

**KINGDOM OF CAMBODIA
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THE ARBITRATION COUNCIL

Case number: 34/04

Date of Award: June 30, 2004

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

Full Value Cambodia Textile

(Employer Party)

AND

Worker Union of Full Value Co., Ltd.

(Employee Party)

DETAILS OF EMPLOYER PARTY:

Representative: Mr. Tiv Tong Leng, Director of the company

Address: Tror Peing Tlengk Village, Chaum Chao Street, Cham Chao Commune, Daun
Kau District, Phnom Penh.

Telephone: (855-23) 80 22 33

DETAILS OF EMPLOYEE PARTY:

Representative: Mr. Tuy Hak. President of the Union

Address: # 788, Street 474, Beung Trabak Commune, Chamkar Morn District, Phnom
Penh

Telephone: (855-12) 419 102

ISSUES IN DISPUTE:

This case is related to two issues that the Arbitration Council must settle:

1- The union demands that the company dismiss Ms. Siv Vanneth, Administration staff.

2- The union demands that the company increase wages for the permanent workers as below:

A- USD5 after three months;

B- An additional USD5 seven months after becoming permanent workers; and

C- An additional USD5 one year after those seven months.

JURISDICTION OF THE ARBITRATION COUNCIL:

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2A of the Labor Law (1997), the Prakas on the Arbitration Council (No. 99 of 21 April 2004); and the Arbitration Council Procedural Rules, which form an Annex to the same Prakas.

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 Labor Law. The conciliation was not successful, and the collective dispute was sent to the Secretariat of the Arbitration Council on May 27, 2004 under letter No. 632/MOSALVY dated May 27, 2004.

COMPOSITION OF THE ARBITRATION PANEL :

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

HEARING:

Date and place of hearing: June 03 and 11, 2004 at the Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

EVIDENCE:

- 1- A request from employees of Genuine Garments, dated May 26, 2004;
- 2- The Certificate of registration of the workers union in the Full Value Garment Factory, dated February 6, 2002;

- 3- Certificate acknowledging the commercial license number (3730MOC.NTK), dated December 12, 2004;
- 4- The internal work rules of the Full Value Garment Factory;
- 5- The conciliation report from the Labor Inspection Department;
- 6- Oral answers from union representatives and employer at the hearing.

Both parties agreed in the hearing that the arbitral award is non-binding.

SUMMARY OF THE CASE

The Full Value (Cambodia) Textile Company employs 550 workers. On May 8, 2004, the workers filed a complaint in relation to eight collective disputes. When the Labor Inspectors went to conciliate, there were six points conciliated and two non-conciliation points, as mentioned above in the letter sent to the Secretariat of the Arbitration Council on May 27, 2004 for settlement. The Arbitration Council opened the hearing on June 3, 2004.

A- First issue:

In the hearing the union demanded that the company dismiss Ms. Si Vanneth because she yelled at the workers in an abusive way and she forced the workers to work overtime by threatening them that "if you did not work overtime now, next time you cannot work overtime," and did not authorize an absence for a worker for marriage. The employer recognized that Ms. Si Vanneth did really use the abusive language as stated by the union. However, related to the overtime issue, the employer does not have a policy to force the workers to do overtime. As for Ms. Si Vanneth, she is not the person who arranges overtime; the overtime is arranged by a production group and the head of the groups. As for the allegation that Ms. Si Vanneth did not authorize an absence for marriage, she alleged that it was just a joke because she did authorize the absence for the worker. The employer promised that he/she would instruct the chief of the groups not to force workers to work overtime anymore.

B- Second issue:

At the hearing the union demanded that the company increase minimum wages as follows: USD5 after the workers become the permanent workers; increase USD5 more after seven months for the permanent workers; and add USD5 one

year after the seven months, because the company has grown and the company extended to two more branches, one at Canadia Park and another at Chamka Doung. The productivity of the company has increased because there is more transportation of goods. In addition, in other factories such as Sun Tex, the wages are better than in the Full Value Company. As for the employers, they said that the company does not have the ability to increase wages as the workers' demanded. The company leases the building at Canadia Park and at Chamka Doung to be used as a clothing shop; they are not new branches where workers were employed. In addition, the production has increased because the company has hired 170 more workers. The company would comply with the Law, if there was an existing law that required an increase of salaries.

FINDINGS OF FACT:

- After examining the non-conciliation report
- After listening to the worker representatives
- After checking all the documents as mentioned above.

The Arbitration Council has compiled all of the following facts:

- 1- Ms. Si Vanneth does use abusive language;
- 2- Ms. Si Vanneth is Administration staff of the Full Value (Cambodia) Textile;
- 3- The Full Value (Cambodia) Textile has accurately paid wages to the workers in accordance with notification No. 017/MOSALVY dated July 18, 2000;
- 4- In relation to the interview of three workers in the hearing, named Sot Rem, Nop Channa, and Py Sophea, they said that from January to May 2004, their production was stable and in June the production was decreased.

REASON FOR DECISION:

Re: Issue 1:

Based on the above reasons and evidence, the Arbitration Council finds that the workers' demand to dismiss Ms. Siv Vanneth is not correct and contradicts the procedure of the employment contract. The Arbitration Council has frequently found that it does not have power to order the employer to terminate employees according to the demand of the employees. (See case # 04/03- Lida; Case # 14/03- Chou Sing; case #

17/03 & 18/03- Hu Hing; case # 06/04 Chou Sing; case # 15/04-Lucky Zone; case # 16/04-Yada Printing and case # 32/04-Ecent).

The Arbitration Council notes that there are some exceptions where it can order the employer to dismiss or transfer the employees from one job to another job in cases where the employees cause problems that affect the health and safety of other workers. (See case # 14/03-Chou Sing).

Article 65 of the 1997 Labor Law states that "[a] labor contract establishes working relations between the employee and the employer. It is subject to common law and can be drawn up in a way that conforms to the needs of the contracting parties". Because this contract is under the court rule (Jurisdiction), so that the decree no. 38 D referring to contracts and liabilities also covers also labor contracts. Decree-law No. 38 Article 22 states, "[a] contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties. A contract shall be executed with honesty and according to the will of the parties." Therefore, only the parties to the contract have the right to terminate the labor contract. This means that the hiring or dismissal of any worker in the factory is the sole right of the employer, who is a contracting party. Even if there are workers who have committed serious misconduct, as mentioned in Article 83 of the Labor Law, the Arbitration Council finds that the Labor Law does not require the employer to dismiss the workers; rather the Labor Law only gives the employer the right to terminate them. (See case 14/03-Chou Sing and case 17/03 & 18/04-Huiying).

Re: Issue 2:

The employer and employees said in the hearing that the payment of wages must be executed following the notification number 017, dated July 18, 2000. The Arbitration Council finds the workers' demand for a salary increase is more than the law provides for and therefore is not a rights dispute, but it is an interest dispute that requires the Arbitration Council to make its decision based on principles of equity.

In relation to the workers' demand for a salary increase better than the Law, the union said that (1)- the company has growth because it has more branches; (2)- the

company exports a lot of goods; (3)- there are other factories which give a better salary. However, the union does not provide evidence to support its argument to the Arbitration Council. In responding to the union's first issue; the employer said that the company does not establish new branches, it just rents the warehouse to stock its goods. The union does not object to the employer's account. In addition, the union did not provide evidence related to the second and third issues.

In relation to the direct answer in the hearing, the Arbitration Council notes that the productivity of the company for the past six months did not grow and there was a decline in June. The Arbitration Council does not find any provisions or principles stated about the wages in the textile industry better than the practices in the Full Value Company today. Otherwise, the Arbitration Council finds that the textile industry in Cambodia does practice quite similar [wage practices] to the Full Value Company in accordance with the notification number 017.

The Arbitration Council does not have any arguments and reasonable ground to make a decision on the workers' demand for a salary increase that is better than the practices today.

Based on the facts and evidence of the case, as well as the Labor Law and principles of equity, the Arbitration Council issues awards as follows:

DECISIONS

- 1- Rejected the union's demand to dismiss Ms. Si Vanneth from the Full Value (Cambodia) textile.
- 2- Rejected the union's demand for a salary increase at the current practices in the Full Value (Cambodia) Textile.

Signatures of Members of the arbitration panel:

Arbitrator chosen by the employer party:

Name: **Ms. You Suonty**

Signature:

Arbitrator chosen by the worker party:

Name: **Mr. Liv Sovanna**

Signature:

Chair of arbitration panel:

Name: **Mr. Kong Phallack**

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.