

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 33/04

Date of award: June 14, 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**Bou Ming Cambodia Garment Company**

(Employer party)

**AND**

**Cambodian Worker Federation**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:**

- 1- Mr. Kuy Sam Kol, Administrative Staff
- 2- Mr. Cheat Khemara, GMAC's officer

**Address:** # 1771, National Route 2, Sangkat Chak Angre Krom, Khan Mean  
Chey, Phnom Penh.

**Tel:** 023 983 463 Fax: 023 983 280

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:**

- 1- Yin Sakhon, The Federation's Coordinator
- 2- Sok Srey Tha, Federation's Assistant
- 3- Peng Ngim, Union's President
- 4- Ath Sopheak, Shop Steward
- 5- Phan Sophal, Shop Steward
- 6- Hun Chhey Dan, Shop Steward

**Address:** # 788, Street 474, Sangkat Boeung Trabek, Khan Chamcamorn,  
Phnom Penh.

**Tel:** 012 486 890 Fax: N/A

## **ISSUES IN DISPUTE:**

(In non-conciliation report)

There are two non-conciliation issues submitted to the Arbitration Council by the MoSALVY:

- 1- The employer says the period of May 4 to 18, 2005 is a striking period, but the workers say it is a period during which the employer does not offer them a job.
- 2- The workers do not agree on Article 10, drafted on May 17, 2004 about the working conditions in Bou Ming Company.

### **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. The non-conciliation report dated 19 May 2004 was submitted to the Secretariat of the Arbitration Council on 24 May 2004.

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

Arbitrator chosen by the employer party:	Mr. Ly Tay Seng
Arbitrator chosen by the worker party:	Mr. An Nan
Chair arbitrator (chosen by the two arbitrators):	Mr. Koy Neam

### **HEARING AND EVIDENCE:**

**Date and place of hearing:** June 2, 2004 at 8.30 a.m. 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- Working Conditions in Bou Ming Company

- 2- Bou Ming Company's letter to the director of the Labor Inspection, dated April 30, 2004
- 3- Letter delaying the negotiation schedule to May 19, 2004, dated May 13, 2004

**Provided by the employee party:**

- 1- The company's proposal dated May 7, 2004
- 2- Agreement to postpone the conciliation schedule, dated May 4, 2004
- 3- Chinese documents, without translation
- 4- Goods delivery notes

**Received from MoLVT:**

- 1- Labor Inspector's conciliation report.

**Presentation by both parties in the hearing.**

**CASE SUMMARY:**

**A. The issue in the period of May 4 to 18, 2004:**

**1. Bou Ming Company's presentation**

From April 26 to 29, 2004, approximately 700 workers from Bou Ming Company went on strike to demand some working conditions. On April 29, the workers and the company reached an agreement for the company to pay each worker US\$ 3 for the strike days with the condition that the workers return to work on April 30, 2004. But on April 30, 2004, the workers did not return to work and asked for USD5 instead of USD3 as a condition to return to work. The company still agreed on the demand because April 30, 2004 was the deadline to finish goods for delivery to the ordering company. If Bou Ming Company did not deliver on time, the ordering company would cancel its contracts with Bou Ming Company. However, some workers returned to work on the day and some did not.

In a letter to the Labor Inspection Department dated April 30, 2004, the company asked its director to intervene in the issue so the company could begin its operations again.

The ordering company began to withdraw orders one by one from April 30, 2004 to May 2, 2004, when all the contracts were cancelled. The ordering company did not inform the employer when it would re-contract. However, the ordering company started re-

contracting with Bou Ming Company on May 19, 2004 and ordered different types of goods from previous orders. The workers resumed working on that date.

**Bou Ming Company's demand:**

Bou Ming Company affirmed that the period from April 4 to 18, 2004 was a strike period; therefore, the workers would not be paid during that period.

**2. Workers' presentation**

The workers argued that there was an agreement between the employer and workers on April 29, in which the employer agreed to pay each worker USD3 for the strike period. The workers thought that this amount was in exchange for returning to work on April 30, 2004. Hence, some workers whose domiciles are in provinces did not accept this offer because they wanted to take long leaves, knowing that May 1, 2004 is a public holiday, May 2, 2004 is Sunday and May 3, 2004 is also a public holiday. On the other hand, some workers, whose domiciles are in Phnom Penh, accepted the offer and returned to work on the agreed date.

On May 4, 2004, all workers came back to work but the company was closed. Beginning May 19, 2004, all workers resumed working as usual.

**Workers' demand:**

The workers maintain that during the period from May 4 to 18, the company did not offer them jobs; therefore, they were entitled to the wage payment. The workers asked for 50% of wages for this period.

**B. Working Condition issues:**

On May 17, 2004, Bou Ming Company provided a working condition for all workers. This text is a new rule containing 10 articles. Article 10 provides that "all workers have to accept the work assignment, organization and arrangement". This article was rejected by the workers and proposed to include a word "according to the production flow" in order to prevent the employer from assigning some workers the tasks that are not in conformity with their skills and work nature.

**FINDING OF FACT:**

- After having examined the non conciliation report on the collective dispute
- After having listened to the employer and employee parties
- After having checked the above mentioned documents

**We find that:**

- 1- On April 29, 2004, the workers did agree with the employer to stop striking from April 26 to 29, 2004. According to this agreement, the workers were required to return to work on April 30, 2004 and the employer agreed to pay each worker USD3 a day for the striking period, April 26 to 29, 2004.
- 2- Some workers returned to work on April 30, 2004 in accordance with the above mentioned agreement. On May 04, 2004, all workers came back to work. In regard to this issue, the company representative did not reject the workers' testimony and said that the company did not have any jobs for them.
- 3- On May 2, 2004, the ordering company cancelled all contracts and stopped buying the goods produced by Bou Ming Company. The company learned that this withdrawal meant the company did not know when the new ordering contracts would be re-signed.
- 4- Bou Ming Company did not write a letter to the Labor Inspection Department in order to ask for the contract suspension from May 4 to 18, 2004. The company did not place this suspension under the Labor Inspector's review.
- 5- Regarding Article 10 relating to the working conditions, both parties transfer their rights to the Arbitration Council to include some words in this clause in order to avoid assigning the worker other tasks regardless of their skill and work nature. The added words are "... according to the production flow and without discrimination".

**REASON FOR DECISION:**

The main issue in the dispute is whether the period from May 4 to 8, 2004 is a striking period or a period during which the company did not have a job to provide the workers.

Based on the facts, the Arbitration Council came to the conclusion that Bou Ming Company did not have any jobs for the workers from May 4 to 18, 2004. This unemployment usually

takes place at all kinds of business. But the Labor Law protects the workers from the employer's improper treatment, i.e. contract suspension without good will. So, the Labor Law provides some procedures to the employer to comply with in order that they not have to pay wages.

Article 71, point 11 provides that:

The following causes serve to suspend a labor contract:

11- In the case of serious financial difficulties, when the operation of the enterprise is rendered economically and materially impossible or unusually difficult. This suspension should be less than or equal to two months and is subject to review by the labor inspector.

Article 72, point 1 provides that:

1- The suspension of a labor contract affects only the main obligations of the contract, which are, on the one hand, to work, and on the other hand to pay the worker, unless there are some provisions to the contrary for the latter obligation.

Bou Ming Company affirms that the workers have continuously gone on strike since April 26, 2004. The Arbitration Panel finds that the strike activity was interrupted in one instance on April 30, 2004 because some workers returned to work, and on May 4, 2004, because all the workers returned to work. Therefore the period of May 04, 2004 onward is a period when the company does not have any jobs for the workers as proven by the breach of the ordering contract on May 2, 2004. In order to be free from the payment obligation to the workers, Bou Ming Company should officially suspend the contracts. By doing this, Bou Ming Company has to comply with the procedures set in Article 71, point 11, of the Labor Law, i.e. the company notifies the Labor Inspectors of the contract suspensions and places it under their review. Since the Arbitration Council is given, by Article 34 of the Prakas on the Arbitration Council, the right to find a resolution that is "fair and correct", the Arbitration Council shall take into consideration the fact that the workers failed to abide by the agreement that the workers had to come to work on April 30, 2004. This failure affected the company's business until the ordering company cancelled all the ordering contracts with this company.

Based on the above-concluded facts and Article 71, point 11, and Article 72, point 1, the Arbitration Council finds that Bou Ming Company has to fully pay the wages for any workers coming to work on April 30, 2004 because the company did not officially suspend their contracts. However, the Arbitration Council does not order the company to pay the wages more than the demanded amount, i.e. not exceeding 50% of workers' wages for the

period May 4 to 18. Regarding the workers that did not come to work on April 30, 2004, the company does not owe them wages because they caused the damage to the company.

The number of days for calculating is 12 days, excluding Sunday 9 and 16 of April 2004. The basic salary per month is US\$ 45 and the number of working days per month is 26 days. Therefore the wage for each worker according to the claim has to be calculated as below:

$$(\$45/26 \text{ days}) \times 12 \text{ days} \times 50\% = \$10.38$$

Each worker receives USD10.38 for the period from May 4 to 8, 2004.

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

**DECIDES :**

1. The workers and the employer of Bou Ming Company have to compile a list of workers who returned to work on April 30, 2004.
2. Bou Ming Company has to pay each worker an amount of USD10.38 for the period of May 4 to 18, 2004. Bou Ming Company has to pay this amount in two increments: the first USD5.19 added to the wages of June, and the second added to the wages of July.
3. The workers that did not return to work on April 30, 2004 are not allowed to demand this wage for the period of May 4 to 18, 2004.
4. Article 10 relating to the working conditions in Bou Ming Company has to provide that:  
"The workers must accept the work assignment, organization and arrangement according to the production flow without any discrimination."

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

**Arbitrator chosen by the employer party:**

Name: Mr. Ly Tay Seng

Signed: .....

**Arbitrator chosen by the worker party:**

Name: Mr. An Nan

Signed: .....

**Chair of arbitration panel:**

Name: Mr. Koy Neam

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 parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.