for four months already, the wages of all workers in this section have had to be augmented by the company to meet the basic wage rate of US\$45.00. The company asserts that it cannot increase the price at the moment but after the conciliation the company will consider [the piece rate in] the finishing section.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators 513/05 (Third Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful and the non-conciliation report No. 523 dated 7 April 2006 was submitted to the Secretariat of the Arbitration Council on the same date.

### **HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building "A", Sangkat Tonle Basac, Khann Chamkamorn, Phnom Penh

**Date of hearing:** 28 April 2006 (From 2:00 p.m. to 5.00 p.m.)

**Procedural issues:**

The Sport Wear Company is located in building number 1533 along National Road 2, Sangkat Chak Angre Krom, Khann Meanchey, Phnom Penh. On 3 March 2006 the Department of Labour Disputes of the Ministry of Labour and Vocational Training received a complaint from the worker party demanding that the company change work conditions in respect of six issues. After receiving the complaint, the Department of Labour Disputes assigned an expert officer(s) to attempt to resolve the problem. The last conciliation date was on 27 March 2006. Five issues out of six were conciliated. The one non-conciliated issue, as mentioned above, was submitted to the Arbitration Council on 7 April 2006. After receipt of the report, all parties were summoned by the Arbitration Council for a hearing on 28 April at 2:00 p.m.

On the above mentioned hearing date, the Arbitration Council sought additional information related to this dispute and allowed the two parties to attempt further conciliation. But the two parties could not reach an agreement during this conciliation. Therefore, the Arbitration Council decides this dispute in consideration of the Labour Law.

#### **EVIDENCE**

**Witnesses and experts:** *N/A*

#### **Documents, Exhibits and other evidence considered by the Arbitration Council**

##### **Provided by the employer party:**

1. Letter dated 28 April 2006 by the Director of the company to authorize Mr. Sor Samnang to resolve the labour dispute at the Arbitration Council.
2. The Internal Work Rules of the company, registered on 7 May 1999.
3. Certificate of Business registration of the Cambodia Sport Wear company, No. LTU 003939.2005 dated 28 March 2005.
4. Certificate of registration in the GSP dated 3 March 2005
5. Certificate of registration in the commercial list of the company dated 15 July 1996.
6. Certificate of registration for VAT dated 31 December 1998.
7. List of wage payments for March 2006 in the trimming and packing sections.

##### **Provided by the worker party:**

1. Name list of work sections, unit price and duration.

##### **Provided by the Ministry of Labour and Vocational Training [MoLVT]:**

1. Request letter asking for resolution of the collective dispute at Sport Wear Company (No. 364) of H.E. Nhep Bunchin, Minister for Labour and Vocational Training, dated 19 April 2006.

2. Report of the conciliation of the collective labour dispute at Spot Wear Company (No. 523), by Mr. Koy Tepdaravuth, Chief of Labour Dispute Department, dated 7 April 2006.
3. Minute of the collective labour dispute, dated 27 March 2006.

Provided by the Secretariat of the Arbitration Council:

1. The Secretariat of Arbitration Council's letter of invitation (No. 163) to the worker party to attend the hearing on 19 April 2006.
2. The Secretariat of Arbitration Council's letter of invitation (No. 164) to the employer party to attend the hearing on 19 April 2006.

**FACTS**

- Having examined documents submitted to the Arbitration Council
- Having examined the report of the collective labour dispute conciliation
- Having listened to statements of the representation from the worker party and the employer party.

**The Arbitration Council finds that:**

Cambodia Sport Wear MFZ Ltd. was established in 1997 and currently employs about 5,250 workers. Among them, approximately 400 workers work in the finishing section, the focus of this demand.

Workers in the finishing section maintain quality control for clothes made in the factory. After clothes are sewn, the workers in the finishing section are responsible for checking products for defects. If clothes with defects are found, they must be fixed. For example, clothes go back to the sewing section to be fixed, or the washing or ironing sections to be washed or ironed. After defective clothes are fixed, the company requires the finishing workers to re-do their check of the clothes again before putting the clothes into boxes for shipping.

At the hearing, the workers clarified that the finishing section workers demand that the Company return to the old policy of including all clothes in the piece rate calculation every time a finishing worker checks a clothing piece, even if the clothing piece is later found to have defects and must be worked on again. In the alternative, if the Company does not return to the old policy, the workers demand that it should pay the piece rate for the 400 finishing section workers when the Company asks workers to have the product fixed, as it was practiced before the company reformed the policy in November 2005.

Since the Company's establishment in 1997, the Company always paid workers in the finishing section according to a piece rate when they were asked to re-do the product. At that

time there was no problem about the wage because workers received over the minimum wage (US\$45.00 per month) when calculated according to the piece rate.

Since November 2005, the company reformed the policy. It stopped paying the piece rate to finishing section workers when it required them to re-do the product. That is, to calculate the piece rate, the company counts only once no matter how many times the workers in the finishing section re-do the product. This was because the Company believed that workers may be conspiring with other workers in order to receive more piecework so that they would be entitled to more wages. At that time, the company dismissed about 30 workers including two accountants and one chief of group in the trimming section because they were found to be conspiring [in this way].

Usually, about 30 percent of clothes are found to have defects and must be redone at all sections. The time for re-doing the product is equal to the previous time of making the product. Since the reform of the payment policy in November 2005, about 90 percent of workers receive a wage under US\$45.00 per month. However, since that time, the company has added a payment to wages up to US\$45.00 per month to the workers. Whilst, the company gives the additional payment up to US\$45.00, the company has warned workers that, if they cannot achieve a wage of US\$45.00 per month (without the additional payments to the wages) for three consecutive months the workers may face dismissal. But the company has not dismissed any workers because of this issue yet. The products which have had to be redone are from the sewing section all the way up to finishing section, that is, after the washing and ironing tasks are finished, and sometimes after the product was put into a container for shipment.

At present, the piece rate provided by the company is US\$0.40 per one hundred trousers for those who perform specific quality control (checking both inside and outside of trousers) and US\$0.45 per one hundred trousers for finishing workers who perform general quality control (also checking both inside and outside of trousers). To determine the piece rate, the company asked all workers to perform for one week and the company then evaluated and determined the piece rate fee. After that the company observed whether there was complaints from workers or not. When there were no complaints the company considered that the workers agreed and approved that piece rate.

### **REASONS FOR DECISION**

Should the employer re-calculate the piece rate or return to the old policy of calculating piece work on the basis of each time workers check the products for workers in the finishing section, when the Company requires them to re-check products with defects?

From the time of establishment in 1997 until November 2005, Cambodian Sport Wear MFZ Ltd. has allowed all workers to calculate the piece rate with reference to all pieces, even those they were asked to re-do. By providing the piece rate fee in this way, the workers always receive over the minimum wage (US\$45.00 per month). But after November 2005, the Company changed its management policy and piece rate calculation. The Arbitration Council finds that the employer has the right to determine and change the piece rate (see 03/05-Flying Dragon).

Article 108 of the Labour Law states, "For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the workers of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker."

Article 137 of the Labour law states, "In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week."

Notification number 017 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, clause 2 states, "Pieceworkers should receive wage based on the amount of piecework. If the result of work is more than US\$45.00 per month, pieceworkers should receive that exceeding amount. However, if it is less than US\$45.00 per month, the employer has to add to US\$45.00 per month."

In the award of 03/05-Flying Dragon, the Arbitration Council stated that Article 108 provides a guideline to determine the piece rate which should allow workers who have average skills and perform the normal eight-hour day or 48-hour week to receive at least the minimum wage of US\$45.00 per month (see 41/05 Violet).

The Labour Law does not define who is a worker of average skill. To determine whether a worker with average skills who works normally is able to earn the minimum wage, and therefore to know whether a piece rate is lawful or not, the Arbitration Council considers all relevant facts and evidence found in the case.

In previous cases, to determine whether a piece rate is lawful or not, the Arbitration Council has considered the method used by the employer to set the piece rate (see 11/06-Fortune). The Arbitration Council has also considered the payroll for piece rate workers (see 03/05-Flying Dragon). [In that case] the Arbitration Council found that the employer had changed the policy relating to piece rate calculation which resulted in 55 percent of the workers unable to receive at least their minimum wage when calculated according to the piece rate determined by the employer. The Arbitration Council found in this case (03/05[- Flying Dragon]) that the piece rate was too low. In addition, Article 108 provides a basis for calculating and determining the piece rate (task work rate) according to the Labour Law, that is that the piece rate must allow

workers of average skill who perform the normal eight hours per day (48 hours a week) to receive at least the minimum wage (US\$45.00 a month for garment workers).

In this case, the finishing section piece rate workers used to receive over minimum wage; however, after the Company changed its policy with respect to piece rate, 90 percent of workers were unable to receive minimum wage according to the new piece rate.

Moreover, the representative of the Company did not provide any evidence of a method for setting the piece rate. The representative only stated that, in determining the piece rate, the company did not select the workers to make a test first but asked them to perform for one week and the company evaluated them and determined the piece rate fee. After that the company observed whether there were complaints from workers or not. When there were no complaints the company considered that the workers agreed and approved that piece rate fee. Thus, the Arbitration Council finds that the employer does not have a method to set the piece rate to show that the piece rate allows a worker of average ability, working normally, to receive at least the minimum wage.

The AC notes that in cases where the company uses such piece rate system, it can allow workers of various skills to undertake a test first within a specific period in order to find a piece rate that allows a worker of average ability, working normal hours, to earn at least minimum wage. In this case, as stated by the law, the employer is required to provide a wage to its workers at least equivalent to the minimum wage without regard to the quantity of products produced. Thus the Arbitration Council finds that in such cases where the company pays based on piece rate, the company should let the workers take a test for a certain duration to let the average skilled worker working in normal hours be able to receive at least the minimum wage. Therefore, the Arbitration Council considers that the piece rate calculation set by the employer does not conform to the provisions of Article 108 of the Labour Law because, according to the facts, there are 90 percent of workers who could not receive at least minimum wage of US\$45.00 when working normal hours, after the new piece rate calculation was set by the employer in November 2005.

According to the above reasons, the Arbitration Council finds that the employer has the right to determine and change the piece rate, but the piece rate calculation must be in conformity with Article 108 mentioned earlier.

Therefore, the Arbitration Council decides that the Company must provide a piece rate [credit] each time the workers are required to re-do the work and ensure that workers receive at least the minimum wage set by law.

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

**DECISION**

1. The Company must provide a piece rate [credit] each time the workers are required to re-do work and ensure that workers receive at least the minimum wage set by law.

**Type of Award: Non binding award**

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.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....