

KINGDOM OF CAMBODIA

Nation Religion King

Case number: 30/03

THE ARBITRATION COUNCIL

Date of Award: Monday 19 January, 2004

ARBITRAL AWARD

Based on Article 313 of the Labor Law

Employer Party: CAMBODI APPAREL INDUSTRY Co., Ltd.

Address: National road N0.4, Chombok village, Vorsa commune, Samrongthong district, Kompong Speu pro.

Employer Party was absent at the hearing.

AND

Employee Party: Free Democracy Union of Cambodia Apparel Industry represented by Miss Chhorn Sokha,
President of CCADOW, Mr. Ath Thonn, Officer of CCADOW.

Office Address: In the Company.

Issues in dispute: (as set out in the non-conciliation report)

1. Employees demanded the employer to reinstate 3 workers: (1) Kim Tola; (2) You Vanny; (3) Tob Sokkhleng, who are the leaders of Free Democracy Union and were terminated
crease their regular-attendance bonus of \$5.00 USD per month and demanded the company to payback the previous bonus.
2. Employees demanded the employer not to charge for new ID card.

Jurisdiction¹ of the Arbitration Council:

The Arbitration Council derives its power to make this Award from Section II B² of Chapter 12 of the 1997 Labor Law; the Prakas on the Formation of the Arbitration Council (No. 338, of 11 December 2002) and the Rules on the Arbitration Council Procedure.

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. However that conciliation was

¹ Jurisdiction (in Khmer) means the judicial power

² Art. 309 through 317 of Labor Law

unsuccessful and a non-conciliation report dated 25 December 2003 was sent to the Secretariat of the Arbitration Council on 29 December 2003.

Composition of the arbitration panel:

Arbitrator chosen by the employer party: Mr. Hem Hour Naryth

Arbitrator chosen by the employee party: Mr. Tuon Siphann

Chaired arbitrator (chosen by the above two arbitrators): Mr. Matthew Rendall

Hearing and Evidence:

Date and place of hearing: December 18, 2003 at 14.30pm, Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

Expert witness : none

Evidences considered by the arbitration panel are as follows:

-Received from the Employer Party:

- 1- Letter of Authorization from Mr. Rober Forw to Mrs. Oun Heang to represent the Company to participate in Labor Dispute Resolution dated 09 January 2004, which was submitted to the Arbitration Council on 09 January 2004.
- 2- Contract of receiving the money from the Cambodia Apparel Industry Co., Ltd of Mr. Kim Tola, Mr. Tob Sokkhleng and Mr. You Vanny dated 31 December 2003, which was submitted to the Arbitration Council on 09 January 2004.

-Received from the Employee Party:

1. Letter of leaders, activists and members of Free Democracy Union of Cambodia Apparel Industry Co., Ltd authorizes to CCAWDO dated 14 January 2004;
2. Additional report made by president of CCAWDO on termination of Free Democracy Union leaders;
3. The complaint of Free Democracy Union and CCAWDO to the MSALVY on Mr. Sim Rathanak and Mr. Khiev Savuth dated 02 January 2004;
4. Constitution of CCAWDO;
5. By-law of Free Democracy Union of Cambodian Apparel Industry Co., Ltd;

-Collective labor dispute report of MSALVY dated 25 December 2003.

-Presenting and testimony of the parties during the hearing.

Without present of employer party at the hearing: **the award is not bidding the parties immediately.**

Summary of the Case:

CAMBODI APPAREL INDUSTRY Co., Ltd. locates along the National road N^o 4, Chombok village, Vorsa commune, Samrongtong district, Kompong Speu province. The Company employs around 416 workers. On 12 December 2003 the employer terminated 3 of union leaders. Workers claimed that the termination of three union leaders was because they initiated conducting union activities and requested to negotiate with employer on working condition on 15 October 2003. On 22 December 2003 employees conducted strike to demand the Company to reinstate the three union leaders. In addition employees demanded employer to stop deducting of employees' wage to pay for the new ID card which was loosed or broken. Workers representatives confirmed that the employer deducts 5,000 riel to make new ID card replacing the loosed ID card and 5,000 riel to make new ID card replacing the broken ID card.

On 12 December 2003 employees submitted letter to depart of labor inspection to inform about the strike in order to have the dispute settled. After receiving the letter labor inspector went to help both parties to settle the dispute. Issues which both didn't agree were referred to the Arbitration Council on 29 December 2003 as follows:

- 1- (a) Is the termination of the three union leaders valid? and should the employer reinstate them?
- 2- Can the employer deduct 5,000 riel from employees' wage to make new ID card replacing the loosed or the broken ID card?

On 02 January 2004 the Arbitration Panel made a certain requests to both parties to submit document as requested to the Arbitration Council. The followings are those requests:

- 1- Employment contracts of the three terminated workers.
- 2- Internal work rules of the Cambodian Apparel Industry Co., Ltd.
- 3- Sample of ID card.

This case was heart on 09 January 2004.

On 08 January 2004 Secretariat of the Arbitration Council received a letter having title "Contract" which name Tob Sokkhang, Kim Tola and You Vanny and has their thumb printed and have seen by Sok Noeun on 31 December 2003.

Both parties didn't submit any document which were requested by the Arbitration Council dated 02 January 2004.

On 09 January 2004 the Arbitration Council held its hearing. At the hearing the Employee Party was represented by Mrs. Chhorn Sokha, president of CCAWDO and Mr. Att Thornn, officer of CCAWDO and the Employer Party was absent.

During the hearing the Arbitration Panel asked questions to find out the relevant fact to the issues adding to the two issues which were referred to the Arbitration Council by the MSALVY:

- 1- (b) Is the providing of the amount of \$700.00 which the employer confirmed that he paid this amount to each of union leaders as consideration of not to be reinstated and not to continue protesting against the employer, valid or not?

Facts finding:

After reviewing the conciliation report of the collective labor dispute and;

After having heard the testimony of the parties and evidences of the employer and employee parties;

After reviewing the above document.

The Arbitration Council finds out that:

Issue 1(a): the three workers were terminated on 12 December 2003. Among three of them they are president, vice president and secretary of Free Democracy Union. The employer didn't ask for permission from the labor inspector when they terminated.

Issue 1(b): the three workers participated in settling dispute on their reinstatement with the employer with the present of Kompong Speu provincial governor on 31 December 2003 at Kompong Speu downtown. As the result both parties agreed as follows: Employer Party agreed to pay \$700.00 USD to each workers and the three workers accept it and agreed to stop demanding to be reinstated as well as stop continuing to demand other thing from the employer.

Issues 2: According to verbal presentation of union representative and written document given to the Arbitration Council proved that the employer (1) deducted 5,000.00 riel from employees' wage to pay for the new ID card replacing the loosed ID card and 5,000.00 riel from employees' wage to pay for the new ID card replacing the broken ID card and (2) didn't give prior notice to the employees about this deduction. However, the reasonable expense of each ID card is about 1,000 riel. The reasons of losing and damage of ID card

are the quality of cardholder clipper is poor and quality of card paper is poor because it was used for longer than 1 year. In some of Companies give necklace as cardholder to workers and change ID card very year. In the factory where worker use the necklace and have their ID cards changed annually percentage of ID card losing is low. With the absent of the Employer Party the Arbitration Council considers that the argument of Employee Party is correct.

Reasons for making decision:

Issues of the dispute

Issue 1: According to Article 293 of the Labor Law termination of employee representative can be conducted only after getting permission from labor inspector. Article 4 of Prakas N^o 305 dated 22 November 2001 of MSALVY extents this protection to union establisher, union member and union leaders as well. The Arbitration Council don't see any document as evidence which proves that the labor inspector agree or the procedure of Article 293 is applied to the termination of the three workers of this case. Therefore this termination is not followed the procedure stated in Article 293 of the Labor Law.

Issue 1(b): the first letter was received by the Arbitration Panel from the employer until the hearing date non of the three workers print their thumb or any witness can confirm in the hearing to prove the validity of this agreement. However the Arbitration Council received a copy of the agreement between the three workers and the employer in which that the employer give each \$700.00 USD to compensate to reinstate them and they agree to get this money with the promise not to demand to be reinstated and agree not to continue demand anything from the employer.

In the reasoning of issue 1(a) above proves that the termination of the three workers is not followed the legal procedure. Because there is an agreement between the three workers and the employer which fully settles the demanded of reinstatement the Arbitration Council will not issue any order rather than this agreement.

Issue 2: According to 127 of the Labor Law employer can deduct employee's wage to compensate tools and equipment required for work that are not returned back to the Company by employee after work.

The Arbitration Council finds that ID card is a property of the Company and is an important tool to perform work in establishment; it is used to identify workers and to notice present, which is a necessary factor for establishment process of the employer. However the Arbitration Council finds that the law allows employer to deduct wage to compensate the tool is only equal to the cost of the loosed property. No evidence to prove the exact cost of new ID card replacing the loosed card or the broken card. As result the Arbitration Council finds that relating to the above question is that the average expense cost for making normal card used in this factory is equal to 600 Riel. Other 400 Riel is for administration expenses in picture photo and registration other information. The Arbitration Council concludes that the reasonable price of each loosed card is 1000 Riel. Worker representatives participated in the hearing agreed that the reasonable price for new card replacing the broken card is 500 Riel. The Arbitration Council accepts this price is valid for making new card to replace the broken card.

During the hearing worker representative proved that most of cards were loosed or broken while they are working. They continued telling that most of losing is caused by the poor quality of card clipper and in the factories where workers use necklace the losing rate is low. They continued that the card laminated by plastic one day it will be fragile and then it will be dropped that is a major reason of losing or broken. They continued that other factories where card is changed very year the losing rate is low. They requested employer to provide necklace for cardholder and change the card every year. The Arbitration Council finds that cost of making new card every year and providing cardholder necklace to workers exactly will not make employer disappointed because the employer requires workers to hold card and the employer shall complete condition and reasonable step to prevent card losing or broken.

Based on the above fact, law, evidence and reasoning the Arbitration Council makes decision and orders which is a full settlement of this collective dispute as follows:

Decisions and orders:

- 1- Keep the agreement between Kim Tola, You Vanny and Tob Sokhhang and Cambodian Apparel Industry CO., Ltd dated 31 December 2003 is valid contract (as stated in the attached agreement).
- 2- Employer shall change ID card of employees once every year with that the expense is burden of the employer.
- 3- Employer shall provide necklace to hold ID card to employees which they can wear it ...
- 4- Employer can't charge cost of making new card replacing loosed card from employees over 1,000 riel for each new card and can't charge cost of making new card replacing broken card from employees over 500 riel.

Signatures of Members of the arbitration panel:

Arbitrator chosen by the Employer Party:

Name: Mr. Hem Hour Naryth

Signature:

Arbitrator chosen by the Worker Party:

Name: Mr. Tuon Sipha nn

Signature:

Chair of arbitration panel:

Name: Matthew Rendall

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 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.