



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 41/07- M&V 3**

**Date of Award: 28 May 2007**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **MAR SAMBORANA**

Arbitrator chosen by the worker party: **SIN KIM SEAN**

Chair Arbitrator (chosen by the two Arbitrators): **TAN TRY**

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **M & V International Manufacturing Ltd., (Branch 3)**

Address: # 1623, National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 023 425 010/ 425 043, 016 707 046 Fax: 023 425 001

Representative:

- |                   |                                    |
|-------------------|------------------------------------|
| 1. Mr. Hu Xiang   | Head of Administration             |
| 2. Mr. Yin Nak    | Vice-head of Administration        |
| 3. Mr. Long Heang | Dispute Resolution Officer of GMAC |

##### **Worker party:**

Name: **Cambodian Industrial Union Federation (CIUF)**

Address: # 60 A, Street 380, Sangkat Boeung Keng Kang 3, Khann Chamkarmorn, Phnom Penh

Telephone: 012 580 912, 011 878 034 Fax: N/A

Representative:

- |                        |                           |
|------------------------|---------------------------|
| 1. Mr. Hem Sok Ponlork | Vice-president of CIUF    |
| 2. Mr. Oum Sophea      | Representative of workers |

3. Mr. Hin Mai	Representative of workers
4. Mr. Nuon Sopheap	Representative of workers
5. Mrs. Ngem Kimsy	Worker
6. Mrs. Van Sat	Worker
7. Mrs. Nuth Kunthy	Worker
8. Mrs. Em Kimsry	Worker

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand the company to increase the piece rate (LOT P.N 0623008) from US\$ 0.35 to US\$ 0.60 per dozen. After two days of discussion on 25 and 26 April 2007, the workers decided to reduce the rate to US\$ 0.45 per dozen as a final rate, not to be decreased any further. The company, on the other hand, agreed to increase the rate of PN 0623008 from US\$ 0.35 to US\$ 0.40 per dozen. In the case that the workers cannot earn the minimum wage, the company will add onto their wages automatically.

### **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 No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 099 dated 11 May 2006 (Fourth Term).*

*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. The conciliation was unsuccessful, and the non-conciliation report No. 384 K.K.B.V/AK/VK, dated 27 April 2007 was submitted to the Secretariat of the Arbitration Council on 30 April 2007.*

### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:** 8 May 2007 (From 2:00 p.m. to 5:00 p.m.)

**Procedural issues:**

On 26 April 2007, the Department of Labour Disputes received a complaint by phone from M&V 3 Company regarding the workers' demand that the company increase the piece rate LOT P.N 0623008 from US\$ 0.35 to US\$ 0.60 per dozen. The Department of Labour

Disputes assigned an officer to conduct a conciliation which resulted in one non-conciliation issue submitted to the Arbitration Council on 30 April 2007.

After receiving the case, the Arbitration Council summoned the employer party, the CIUF, and the relevant representatives of the workers to attend the hearing and conciliation on the one non-conciliation issue on 8 May 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council. On the hearing day, the Arbitration Council attempted to further the conciliation but the parties did not reach an agreement. Thus, in this award, the Arbitration Council will consider the one non-conciliation issue based on evidence and findings of fact as follows:

### **EVIDENCE**

**Witnesses and experts:** N/A

### **Documents, Exhibits and other evidence considered by the Arbitration Council**

#### **Provided by the employer party:**

- Letter of the delegation of rights by M&V 3 Company, dated 27 April 2007.
- Certificate of registration No. 1311 M&V Manufacturing Ltd., (Branch 3), dated 11 July 1995.
- Internal Work Rules of M&V 3 Company, registered on 2 May 2001.
- Defense statement by the company, dated 10 May 2007, to the labour dispute in this case and photos of the workers striking.
- Table of the report of regular workers who work in the ironing section who iron LOT P.N 0623008 for 23 to 24 April 2007.
- Table of the report containing the data of the amount of work on P.N 0623008 and other dozens completed in one day by the workers in the ironing section for 25 to 30 April 2007 and from 2 to 4 May 2007.
- Court's verdict upon request by Phnom Penh municipal court No. 476/30.04.07 dated 30 April 2007 regarding the temporary halt of the workers' strike.
- Letter dated 21 April 2007 with a subject on the provision of wages to workers in the ironing section.

#### **Provided by the worker party:**

- Report of data of piece rate for P.N 0623008 which was completed in one day for ironing section on 23 and 24 April 2007.
- Court's verdict upon request by Phnom Penh municipal court No. 476/30.04.07 dated 30 April 2007 regarding the temporary halt of the workers' strike.

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

- Report on the collective labour dispute resolution in M&V (Branch 3) company, No. 384 KBV/AK/VK, dated 27 April 2007.
- Minutes of the collective labour dispute resolution, dated 26 April 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 175 K.K.B.V//AK/VKLKA, dated 2 May 2007 to invite the worker party to attend the hearing.
- Invitation letter No. 174 K.K.B.V//AK/VKLKA, dated 2 May 2007 to invite the employer party to attend the hearing.
- Minutes of information received, dated 21 May 2007 regarding the payroll of workers in ironing section of M&V (Branch 3) Company.

**FACTS**

- Having examined the documents the parties submitted to the Arbitration Council
- Having reviewed the reports of the collective labour dispute conciliation
- Having listened to the statements by the representatives of the worker party and the employer party

**The Arbitration Council finds that:**

- M&V 3 company employs a total number of 2,817 workers and has three union federations: CFITU, CIUF and C.CAWDU.
- There are about 40 workers in the ironing section who make the demand in this case.
- Both parties agreed that M&V 3 company asked the workers to start working on P.N 0623008 on 23 April 2007.
- The workers demand for an increase of the piece rate of P.N 0623008 from US\$ 0.35 to US\$ 0.60 per dozen. Workers in the ironing section who make this demand started a strike to negotiate with the employer in the afternoon of 24 April 2007.
- The employer party raised that after continuous negotiation, the employer agreed to increase the rate of P.N 0623008 from US\$ 0.35 to US\$ 0.37 per dozen but the worker party did not agree. In a meeting to find a solution [to this] in the presence of a labour dispute officer on 26 April 2007, the company agreed to increase the rate for the last time to US\$ 0.40 per dozen while the worker party demanded US\$ 0.45 per dozen. The worker party does not object to this claim.
- In the hearing, the employer asserted that the highest rate the company can provide for P.N 0623008 is US\$ 0.40 per dozen and in the case that any worker cannot work

up to the minimum wage, the company will add to their wages automatically at every payroll [to meet the minimum wage].

- Now M&V 3 company sets the rate of US\$ 0.40 per dozen for P.N 0623008 in calculating wages for the workers.
- M&V 3 pays workers' wages every half a month, i.e., on the 5<sup>th</sup> and the 20<sup>th</sup>.
- In the hearing, the workers maintained their stance of demanding the rate for P.N 0623008 to be US\$ 0.45 and in the case that the workers cannot work up to the minimum wage, the company has to ensure a minimum wage equal to US\$ 1.92 [per day].
- In the hearing, the workers mention that CIUF does not have most representative status yet and represents approximately 700 workers.
- The employer party provided a document regarding the amount of money (attached with the number and type of product) which floating workers, who were already the company's workers, earned when they replaced the ironing workers during the time those workers were on strike. Based on that table, we observe that 26 workers agreed to iron eight types of product per day from 25 April 2007 to 4 May 2006, and we see that [there were] workers who received less than US\$ 1.92 [per day] and more than US\$ 1.92 [per day] without complaint, as shown below.

Number of working days	25-4	26-4	27-4	28-4	29-4	30-4	2-05	3-05	04-05
Number of workers who receive less than 0.92 US\$	0 pers.	0 pers.	0 pers.	2 pers.	4 pers.	1 pers.	0 pers.	0 pers.	0 pers.
Number of workers who receive more than 0.92 US\$	26 pers. (100%)	26 pers. (100%)	26 pers. (100%)	24 pers. (92.3%)	22 pers. (84.6%)	25 pers. (96%)	26 pers. (100%)	26 pers. (100%)	26 pers. (100%)

Based on the above table, the Arbitration Council finds that the figures in this table show that among the 26 floating workers in the ironing section who worked for nine days, only 27 percent of them who ironed the products earned less than the daily minimum wage<sup>1</sup> of US\$ 1.92 per day. About 73 percent who ironed the product of P.N 0623008 and other types earned a wage higher than the daily minimum wage of US\$ 1.92, among them some workers who earned US\$ 7, 8, 10, or more per day.

<sup>1</sup> The term "daily minimum wage" is not what is determined by the Labour Law.

The Arbitration Council received some notices regarding the data shown in the report submitted by the employer to the Arbitration Council for consideration.

This table does not show the number of working hours each floating worker worked each day. Based on the contents of Article 108, the duration of working hours each worker should perform per day is an important element in [calculation in respect of] Article 108. This means that if we want to make a comparison of the skills of one worker with another, and in this case it is the unit number of products the floating workers are able to do with the unit number the workers in the ironing section are able to do, the Arbitration Council needs to know the actual number of hours each worker spent to reach to that result.

In conclusion, the Arbitration Council considers that the data shown in the table is not enough (as it lacks the number of working hours) to be taken as a basis to compare the skills of the floating workers in the ironing section with the skills of the workers in the ironing section who are the party to this demand.

- The workers provided a table that records the work the regular workers in the ironing section who ironed the product PN 0623008 completed on 23 (a full day) and 24 (not a full day) April 2007, which received no objection from the employer party in the hearing; [the report] shows the number of workers who received a daily wage of less than or more than the minimum wage of US\$ 1.92, without mentioning if there was overtime work, as follows:

Amount of wage earned per day	Less than US\$ 1	US\$ 1 - US\$ 1.50	US\$ 1.50 - US\$ 1.92	More than US\$ 1.92
23 April	1 pers.	9 pers.	12 pers.	22 pers.
24 April	3 pers.	4 pers.	15 pers.	19 pers.

### **REASONS FOR DECISION**

**Issue 1:** The workers demand the company to increase the piece rate of PN 0623008 from US\$ 0.35 to US\$ 0.60 per dozen. After two days of discussion on 25 and 26 April 2007, the workers decided to reduce the rate [demanded] to US\$ 0.45 per dozen as a final rate which cannot be decreased further.

In the hearing, the worker party demands the company to increase the rate of PN 0623008 from US\$ 0.35 to US\$ 0.45 per dozen to calculate their wages. In addition, in the case that workers cannot earn the minimum wage, the company has to ensure the minimum daily wage of US\$ 1.92. The employer party still maintains the rate of US\$ 0.40 per dozen, as it is set to currently practice this calculation of wages for workers.

Article 108 of the Labour Law states, "For task-work or piecework ... the wage must be calculated in a manner that permits the worker of mediocre ability working normally to

earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker”.

The Arbitration Council does not see an Article which makes a determination of piece rate besides the calculation of wage.

The Arbitration Council found that after continuous negotiation, the company increased the [piece rate for] product No. PN 0623008 from US\$ 0.35 to US\$ 0.40 per dozen and that the company is currently practicing this rate with 26 floating workers who are ironing the product No. PN 0623008 and other PNs on the same days.

Based on the table of the report, of the full right workers in the ironing section who ironed product PN 0623008 (on 23 April), 50 percent earned less than the daily minimum wage of US\$ 1.92. On 24 April, 22 out of 41 workers (54 percent) came to work and earned less than the daily minimum wage of US\$ 1.92. The Arbitration Council has two notes on this data.

First note: In the afternoon of 24 April, the workers in ironing section halted their work activities and joined a strike; thus the data on that day cannot be accepted for consideration because it documents only the work completed in the morning.

Second note: Even [though] the figures show a large number of workers who earned less than the daily minimum wage of US\$ 1.92, the Arbitration Council still finds that this data does not have enough legal ground to accurately determine the level of skill for each worker in ironing section.

In addition, paragraph 1 of Article 166 of the Labour Law states, “Labourers' wages shall be paid at least two times per month, at a maximum of sixteen-day intervals.” In this case, workers in the ironing section always received payment from the employer twice per month on the 5<sup>th</sup> and 20<sup>th</sup> of each month. In contrast, the evidence received from the worker party is a table reporting only one day [and a half] of work which does not show the data of the number of days and other normal wages the workers usually received. One day [and a half] of time is insufficient to lead the Arbitration Council to consider it adequate grounds for consideration on whether the rate of PN 0623008 is in accordance with the guaranteed minimum wage stated in Article 108 of the Labour Law. In short, because the evidence submitted does not contain enough data of the number of working days adequate for consideration or enough data to determine the level of skill of each worker in ironing section accurately, as mentioned above, the Arbitration Council declines to consider the interests dispute.

In conclusion, the Arbitration Council decides to reject the demand.

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

**DECISION**

- Rejects the workers' demand for the employer to increase piece rate No. PN 0623008 from US\$ 0.35 to US\$ 0.45 per dozen.

**Type of Award: Non binding**

This Award will become binding after 8 days from 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: **MAR SAMBORANA**

Signature: .....

Arbitrator chosen by the worker party:

Name: **SIN KIM SEAN**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **TAN TRY**

Signature: .....