

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

**THE ARBITRATION COUNCIL**

Case: 46/04

Date of award: 5 July 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**M & A Cambodia Garment Co., Ltd**

(Employer party)

**AND**

**Khmer Youth Union**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:** 1- Ms. Lo Yin Lan                      Company Director  
2- Mr. Nel Son    Assistant to the Director  
3- Mr. Trang Ty    Interpreter  
4- Ms. Chang Ailing                                      Interpreter  
5- Mr. Lonh Heang                                      Representative of GMAC

**Address:** # 90-92, Street 230, Sangkat Psa Doeunkor, Khan Tuol Kok, Phnom Penh.

**Tel:** 023 722 292    Fax: N/A

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Mr. Ky Sovannarith                      Union President  
2- M. Peng Gnuon                                      Vice President of the Union  
3- Mr. Ov Vannara                                      Worker  
4- Mr. Pa Puthery                                      Worker  
5- Mr. May Vathana                                      Representative of KYTU

**Address:** # 403, Street (no number), Sangkat Beng Tumpun, Khan Mean Chey, Phnom Penh.

**Tel:** 012 635 056    Fax: N/A

## **ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- Workers demand the company provide full basic salary when there is no work to do, and to repay the workers who have a specified duration employment contract.
- 2- Workers demand that the company install more equipment in order to reduce the heat on the fourth floor.

### **JURISDICTION OF THE ARBITRATION COUNCIL :**

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labor Law (1997); the Prakas on the establishment of the Arbitration Council No. 338, dated 11 December 2002; 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 hearing was unsuccessful. The non-conciliation report dated 04 June 2004 was submitted to the Secretariat of the Arbitration Council on 14 June 2004.

### **COMPOSITION OF THE ARBITRATION PANEL :**

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

### **HEARING AND EVIDENCE:**

**Date and place of hearing:** 22 June 2004 at 2:00 pm at the Secretariat of the Arbitration Council

**Witnesses and Experts:** No

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

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

- 1- The commercial registration certificate of the company dated 9 February 1998.
- 2- The internal rule of the company dated 13 November 1998.
- 3- The meeting letter of the Ministry of Social Affairs and Labor No 005 MoSALVY dated 31 May 2004.

- 4- The minutes of the collective dispute conciliation dated 31 May 2004.
- 5- The minutes of information of Mr. Duong Chanrasmey dated 31 May 2004.
- 6- The letter of Khmer Youth Trade Union submitted to the Director of Labor Inspection Department No 183.
- 7- The complaint of the workers submitted to Khmer Youth Trade Union dated 26 May 2004.
- 8- The payroll of the workers for March, April and May 2004.
- 9- The employment contracts of Keo Vanny, Kea Meng Sroy, Roeun Simhong, Chan Thyda, and Sam Danith.

**Documents Provided by the employee party: None**

**Documents Received from MoLVT:**

- 1- The non-conciliation report of the Ministry of Labor dated 4 June 2004.
- 2- The minute of the collective dispute conciliation dated 31 May 2004.
- 3- Minute of the Ministry of Labor dated 08 June 2004.
- 4- The cover letter of the Ministry of Labor dated 08 June 2004.

**The presentation and testimony answers provided by the representatives of both parties during the hearing.**

**Both parties decided in the hearing that *this award is not binding.***

**CASE SUMMARY:**

- 1- M&A Cambodia Garment Co., Ltd is located on No. 90-92, Street 230, Sangkat Psa Doeunkor, Khan Tuol Kok, Phnom Penh and employs 180 workers. On 26 May 2004, the workers demanded that the company improve some working conditions. On 31 May 2004, Labor Inspection officials conciliated with the parties and reached an agreement on nine of 11 issues. The Arbitration Council received this case from the Ministry of Social Affairs and Labor on 14 June 2004 and conducted a hearing on 22 June 2004.
- 2- The testimony of the employees  
The employees question how they can survive when there is no work for them to do and the company pays them only 50% of their basic salaries. If the company suspends their employment contracts legally according to the Labor Law, they would not be entitled to any payment because it is the law. So, all the workers ask the company to preserve full basic salary payments to workers who have specified duration employment contracts. During the hearing, the workers give up their demand requiring the company to repay them for instances of insufficient wage [payment].

The workers also attest that it is very hot on the fourth floor. The roof of the factory was moistened with water but this did not reduce the heat. In addition, there is tissue on the fourth floor; which in periods of sun cause a bad smell including a chemical smell and it is very difficult to breathe. The company should reduce the heat by installing exhaust fans to absorb the bad smell in order for the workers to breathe more comfortably.

3- The testimony of the employer:

The employer attests that the company will pay only 50% of the basic salary when there is no work because it is clearly mentioned in the workers' employment contract. The company asks that the contract and Labor Law be followed.

Regarding the heat on the fourth floor, the company has thrown some water on the roof and it seems enough to have reduced the heat. However, the company promises to throw more water and to install fans on the fourth floor in order to reduce the heat and to provide air circulation.

**FINDINGS OF FACT:**

- Having examined the non-conciliation report
- Having listened to the representatives of both employer and employee sides
- Having checked the above documents

**We find that:**

- 1- M&A Cambodia Garment Co., Ltd employs 180 workers including specified duration employment contract workers. On 26 May 2004, the employees demanded that the company pay them [their] full basic salary when there is no work for them to do.
- 2- In the past, when there has been no work for the workers to do, the company suspended a few workers for a few days by asking them to go home or by telling them in advance about the suspension.
- 3- The company did pay the workers, including those on specified duration employment contracts, 50% of the basic salary as mentioned in the employment contract.
- 4- The workers gave up their demand requiring the employer to repay the specified duration employment contract workers for their lost wages.
- 5- It is very hot on the fourth floor because it is so close to the roof and because of the abundance of tissue. As a result, there is not enough air circulation and the chemical smell of tissues pollutes the environment of the workplace.
- 6- The company has promised to install more pipe-lines and three more fans on the floor.

## **REASONS FOR DECISION:**

### *1<sup>st</sup> issue:*

According to Notification No. 017 of the Ministry of Social Affairs and Labor, the employer has to pay the workers a minimum salary of USD45 every month. But in cases where the enterprise faces an economic problem or difficult circumstances, the employer has the right to suspend the employment contract if the suspension is under the control of the Labor Inspection Department. If the employer has not suspended the contract in conformity with the procedures mentioned in Article 71(11) of the Labor Law, the employer has an obligation to pay the minimum wage to the workers.

The specified duration employment contract stipulates that the worker agrees to accept 50% wages when the company faces difficult circumstances which lead to stopping work temporarily as mentioned in the Labor Law. According to the meaning of this contract, the Arbitration Council finds that it is less favorable to workers in comparison to [the entitlements set out in] the Labor Law. Thus, according to Article 13 of the Labor Law, the Arbitration Council finds that the actual employment contract cannot be applied, except where the employer follows the requirements set out in Article 71 of the Labor Law.

### *2<sup>nd</sup> issue:*

The employer agreed to meet the workers' demand by promising to install more pipes and 3 more fans on the fourth floor in order to reduce the heat and to improve the environment there.

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

## **DECISION:**

### *1<sup>st</sup> issue:*

The employer must pay the employees full basic salary, except where the employment contract is suspended in conformity with Article 71 of the Labor Law.

### *2<sup>nd</sup> issue:*

The company must install more pipes and three or four more fans on the fourth floor of the factory.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

**Arbitrator chosen by the employer party:**

Name: Kao Thach

Signed: .....

**Arbitrator chosen by the worker party:**

Name: An Nan

Signed: .....

**Chair of arbitration panel:**

Name: Ang Eng Thong

Signed: .....

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.

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.