

KINGDOM OF CAMBODIA
Nation King Religion

ARBITRATION COUNCIL

Case number and name: 39/05-Wing Tai 2

Date of Award: 20 July 2005

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

Arbitration Panel

Arbitrator chosen by the employer party: Mr. **Ly Tayseng**

Arbitrator chosen by the worker party: Mr. **An Nan**

Chair arbitrator (chosen by the two arbitrators): Mr. **Ang Eng Thong**

Disputing parties

1- Employer party:

Name: Company Wing Tai 2 Apparel (Cambodia) Limited

Address: # 4, National Road 5, Sangkat Russey Keo, Khan Russey Keo

Telephone: 023 428 927

Representatives:

- | | |
|----------------------|-----------------------|
| 1. Mr. Long Phally | Company Administrator |
| 2. Mr. Cheat Khemara | GMAC representative |

2- Worker party:

Name: Dhama Thpaktay Federation Union

Address: # 7, National Road 6A, Sangkat Prek leap, Khan Russey Keo, Phnom Penh.

Telephone: 012 941 662/011 755 390

Representatives:

- | | |
|------------------|---|
| 1. Nuon Chantha | President of Dhama Thpaktay Federation Union; |
| 2. Yorm Sochinda | Vice President of Local Dhama Thpaktay Union; |
| 3. Ghok Sineth | Union Secretary |

Issues In Dispute

The employee party demanded that the company offer annual leave for five days when the company has no work, but the company [instead] offered additional annual leave at the time

of Khmer New Year to all members of Dhama Thpaktay Federation Union. The company did not agree to the union's demand because the company and the workers agreed to [use annual leave] in accordance with Article 170 of Labour Law.

Jurisdiction of the Arbitration Council

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council (99/04); the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators (Second Term) (103/04 and 265/04).

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 Labour Law. But the conciliation hearing which took place on 30 June 2005 was unsuccessful, and the non-conciliation report number 907/MoLVT was submitted to the Secretariat of the Arbitration Council on 30 June 2005.

Hearing and Summary of Procedure before the Arbitration Council

Place of hearing: The Arbitration Council, Phnom Penh Center Building "A", Sothearos Blvd,
Sangkat Tonlebasak, Phnom Penh.

Date of hearing: 8 July 2005

Procedural issues: N/A

Evidence

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Notification arranging 2004 annual leave dated 20 March 2005
- Internal Work Rules of the Company registered on 25 March 2005
- Minute of collective dispute conciliation dated 7 June 2005
- Letter from Dhama Thpaktay Federation Union of Wing Tai 2 dated 3 July 2005
- Letter from Dhama Thpaktay Federation Union of Wing Tai 2 dated 3 July 2005

Facts

On 2 March 2005, Wing Tai gave the workers notice about an arrangement made in 2004 [for the workers to take] annual leave from 11 - 19 April 2005. All the workers tacitly agreed to this arrangement by taking annual leave at that time without any objection [to the employer]. On 6 June 2005, the workers disagreed with this annual leave arrangement,

which was made by the company, and brought an action to the Labour Inspector at Russey Keo District to demand that the company comply appropriately with the Labour Law.

After receiving the complaint from the workers, the Labour Inspector tried to immediately settle [the issue] for the first time on 8 June 2005 and for a second time on 24 June 2005. The settlement process was successful with respect to two of three issues.

The remaining issue is that the workers demand that the company reimburse annual leave in the amount of five days. [The workers] argue that the company arranged for workers to take their 2004 annual leave during Khmer New Year while the company had no work [for them to do]. The company did not agree with this claim, arguing that there is an agreement between the company and the workers and that the company has complied with Article 170 of the Labour Law.

At the hearing, the worker party argued that they did not agree with the company's arrangement for annual leave and that they therefore filed a complaint with the Labour Inspector. On the other hand however, the company has never received any [direct] complaints from the workers about the annual leave arrangement until now. The company argued that the arrangement was made based on an agreement with the worker party, in particular an agreement with four of the five unions in the factory.

The Arbitration Council finds that:

Reasons for Decision

Having examined the evidence and both parties' arguments at the hearing, the Arbitration Council finds that the company took action on 2 March 2005 to notify employees about an arrangement [through which the workers would use their] 2004 annual leave before or after Khmer New Year between 11 and 18 April 2005. At that time, there was no objection to the company's arrangement from the workers and they took leave without objection. On 6 June 2005, there was a complaint letter [from the worker party] to the Labour Inspector demanding that the company compensate the workers for the annual leave which they used, by arguing that the company's arrangement happened during a period of no work.

According to Article 170 of the Labour Law: "*In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement*".

Both parties have a right to negotiate about the time annual leave is taken. The employer has the right to ensure that production is not obstructed and the needs of the business are met, while employees have the right to request annual leave when they wish to take it.

However, Article 170 sets out a presumption that annual leave will be taken at Khmer New Year. If either the employees or employer wish annual leave to be taken at another time there must be an agreement between the employer and employee (see 62/04 - Ecent and 21/05 - Sinomax).

In this case, the employer complied with Article 170 of the Labour Law by granting annual leave at Khmer New Year. At the time of the employer's direction about annual leave, the employees did not object to the leave being granted. The employees did not suggest that annual leave be granted at another time and in addition, the employees took the annual leave at that time. Therefore, the Arbitration Council rejects the workers' demand of compensation for five days of annual leave, which the company arranged the workers to use in April 2005.

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

Decision

Reject the workers' demand that they be reimbursed five days annual leave, which the company arranged [for the workers] to take in April 2005.

Type of Award: Non binding award

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.

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair of arbitration panel:

Name: **Ang Eng Thong**

Signature: