

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

ARBITRATION COUNCIL

Case number and name: 42/05-Yung Wah

Date of Award: 3 August 2005

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**
Arbitrator chosen by the worker party: **Liv Sovanna**
Chair arbitrator (chosen by the two arbitrators): **Run Saray**

DISPUTING PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co., Ltd.**
Address: Street 210, Prek Samraung, Takmao commune, Takmao district,
Kandal province
Telephone: 023 425 388, 012 510 966, Fax: 023 425 389
Representative:
1- Mr. Sam Upiseth Administration Manager
2- Mr. Eung Seng Legal officer
3- Mr. Men Chengchhay Administration staff member

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU)**
Address: #6C, Street 476, Toulthompong I commune, Chamkarmon district, Phnom Penh.
Telephone: 023 210 481 012 650 013
Representative:
1. Ms. Chorn Sokha Vice President C.CAWDU
2. Ms. Reun Chanthan Official of C.CAWDU
3. Ms. Meas Vandy Official of C.CAWDU
4. Mr. Sor Mora Official of C.CAWDU
5. Ms. Chhay Soklay Union President of C.CAWDU at Yong Wah
6. Ms. Chhem Sokry Union Secretary of C.CAWDU at Yong Wah.

ISSUES IN DISPUTE

1. The workers demand that the company only cut their attendance bonus by US\$2.50 in case the card reading machines fail to record their attendance. The company does not agree to the workers' demand.
2. The workers demand that the company provide the attendance bonus on 13 April 2005. The company does not agree to the workers' demand.

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 Annexure to the same Prakas; and the Prakas on the Appointment of Arbitrators 513/05.

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 was unsuccessful, and the non-conciliation report number 005/05 was submitted to the Secretariat of the Arbitration Council on 13 July 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: 18 July 2005 at 14:00 p.m.

Procedural issues:

Yung Wah Industrial (Cambodia) Co., Ltd. employs 4,000 workers. 350 of these workers are members of C.CAWDU and there are also members of Khmer Youth Federation of Trade Union (KYFTU).

On 7 June 2005, a complaint was sent to the labour inspector. On 4 July 2005, the Ministry of Labour and Vocational Training appointed conciliators and a conciliation process began on 8 July 2005 over 12 issues. 10 issues were successfully conciliated with the remaining 2 issues being forwarded to the Arbitration Council.

The Secretariat of the Arbitration Council invited both parties to appear at a hearing on 18 July 2005 at 2:00 p.m. at the Arbitration Council. The Arbitration Council encouraged both parties to continue further negotiation either in the hearing or through further conciliation. However, the parties were unable to reach an agreement. In the hearing, the workers' party sought to change their request set out in the non-conciliation report that the

employer must provide an attendance bonus of US\$5 in case the card reading machines did not read the workers' names [properly] once per month.

EVIDENCE

Witnesses and experts: *n/a*

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Business registration certificate of the company dated 28 March 1998.
2. Notice 017/MoSALVY dated 18 July 2000.
3. Internal Work Rules of the company dated 12 February 2002.
4. Memorandum and status of the company dated 22 January 2003.
5. Pictures of the card reading machines, of the workers passing through the card reading machines and of the security guards monitoring the workers leaving work.
6. Prakas 333/05 on the change of public holiday in 2005 of the Ministry of Labour and Vocational Training.
7. Report about card reading machines of about 19 workers.
8. Delegating letter dated 18 July 2005 authorised Mr. Som U Piseth to join to settle [the dispute] at the Arbitration Council.

B. Provided by the worker party:

1. Receipt of the case from the Department of Labour Inspection of the Ministry of Labour and Vocational training received on 18 July 2005.
2. Letter dated 7 March 2005 of C.CAWDU sent to a chief of the office of Labour and Vocational Training in Kandal province to file a complaint against the company's director about discrimination, disturbing union leaders and abusive working conditions.
3. Letter to improve working conditions from 12 workers.
4. Letter seeking help to resolve the labour dispute between the workers and Yung Wah dated 18 May 2005 of C.CAWDU sent to a chief of the office of Labour and Vocational Training in Kandal province.
5. Minute of the collective labour dispute conciliation dated 4 July 2005.
6. List of 75 workers who worked over time voluntarily and non-voluntary in respect of over time in June 2005.
7. Minute on collective labour dispute conciliation of Yung Wah dated 16 June 2005.
8. Letter on report activities of the company dated 27 July 2005 of C.CAWDU to the Arbitration Council during the process of the Arbitration Council.

C. Provided by the Ministry of Labour and Vocational Training:

1. Collective labour dispute report of Yung Wah company no. 005/MoVLT dated 13 July 2005 from Mr. Thok Vin, Vice Office Chief, in charge of common tasks, of Labour and Vocational Training in Kandal province.
2. Minute on the collective labour dispute at Yung Wah no. 006/MoLVT dated 12 July 2005.
3. Minute about the collective labour dispute dated 8 July 2005.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter no. 247 inviting the employer party to appear at the hearing dated 14 July 2005.
2. Letter no. 248 inviting the worker party to appear at the hearing dated 14 July 2005.

FACTS

- Having examined the minute of conciliation of the collective labour dispute;
- Having listened to the company and the employees' sides as described above and reviewing the minute of the hearing;
- Having reviewed other relevant documents.

The Arbitration Council finds that

1st Issue:

Yung Wah has seven card reading machines. According to the Internal Work Rules of the company, the workers have to enter through the gates of the company before the commencement of working hours. To enter and exit the workplace, the workers must insert their identity card into one of the card reading machines to identify themselves as they punch-in and punch-out. The company reviews the reports from each card reading machine to assess the attendance record of each worker. If the report indicates that a worker has arrived a total of 5 minutes or more, late each month that worker does not receive his or her attendance bonus. Each month there are [allegedly] approximately four or five workers whose attendance is not correctly recorded by the card reading machines and who, as a consequence, do not receive their attendance bonus.

The workers contended that the card reading machines do not always work properly and sometimes even if they punch-in on time to start work, the machine incorrectly records their arrival time.

The employer said that the card reading machines work properly and do not make any mistakes, and said further that it is the workers themselves who do not pay attention to the card reading machines.

The Arbitration Council finds that in addition to the monitoring of the workers through the card reading machines, the security guards of the company have a duty to record and give to the Administration office the names of the workers who pass through the gate less than 5 minutes before the commencement of work. For those workers who arrive less than 5 minutes before the commencement of work, the security guards do not allow them to enter the workplace. Each work group has a line leader to control the worker's work as well.

2nd Issue.

Yung Wah has two shifts: day shift and night shift. On the evening of 12 April 2005, the company posted an announcement that the workers who work the day shift were not required to attend work from 14 to 16 April 2005 because of Khmer New Year. The night shift workers were not required to attend work from 13 to 16 April 2005. On 13 April 2005, the day shift workers realised that the company had allowed the night shift workers to stop work for the Khmer New Year a day earlier than them.

The workers said that the reason why the day shift workers did not attend work on 13 April 2005 was because there was unequal treatment between the day shift and the night shift. Thus, the workers demand that the company provide their attendance bonus for April. But the workers admit that the company's decision to treat the shifts differently in relation to stopping work for Khmer New Year is not related to discrimination.

The company said that allowing a public holiday on Khmer New Year is simply following the requirements of the Prakas of the Ministry which states that Khmer New Year (14, 15, 16 April 2005) is a public holiday. The company allowed the night shift workers to stop work on 13 April because the night shift is from 6:30 p.m. to 5:00 a.m. Accordingly, the night shift workers' shift on 13 April 2005 would have ended at 5:00 a.m. on 14 April, which was a public holiday.

The Arbitration Council finds that the company also posted the Prakas of the Ministry regarding the Khmer New Year on 12 April 2005, but did not make any other announcement to the day shift workers either about a public holiday for Khmer New Year or explaining its reason for treating the shifts differently.

REASONS FOR DECISION

1st Issue.

Is the workers' demand an actual dispute that the Arbitration Council can resolve or not?

A. Is the issue related to a rights dispute or interests dispute?

Rights disputes relate to legal rights which result from or are stated in contract, collective bargaining agreements (CBA) or provisions of laws. An interests dispute is a dispute related to a benefit in the future and is not related to rights resulting from or stated in contract, CBAs or provisions of laws.

This issue is based upon the workers' demand for the attendance bonus which is determined by Notification 017/00 of the MoSALVY, dated 18 July 2000. However, the workers did not demand for prior attendance bonuses which were cut by the employer; the demand is for the future. If the card reading machines make a mistake once per month, the workers demand to keep their attendance bonus of US\$5 according to a provision of Notification 017.

In the hearing, the Arbitration Council tried to conciliate between the parties to establish an extra system to compare with the results from the card reading machines in order to ease the doubts of the workers about the machine and to keep as evidence of the effectiveness of the machines. However, the employer did not agree. Finally, the workers still maintained their demand.

Thus the Arbitration Council finds that this issue is a rights dispute because this issue is related to the rights of the workers to make a demand for the attendance bonus which is stated in the Notification above. Accurate evidence of workers' attendance must come from a properly working card reading machine and it is based on this evidence that the employer decides whether to pay the attendance bonus or not. The workers' demand for attendance bonus, which may be cut by the employer in the future resulting from the faulty card reading machines, is a rights dispute in the future.

B. The Arbitration Council cannot make a decision on a future rights disputes.

The Arbitration Council cannot make a decision on a rights dispute which may occur in the future because we can never know what scenarios may occur in the future including which parties may be involved, or which provisions of the law, of the contract, or of the CBA [are relevant]. Moreover, to decide on a rights dispute, the Arbitration Council needs specific evidence of actual events to compare with the provisions of the law.

The Arbitration Council notes that related to this situation in the future the workers have two options:

1. **Argument related to rights dispute:** The workers can make a demand for the attendance bonuses which have already been cut. The workers must present sufficient evidence to prove that an attendance bonus has been cut because of a faulty card reading machine. The workers who are affected must make a demand for their attendance bonus which has already been cut. In case of using the procedure of the Arbitration Council, the Arbitration Council will evaluate a wrongdoing or reports from effective card reading machines in order to determine whether or not the workers are entitled to the attendance bonus under the law.
2. **Argument related to an interests dispute:** The workers can make a demand that the company establish a further system to compare effective card reading machines. But generally, the Arbitration Council always refuses a claim related to an interest dispute of the union which does not have most representative status in the enterprise (see 31/03 - [Hong Wah]).

Based on the above, the Arbitration Council notes that it cannot make a decision over the actual demand of the workers.

Issue 2.

On 13 April 2005, the day shift workers at Yung Wah did not attend work because they did not agree with the employer's decision to allow the night shift workers to stop working on 13 April 2005 for Khmer New Year whilst they were still required to attend. Because the day shift workers did not attend work on 13 April 2005, the employer decided to cut their attendance bonus in April.

The attendance bonus provision in Notification 017/MoSALVY dated 18 July 2000 states "workers who come to work regularly on the regular working days of the month are entitled to \$5 per month."

13 April 2005 was a working day for the workers (Notification 333/MoLVT, dated on 11 March 2005 of the Ministry of Labour and Vocational Training).

The Arbitration Council finds that the day shift workers who did not attend work on 13 April 2005, and whose absence was unauthorised, are not entitled to the benefits from the

Notification 017 regardless of their motives. The Arbitration Council notes that in the future the employer should explain to its workers its reasoning in treating the day shift and night shift differently.

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

DECISION

1. Dismiss the workers' demand over the first issue of the non-conciliation report 005/05 which was clarified in the hearing on 18 July 2005. If this dispute actually occurs, the workers could raise the dispute to be settled according to the procedures under the Labour Law.
2. Reject the workers' demand for the attendance bonus in April 2005. .

Type of Award: Non binding awards

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair of arbitration panel:

Name: **Run Saray**

Signature: