

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 35/04

Date of award: 22 June 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Jacqsintex Industrial Cambodia Co., Ltd

(Employer party)

AND

C.CAWDU

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives:

- 1- Mr. Vieng Pao Ying, director of the company
- 2- Mr. Nick Chieb, translator
- 3- Mr. Khai King, the administrator

Address: # Morl Village, Dangkor quarter, Dangkor district, Phnom Penh.

Tel: 023 300 128 Fax: 023 310 128

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

- 1- Mr. Miech Bunnoeun, local union president
- 2- Mrs. Lim Thida, Conflict conciliator of CCAWDU
- 3- Mr. Pen Bora, Union financier
- 4- Mr. Siek Lo, Secretary of the union

Address: # 6C, Street 476, Toul Tumpong I quarter, Chamkarmorn district, Phnom Penh.

Tel: 012 419 102 Fax: 023 210 481

ISSUES IN DISPUTE:

(In non-conciliation report)

There are 3 issues that the Arbitration Council has to solve:

- 1- The workers demand the company reinstate Mr. Ros Samang. The company cannot reinstate Mr. Ros Samang, but will pay any benefits according to the Labor Law.
- 2- The workers demand the company build a proper canteen for the workers. The company refuses, saying it cannot afford to do this.
- 3- The company allows workers to bring cake and food into the factory's premises—outside the production building, but workers have to keep it clean and put any leftovers into the rubbish bin. If the workers do not abide by this proposal, the company will not allow them to take cake or other food into the factory. The workers demand the company take actions against the workers who litter and stop banning all workers from bringing in cake and food.

JURISDICTION OF THE ARBITRATION COUNCIL :

The Arbitration Council derives its power to make this Award from Section II B of Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council No. 099, dated 21 April 2004; the Arbitration Council Procedural Rules which 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. That conciliation was unsuccessful, and the non-conciliation report No. 631/MoSALVY dated 27 May 2004 was submitted by the Ministry of Labour and Vocational Training (MoVLT) to the Secretariat of the Arbitration Council on 27 May 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Kao Thach
Arbitrator chosen by the worker party:	Mr, Vong Vanna
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE:

Date and place of hearing: 4 June 2004 at 8:30am at the Secretariat of the Arbitration Council

Witnesses and Experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS FOLLOWS:

Documents provided by the employer party:

- 1- Certificate of commercial and company registration No. 1458 dated 29 May 29 1998.
- 2- Internal Work Rules of the company dated 16 February 1999.
- 3- Agreement on the dismissal of Ros Samang dated 17 May 2004.
- 4- Letter requesting a delay of the financial report dated 10 June 2004.

Documents provided by the employee party:

- 1- Agreement on the dismissal of Ros Samang, dated 17 May 2004 (in which the employer reinstates the worker).
- 2- Internal Work Rules of the company, dated 16 February 1999.
- 3- List of 16 companies that have built canteens for their workers, dated 18 June 2004.

Received from MoLVT:

- 1- Non-conciliation report on the collective dispute, dated 19 May 2004.
- 2- The report on the collective dispute conciliation, dated 17 May 2004.
- 3- Letter No. 631 from MoLVT, dated 27 May 2004.

Presentation by employers and employees at the hearing.

The two parties decided in the hearing that: THIS AWARD IS NOT IMMEDIATELY BINDING.

CASE SUMMARY:

Jacqsintex Industrial Cambodia Co., Ltd employs 500 workers. On 17 May 2004 approximately 475 workers went on strike, demanding that the company improve working conditions such as asking the company to build a proper canteen, letting the workers bring cakes and food into the factory, and reinstating a worker, Ros Samang.

On 17 May 2004, the labor inspectors intervened in order to resolve the conflict between the two parties. As a result three out of the six issues were reconciled.

On 28 May 2004, the Arbitration Council received the case from MoLVT and heard the case on 4 June 2004 at 8:30am. Before the hearing, the Arbitration Council [received notice that] an agreement had been reached between the employer and Mr. Ros Samang, in which the employer agreed to reinstate Ros Samang.

Arguments of the worker party:

The worker party argued that the company does not contain a place for the workers to have meals, therefore the workers ask for a canteen for the following reasons:

- The street to the factory is too narrow and the trucks that go back and forth bring with them dust in the dry season and mud in the rainy season, which consequently brings about bad smell and hygiene.
- The workers do not have a place to have meals as the company has not taken any measures to provide one. The workers have difficulty in the dry season, as they must eat their meals under the sun and in the dust, and in the rainy season, as they have their meals in the rain, mud and bad smells, which affect their health. The trucks coming back and forth might cause accidents as well.
- The fact that the employer allowed cakes and food into the factory, but did not allow the cakes and food into the production building is fine [with the workers]. But, the employer should not ban the workers from bringing cakes and food into the inner factory when one worker litters unintentionally. The employer should ban only the workers who want to bring cakes and food into the production building. The workers have to promise to the employer that they will not bring any cakes and food into the production building. Otherwise, the workers accept that the employer applied the Internal Work Rules and Labor Law. The workers said that there were few and small rubbish bins, so they had to recycle the oil containers as rubbish bins. If a canteen is built in the unoccupied land in the factory premises, there shall be no conflict.

Arguments of the employer party:

The employer's representative argued that the company had planned to build the canteen for a long time, but the financial condition of the company did not allow for it because it was costly. In fact, the ideas raised by the union are very good, but the financial problem prevents those ideas from being implemented. Therefore, the company allowed the workers to bring into the company premises cakes and food, but did not allow them in the

production building areas because if there is debris or waste often dropped in the production areas it will attract mice that will destroy the finished products. Hence, the company allowed the workers to bring only cakes and food into the factory premises, and waste or rubbish must be put in the (approximately) 10 rubbish bins that the company has already put under the trees.

FINDINGS OF FACT:

- Having examined the report on the collective dispute conciliation
- Having listened to the employee and employer representatives
- Having checked the above documents which [the Arbitration Council considers] are insufficient

We find that:

1-The Company has decided to reinstate the worker, Ros Samang, and just to warn him for the first time. (According to agreement dated 17 May 2004 between the employer and the representative of the employees). The company shall dismiss Ros Samang, based on the Labor Law, if he commits misconduct for the third time.

2-As for building the workers' canteen, the company director accepts to do this, but the company must wait for the financial situation of the company to improve, which will allow the company to afford the cost of building.

3-The company director allows the workers to bring cakes and food into the factory premises with the condition that if the company finds any cakes and food in the production building, it will no longer allow workers to bring cakes and food into the factory premises. If any worker is found bringing food into the production building, he or she will face [sanctions in accordance] with the Internal Work Rules of the company and the Labor Law.

REASONS FOR DECISION:

1st issue:

As the parties have reached a conciliated outcome and the employer agrees to reinstate Ros Samang to work in the ironing section, the Arbitration Council will not issue a decision on this point.

2nd issue:

The company does not have a canteen for the workers to put their food, cakes, and provide a place for having meals and taking a rest, this consequently causes disorder,

unfavorable working conditions, and bad sanitation in contravention of the working conditions necessary for the health of workers as stated in Article 229 of the Labor Law. The employer argued in the hearing that the company had planned to build the canteen for a long time, and that the plan would be achieved when the financial situation allowed; this argument showed that the company has agreed to build the canteen as demanded by the workers, [the only issue which remains is the time frame as] the employer party did not mention a clear date for the plan.

3rd issue:

The company said in both the conciliation stage presided over by the Labor Inspector and in the hearing, that the company allowed the bringing of food into the factory premises, but asked the workers to help keep the grounds clean; the employees promised that they would not bring any food into the production areas. If they were found bringing in food [into this area], they agree to let the employer apply the company's Internal Work Rules and the Labor Law. This is an agreement between both parties before the Arbitration Council.

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

DECIDES :

1-Order the company Jacqsintex to provide a clear date for the canteen construction to the employees within three months from the date the award takes effect.

2-Order the company to allow the workers to bring cakes and food into the factory. [Order] the workers to keep the factory premises clean by putting waste and leftovers into the rubbish bins properly. The workers must not bring food and cakes into the production areas.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signed:

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signed:

Chair of arbitration panel:

Name: **Ang Eng Thong**

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.

If either party lodges an opposition in accordance with the law, either party can proceed to the court or go on strike or lock out.

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