

**KINGDOM OF CAMBODIA**

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**THE ARBITRATION COUNCIL**

Case number: 30/04

Date of Award: June 15, 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**Honey Wear Garment Co., Ltd.**

(the “employer party”)

AND

**National Union Federation of Honey Wear Co., Ltd.**

(the “employee party”)

**DETAILS OF EMPLOYER PARTY:**

**Address:** National Road number 4, Ang Keo Village, Kontouk Commune, Ang Snoul District,  
Kandal province

**Representative:** Chou Sao Vanna, administration manager

**Telephone:** (855-12) 839 253                      Fax: N/A

**DETAILS OF WORKER PARTY:**

**Address:** Toul Tempoong II, Khan Chamkar Morn, Phnom Penh

**Representative:** Ly Teng, Deputy of Union, Chea Mom, Secretary, Heng Sophy, Financial  
Official, Ly Veng, Staff- NIFTUC

**Telephone:** (855-12) 424 640                      Fax: N/A

**ISSUES IN DISPUTE**

- 1- The workers demand that the company provide the same benefits and rights to casual workers as to permanent workers.
- 2- The workers demand that the company pay wages at the rate of 100% for the first month, 80% for the second and third months, and 50% for the fourth to sixth months when they are sick with proper medical certification.

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

The Arbitration Council derives its power to make this Award from Section II B<sup>1</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.

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 number 074/MOSALVY, dated May 19, 2004, was sent to the Secretariat of the Arbitration Council on May 19, 2004.

## **COMPOSITION OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party: Ms. You Sonty  
Arbitrator chosen by the worker party: Mr. Liv Sovanna  
Chair arbitrator (chosen by the above two arbitrators): Mr. Kong Phallack

## **Hearing and Evidence:**

Date and place of hearing: May 31, 2004 at 2:00 p.m. at the Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

## **DOCUMENTS AND OTHER EVIDENCE CONSIDERED BY THE ARBITRATION PANEL ARE AS FOLLOWS:**

### **A- Received from employer party:**

1. The letter of delegation of authority, dated April 31, 2004.
2. The commercial registration certificate, dated April 25, 2004.
3. The internal work rules, dated June 3, 2004.
4. The memorandum of understanding and the statute of the company.

### **B- Received from employee party:**

1. Registration request, dated October 7, 2004.
2. Letter detailing reorganization of the union by MOSALVY, dated October 7, 2004.

Both parties chose a binding arbitral award.

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<sup>1</sup> Art. 309 through 317 of Labor Law

### **Summary of the Case:**

The company employs 390 workers. On May 6, 2004, the National Union Federation of Cambodian Garment Factories filed a complaint with the director of the MOSALVY branch in the Kandal province to demand the resolution of eight issues in dispute. The labor inspectors in the Kandal province received the complaint on May 10, 2004 and the conciliation was held on May 17, 2004. The employer and the employees agreed on six points. The two non-conciliation points were sent to the Arbitration Council on May 19, 2004. After receiving the case, all the conflicting parties were invited to the Arbitration Council at 2:00pm for the hearing. The hearing was held to resolve the following two points:

- 1- The workers demand that the company provide them (the casual workers) with the same rights and benefits as the permanent workers.
- 2- The workers demand that the company pay their wages when they take sick leave with proper medical certification. The company shall pay wages at the rate of 100% for the first month, 80% for the second and third months and 50% for the fourth to sixth months.

The employers did not agree to the workers' demands, and offered the following proposals:

- 1- With respect to casual workers, the company cannot provide the benefits and other rights as it does to the permanent workers. The company shall pay only 500 riels per hour to the casual workers.
- 2- With respect to sick leave with proper medical certification, the company agreed to give 100% for the first month, 60% for the second and third months and no pay for the fourth to six months.

In the hearing, the Arbitration Council interviewed for further information and attempted to conciliate the disputes. The parties agreed to the first issue, but they left the second issue for the Arbitration Council to decide:

### **FINDING OF FACT:**

- 1- The company acknowledges the rights of the casual workers as under Article 10 of the Labor Law and promises to provide the same benefits and other rights as they do to permanent workers.
- 2- Article 4 (7) of the internal work rules states that the wage rate in cases of sick leave is 100% for the first month, 60% for the second and third months, and job security, but no pay for the fourth to sixth months.

- 3- The union representative pointed out that the demand for sick leave payment was based on Articles 169 and 73 (3).
- 4- The company said that it couldn't do what the workers demanded with respect to the sick leave wages.
- 5- The workers said they never saw the internal work rules.

**REASON FOR DECISIONS :**

**First issue:**

In the hearing the employers agreed to the workers' demand because this issue is addressed in Article 10 of the Labor Law. This Article states: "casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except when a clause stipulates separately."

In the hearing, the Arbitration Council found that both parties' employment contracts did not mention the particular benefits for the casual workers, except for the daily payment of 500 riels a day. This payment is lower than the daily wage payment that is the minimum wage in the textile field (US\$45/26 days). Article 13 states that consequently, all rules resulting from a unilateral decision, a contract or a convention that do not comply with the provision of this law or any legal text for enforcement are null and void. Therefore, the casual workers are entitled to enjoy the same benefits as the permanent workers. Particularly with respect to minimum wages, the employer must follow the guidelines of notification number 017/2000, including regulations providing attendance bonuses and overtime payment equal to the amount of their previous day's work. Furthermore, they are entitled to annual leave, special leave and public holiday leave equal to the number of their days worked (See Sport Wear Case # 26/04).

**Second issue:**

As for the second issue, the employer provided the following wage structure: 100% for the first month, 60% for the second and third months, and job security, but no pay for the fourth to sixth months. This is based on the internal work rules of the company in accordance with Article 23 Section 3, Chapter 2 of the Labor Law. As for the workers, they demand 100% for the first month, 80% for the second and third months and 50% for the fourth to sixth months. The workers' demand is higher than what they are entitled to as mentioned in the internal work rules of the company. But the workers said what they demanded is based on Article 71(3) and Article 169 and not based on the internal work rules. The workers representative added that the law is higher than the internal work rules.

Article 71(3) states that a worker's contract will be suspended in the case of leave from the job for illness or injury verified by a qualified doctor. The duration of this absence is limited to six months, but can be extended until the worker is replaced. This Article does not say anything about the workers being entitled to full wages during their illness. The Article only guarantees that (1)- sick leave from work is insured for six months, and (2)- the employment contract is suspended during the sick leave. Article 72(1) states that when the labor contract is suspended, the employer does not have an obligation to pay wages to the workers, and the workers are not required to work for the employer either. As for Articles 166 and 169, they do not address the salary during sick leave, but only paid annual leave.

In this case, MOSALVY did not require companies to release Prakas specifically addressing paid leave for the workers. The Ministry merely inserts the subject of sick leave in its sample of the internal work rules. (See the annex attached to the Notification # 14 dated August 16, 2002.) In practice, when the labor inspectors examine the internal work rules of a company, they just require the company to insert a provision related to sick leave with a wage payment.

Therefore, the law does not ensure wages during sick leave. In practice, the internal work rules of most companies now provide the workers with entitlement to part of their wages during sick leave. In this matter, internal work rules help protect the workers better than the law. For example, with regard to sick leave and wage payment, the actual practice at the garment factory is to offer 100% for the first month, 60% for the second and third months, and job security, but no pay. Some companies provide more for paid leave, while some provide less. In Sport Wear case #26/03, the parties agreed to increase the salary for sick leave to the following: 100% for the first month, 60% for the second, 40% for the third month and job security, but no pay for the fourth to sixth months. In Top One case # 24/03, the Arbitration Council held that the company must provide the wages for sick leave to the workers at the rate of 100% for the first month, 60% for the second and third months and job security, but no wages for the fourth to sixth months. Also, in Sport Wear case # 13/04 the Arbitration Council found that based on the agreement of the parties, the wage rate should be 100% for the first month, 60% for the second and third months and job security, but no pay for the fourth to six months. In addition, the Arbitration Council notes that the wage payment of 100% for the first month, 60% for the second and third months and job security with no pay for the fourth to sixth months is the structure in some hotels such as Raffles Le Royal Hotel, according to their internal work rules.

In conclusion, the Arbitration Council finds that the workers' demand regarding wages during the sick leave of the workers is the interest in dispute, because it is not addressed in

the Labor Law. In the hearing, the Arbitration Council attempted to explain to the parties the consequences of an award about a dispute relating to interests. It could become a Collective Bargaining Agreement that will last one year. They urged the parties to conciliate, but the parties still refused and insisted on the Arbitration Council making a decision.

Where there is no law on point for an issue, the Arbitration Council can decide an interest-related dispute, under equity principles as articulated in Article 312 (2) of the Labor Law. In addition, according to legal principles where there is no relevant law, the internal work rules and actual practice must be considered as grounds for making a decision. Therefore the Arbitration Council finds that the workers' demand is not reasonable.

**DECIDES:**

- 1- Order the company to provide benefits and other rights to the casual workers that are the same as those of the permanent workers.
- 2- Reject the workers' demand for 100% of wage payment for the first month, 80% for the second and third months and 50% for the fourth to sixth months.
- 3- Order the company to continue providing wages for sick leave as mentioned in clause 4 (7) of the company's internal work rule, 100% for the first month, 60% for the second and third months, and job security, but no pay for the fourth to sixth months.

***Signatures of Members of the arbitration panel:***

Arbitrator chosen by the employer party:

Name: **Mr. Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Mr. Liv Sovanna**

Signature: .....

Chair of arbitration panel:

Name: **Mr. Sa Sovan**

Signature: .....

This Award is immediately binding upon the parties after the parties have been notified.