

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 45/06-Sports Wear and Super Tech

Date of Award: 20 June 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Hem H. Naryth**

Arbitrator chosen by the worker party: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Tong**

DISPUTING PARTIES

Employer party:

Name: **Cambodia Sports Wear MFJ Ltd.**

Address: #1533, National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey

Telephone: 012/011 879 772 or 023 425 020 Fax: 023 365 668

Representative: Mr. Sar Samnang Lawyer of the Company

Other Participants:

- | | |
|-------------------|--|
| 1. Men Sotha | Head of Administration |
| 2. Liv Mann | Head of Administration |
| 3. Chuon Momthol | Head of Khmer Union Federation |
| 4. Sok Ravuth | Head of Free Khmer Labourer Federation |
| 5. Lor Thanak | Head of Worker Union |
| 6. Heak Nguon Hak | Head of Khmer Labourer Union |
| 7. Pen Kimsean | Head of Khmer Union |
| 8. In Choki | Head of Khmer Union |
| 9. Sal Sok | Vice-head of Clean Clothes Union |
| 10. Chiet Khemra | GMAC |

Worker party:

Name: National Industrial Textile Union Cambodia of Sports Wear Company

Address: #1533, National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey

Telephone: 012 736 270/ 012 629 759

Representative:

- | | |
|-----------------------|--|
| 1. Mr. Tol Phanmoeung | Head of National Labour Union Federation |
| 2. Mr. Thy Seap | Head of NIFTUC |
| 3. Ms. Chamroeun Sun | Worker representative |
| 4. Mr. Khun Eang | Worker delegate |
| 5. Mr. Rath Vannarin | Worker delegate |
| 6. Mr. Mam Vanthet | Worker delegate |
| 7. Mr. Chhiv Keang | Secretary |
| 8. Mr. Nhel Pheap | Consultant of the National Worker Union Federation |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Workers demand the company to implement and follow the Award of the Arbitration Council.
2. Workers demand the company to get rid of the unilateral labour contract made by the company without acknowledgement from the worker party.
3. Workers demand the company to increase the piece rate to an appropriate price in every group and section.
4. Workers demand the company to increase once a year the wages of daily-paid and monthly-paid workers.
5. Workers demand the company to warn or require thumbprints of workers who make mistakes unintentionally.
6. Workers demand the company to change the position of the person responsible for deducting union contribution fee.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B 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 Appointment of Arbitrators No. 009 ក.ក.ប.វ/ប្រក. 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 hearing was not successful, and the non-conciliation report No. 764 គ.ក.ប.វ/អក/វ.ក dated 06 June 2006 was submitted to the Secretariat of the Arbitration Council on 06 June 2006.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd.,
Sangkat Tonle Bassac, Khan Chamkar Morn, Phnom Penh.

Date of hearing: 08 June 2006 (02:00 p.m. to 04:00 p.m.)

Procedural issues:

Sports Wear company is located in house No. 1533, National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh. On 25 May 2006, the Department of Labour Dispute received a complaint by phone from workers to conduct a strike to demand the company implement the Award of the Arbitration Council properly. Upon receiving the notification, the Department of Labour Dispute assigned a labour official to settle the labour dispute. As a result, none of the 6 issues were conciliated. In a conciliation meeting outside the hearing on 08 June 2006, the Arbitration Council attempted to ask for additional information relevant to this labour dispute and allowed both parties to engage in further conciliation but parties could not reach an agreement nor conciliate [the dispute]. The National Worker Union Federation which represents workers at the Sports Wear company withdrew issue 2 to issue 6 through a request dated 09 June 2006. Seven of the 11 issues have been successfully resolved. The other four non-conciliated issues were referred to the Arbitration Council on 17 March 2006. Having received the case, the Arbitration Council summoned the parties to attend a hearing on 28 March 2006 at 8:00 a.m.

Thus, the Arbitration Council considers the case based on legal labour procedures as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Letter No. 08 June 2006 from the Sports Wear company to the Arbitration Council to ask for intervention to have workers come back to work.

2. Letter to request permission to have the representative of the enterprise, establishment attend the hearing on the employer's behalf to the SAC dated 08 June 2006.

Provided by the worker party:

1. Request letter to have representatives of the union-federation attend the hearing on 08 June 2006.
2. Request to withdraw case No. 45/06 dated 08 June 2006.
3. Notification to the Sports Wear company about the request to conduct a strike of the workers No. 24/06 ស.សជកក dated 25 May 2006.

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

1. Report on the resolution of the collective dispute at Sports Wear Company No. 764 ក.ក.ប.វ/អក/វ.ក dated 06 June 2006 by the head of Department of Labour Dispute.
2. Minute on the resolution of the collective dispute dated 02 June 2006.

Provided by the Secretariat of the Arbitration Council:

1. Letter of Arbitrator selection by the worker party to the hearing dated 07 June 2006.
2. Letter of Arbitrator selection by the employer party to the hearing dated 07 June 2006.
3. Letter of third-Arbitrator-to-the-hearing selection dated 07 June 2006.
4. Minute on receipt of information from the lawyer of the Sports Wear company dated 08 June 2006

FACTS

- Having examined documents submitted to the Arbitration Council
- Having examined the report of the collective labour dispute
- Having listened to the statements of the worker party and the employer party.

The Arbitration Council finds that:

Cambodia Sports Wear MFJ Ltd. was established in 1997. It currently employs approximately 5,250 workers. Among these workers, 400 workers who are the subject of the demand of this case work in the finishing section.

In a pre-hearing meeting, the worker party mentioned that the first demand is to demand the company to implement and follow the Arbitral Award 30/36 by the Arbitration Council. Labour dispute No. 30/06-Sports Wear was settled by the Arbitration Council in the Arbitral Award dated 18 May 2006. The Award requires the company to provide the piece rate price each time the

company asks workers to redo the product and ensure that workers can receive at least the minimum wage required by the law. However, the award was objected to by the employer party on 23 May 2006. It is because of this reason that the worker conducted a strike to demand the employer follow the Arbitral Award.

REASONS FOR DECISION

The worker party in this case withdrew the demands from issue 2 to issue 6 as shown in the non-conciliation report issued officially by the Ministry of Labour and Vocational Training and the withdrawal was submitted to the Arbitration Council through a letter dated 09 June 2006 signed by Mr. Tol Phanmoeung, the head of National Labour Union Federation. Based on this the Arbitration Council does not consider the withdrawn issues. (See Arbitral Award 47/05-Ho Y). Thus, there is only one remaining issue: that is, issue 1 in the non-conciliated report which is considered in this case.

Issue 1 in the non-conciliated report states that *workers demand the company to implement and follow the Arbitral Award of the Arbitration Council*. In the pre-hearing meeting which was held on 08 June 2006, the worker party stated that they demand for implementation of the Arbitral Award No. 30/06-Sports Wear which was issued by the Arbitration Council on 18 June 2006. But that Arbitral Award was rejected by the employer party on 23 May 2006. According to article 40 of the Prakas 099 សកប្បវិញ្ញាណកម្ម issued on 21 April 2004, a party who wants the other party who had rejected the Arbitral Award to follow that Arbitral Award, has to lodge a complaint to the authorized court for a final decision or conduct a strike according to Article 319 of the Labour Law 1997. The request regarding this decision is outside the jurisdiction of the Arbitration Council (see article 40 of Prakas 099/04). Therefore, the Arbitration Council does not consider this demand. Based on the above facts, legal principles, and evidence the Arbitration Council makes its decision as follows:

[DECISION???

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Hem H. Naryth**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Tong**

Signature: