



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 and a non-conciliation report dated 21 April 2004 was submitted to the Secretariat of the Arbitration Council on 26 April 2004.

**Composition of the arbitration panel:**

Arbitrator chosen by the employer party: Mar Samborana

Arbitrator chosen by the worker party: Tuon Siphann

Chair arbitrator (chosen by the two arbitrators): Sok Mathoeung

**Hearing and Evidence:**

Date and place of hearing: Thursday, July 01, 2004 (08.00 – 12.00), Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

**Evidence:**

Provided by the employer party:

1. The Internal Work Rules of the factory, Da Joo Cambodia, dated November 10, 1998, registered at the Department of Labor Inspection on December 03, 1999.
2. Letter No. 112/04, dated July 01, 2004, from the factory to Mr. Hel Sen expressing an intention to resolve the labor dispute at Da Joo factory in the Arbitration Council.
3. Notification No. 993 from the Ministry of Interior, dated October 08, 1997, about the procedure for making a police profile for each worker and each employer in the factory.
4. Letter from the Police in Kandal Province No. 054, dated November 03, 2002, on making profiles at the factory.
5. Mission letter of the Cabinet of Kandal Province No. 283, dated August 5, 2003.
6. Letter of the Ministry of Interior No. 17/03, dated April 28, 2003, on making a profile for each worker and each employer and the contribution fee.
7. Receipt for contribution No. 73/02, dated December 05, 2002.
8. Registration Certificate of the Da Joo Cambodia Factory, dated October 16, 1996.

Nothing provided by the employee party.

Received from MoSALVY:

1. Non-conciliation Report on June 14, 2004 from MoSALVY
2. Minutes of conciliation of collective labor dispute.
3. Evidence of oral testimony at the hearing

**Summary of the Case:**

The Da Joo Cambodia factory employs 450 workers.

420 workers went on strike to urge the employer to respond to 8 demands made on June 11, 2004.

An officer of the Kandal Labor Inspector conciliated the dispute on June 11, 2004 and both parties reached an agreement on 6 points. The other 2 points, as set out above, were not resolved.

In the hearing on July 1, 2004 at the Arbitration Council Secretariat, the parties raised the following issues:

### **Issue 1**

#### **Employees:**

The workers claim that the administrator of the factory took the workers' thumbprints in preparation for each worker's or each employer's profile and he required the workers to contribute 3,00 riels. At that time, the workers made thumbprints without understanding the reason or the written document about it. The workers affirm that they did not want to pay but they were required to, and they obeyed out of fear of the employer. If the police had asked them to pay, they would not have paid. During payment, there was an administrator of the factory named Chanthy who collected and kept this money for the police. After making thumbprints and paying the fee, the workers never received anything back in the nature of a profile copy or receipt. All the workers doubt the importance of the profile for workers. The workers do not know what they can use it for.

First and foremost, the workers' representatives claims that the employer should pay 100%, which equals 3,000 riels for each worker. The workers affirm that the factory told the workers to pay for this profile. This demand required workers to pay without ever consenting to pay. Even so, the workers' representatives have accepted that the profile is related to each worker and also to each employer.

Letter No. 993 of the Ministry of Interior on October 8, 1997 addresses police employee profiles. The profile is made with the purpose of guaranteeing the public security of the factory. Therefore it is in the common interest of both the workers and the factory. Based on these reasons, the workers think that the employer should pay at least 50% to each worker, which would equal 1,500 riels each.

Moreover, the workers claim that they did not meet directly with the police. The police contacted the employer and the factory relayed it to the workers. Based on a receipt, the police clarified that they received the contribution from the factory, but it was not from the workers directly. The receipt has the signature of the factory's administrator and a policeman. Thus, the workers argue that the factory is solely responsible for paying this contribution.

#### **Employer:**

The factory argues that the profiles are the individual (personal) responsibility of each worker and each employer because they are required by the Ministry of Interior for reasons related to public security in factories and other enterprises. The factory is not responsible for this fee. The factory

says that if workers do not agree about this issue, they should complain to the Ministry of Interior, or the police officer or other persons, as named in the receipt, who received the contribution.

The factory promises to bring the documents back to the workers who have paid for them. Some workers paid the money, 3,000 riels, directly to the police and others gave it to the police through the administrator, Chanthy. The factory said that the factory did not deduct 3,000 riels from the workers' wages. Workers received their salaries as normal, and then they took 3,000 riels from their envelopes and gave it to the administrator to pay the profile fee to the police. There was no deduction in the payroll, and workers received their full salaries. The administrator, Chanthy, has stopped working in this factory and he now works for another factory.

The factory also wishes to clarify that the police required the contributions from the factory, and that it was not the factory's idea. The factory simply told workers that the police would collect 3,000 riels from each worker and each employer for a profile fee. When the police gave the mission letter to the factory, the factory asked the police who was to pay the fee. The police told the factory that the individual workers or employers would pay because this was a personal profile. This fee was also addressed in the letter from the Ministry of Interior No.17/03, dated April 28, 2003, stating that Cambodian workers should pay 3,000 riels and foreigners should pay US\$5 for the printing, ink, follow up book, etc. The factory's representative raises the point that the profiles are made only in the factories and other enterprises in Kandal Province and not in other provinces or in Phnom Penh. The factory said that workers in other factories pay 3,000 riels for their profiles by themselves and they have never requested the money back from the factories.

## **Issue 2**

Workers said that they have to undergo medical examinations that are required by the employer, but the factory does not pay for them. Each worker paid 10,100 riels to Medical Services for their own examinations. Workers affirm that some examinations were paid for by the factory and others were paid for by the workers themselves. Workers claim that it is the employer who must pay for the medical examination according to the law. Thus, workers claim the employer must pay the full fee, 100% and pay for all workers, a total of \$450. After the negotiations between the workers and the employer, the workers agreed to pay 50% if the employer agreed to pay the rest.

The employer said that the factory could not pay for the medical examinations for the workers because it is the obligation of the workers to have a medical examination before starting work in the factory. Moreover, the factory protests that they allowed workers to have medical examinations during the workday without deducting salary or attendance bonuses and the factory also rented cars for the workers. The factory has already spent lot of money, so the factory does not agree and cannot pay more. However, based on a negotiated agreement, the factory later agreed to pay back 4,000 riels to workers for their medical examinations. Workers accept the employer's offer to pay 4,000 riels back to each worker. The employer promises to pay this money to all workers on July 10, 2004.

### **Fact Finding:**

- After checking the non-conciliation report,
- After listening to the report of the employee and the employer parties as recorded in the hearing minutes,
- After checking all the documents,

### **The Arbitration Council finds that:**

#### **Issue 1**

1. Regarding worker profiles in factories and enterprises to guarantee public security, the Ministry of Interior issued Notification, No.993, dated October 08, 1997. In the Notification, the Ministry of Interior stated that the procedure for making a profile is as follows:
  - The personal information of each worker or each employer must be extracted from the workers' and employers' profiles in their workbooks to file in a police profile.
  - A photograph of each worker or employer (3 × 4mm) of professional quality must be taken and pasted on this profile.
  - Thumbprints of each employee or employer must be included in the workbook and the profile.
2. In response to the request of the Kandal Province police superintendent, the Kandal Provincial Hall sent a mission letter, No.620, dated October 18, 2002, to nominate 6 police officials who would be in charge of profiles in the factories and enterprises in all districts in Kandal province.
3. On November 3, 2002, the Kandal Province police sent a letter, No.054, to Da Joo factory to inform them about their mission in the factory to make profiles on December 5, 2002 at 8:00am.
4. On December 5, 2002 a police officer named Nuon Leng signed a contribution receipt, No.73/02 on receiving 126,000 riels from the factory director for 42 workers; 3000 riels per worker.
5. On April 28, 2003, the police department in Kandal Province sent a letter, No.17/03, to inform all factories and enterprises in Kandal Province about the mission to make profiles in the factories for each worker or each employer. The letter also addresses the contribution fee, 3,000 per Cambodian worker and \$5 per foreign worker.
6. Based on the request of Kandal Province police superintendent, the Kandal Provincial Hall sent a mission letter, No.283, dated June 17, 2003, to nominate 4 police officials who would be in charge of profiles in the factories and enterprises in all districts in Kandal Province.
7. On July 7, 2003, the Kandal Provincial police sent a letter, No.018, to Da Joo factory to inform them about their mission in the factory to make profiles on July 9, 2003 at 8:00am.
8. Workers gave 3,000 riels for profile production. Some workers gave this money to the factory administrator who collected it and then the administrator gave this money to the police. Some workers gave money directory to the administrator in front of the police during the making of

the profiles. Workers didn't agree to give 3,000 riels to the police. When workers made thumbprints and gave money to the police, they didn't understand what the document was. The employer party promises to bring this document back to workers.

9. Workers did not receive a certificate or profile copy from the police after they made the thumbprints and gave the 3,000 riels. According to Notification, No.993, of the Ministry of Interior, the profile is made "To guarantee public security in the factories and enterprises where workers or employers are working in Cambodia and to facilitate police checks for fraud and crime in the factories or enterprises". This means the profile is an ID for each worker or each employer and makes it easier for the police to find perpetrators of crimes.
10. This profile is an administrative measure of the Ministry of Interior. The police in Kandal province make profiles to search for perpetrators to serve public interest, not only the factories or enterprises. There is no law or regulation that addresses who pays the contribution fee for each worker or each employer. The factory must facilitate all activity for the police to make this profile in accordance with the mission letter of the police. The factory received money, 3,000 riels from workers who did not pay directly to the police and the factory gave this money to the police.

## **Issue 2**

The workers have a medical examination that is required by the factory and all workers pay 10,100 riels for this fee on their own. The factory pays compensates some workers for this fee, but others pay by themselves.

The factory allowed workers to have a medical examination during the working day without deducting day wages or attendance bonuses and the factory also rented cars for workers.

The factory agrees to pay back 4,000 riels to each worker. The employee party accepts the employer's offer to give back 4,000 riels to each worker. The factory promises to pay this money to all workers on July 10, 2004.

## **Reasons for Decision:**

### **Issue 1:**

According to the Labor Law (1997), there is no provision requiring the employer or employee to make a profile, except for the one in the workbook, which is the obligation of each worker (Art. 32 and 34 of the Labor Law) and the medical examination that is the responsibility of the employer (Art. 247 of the Labor Law and Prakas No. 09/99).

Notification No.993, dated October 8, 1997, of the Ministry of Interior, requires the factory to help the officials of the Ministry of Interior and the Ministry of Labor to do profiles for each worker or each employer in factories or enterprises. This means the factory has an obligation to make it easy for the police to carry out their work. However, this obligation does not mean that the employer must collect

money from workers and pay it to the police. The obligation to facilitate involves making arrangements for the police and workers to communicate.

According to letter No.17/03 of the Ministry of Interior, dated April 28, 2003, "the contribution fee, of 3,000 riels for each Cambodian worker and US\$5 for each foreign worker, in all factories or enterprises in Kandal province must be consistent". This letter does not mention clearly who pays for the cost of the profiles. According to the law, it is likely that neither employer nor employee is obliged to pay because documenting profiles is a public service by a public authority in order to maintain social order. However the Arbitration Council finds that, in practice, in at least some factories in Kandal Province, the workers and employers pay this fee on their own.

Moreover, Article 114 of the Labor Law does not allow the employer to manage the wages of workers without the workers' consent. This article states: "The employer, however, is prohibited from restricting the worker's freedom to use his wage at his disposal". The Arbitration Council finds that the employer themselves did not deduct 3,000 riels but that the workers gave it to them after they received their full salaries from the employer. However, the workers would not have agreed to pay 3,000 riels if they had not been afraid of the employer who was collecting this money. For this reason, the employer interfered with the workers' freedom to use their salaries. Based on legal principle, the Arbitration Council holds that the employer cannot and has no right to require or force workers to do anything relating to their salaries, except where there is a worker's agreement in advance or the law permits it. If the police or other authorities require workers to pay according to the law, those police or authorities shall directly tell the workers who have to pay this money. The Arbitration Council understands that forcing or requiring workers to use their salary at the employer's will is against Article 114 of the Labor Law, and therefore the employer cannot do this.

When the workers paid 3,000 riels directly to the police for making the profile in the factory, the employer did not do anything wrong because the employer completed their duty to facilitate the communication between the police and workers. However, when the employer plays a role in the process, by collecting money from workers and giving it to the police after the employer has paid the salary to workers, this is unlawful because this action is the same as a salary deduction and that is prohibited by Article 114 of the Labor Law. Thus, the Arbitration Council finds that the employer party must stop collecting money from workers to give to a third party, unless there is a prior written agreement from the workers or the law requires the employer to do so. The collection by the employer was unlawful and the employer must be held responsible for this action.

**Issue 2:**

The employer and employee parties agree that the employer party will repay 4,000 riels to each worker.

### **Decision & Orders:**

According to the facts, evidence and law as mentioned above, the Arbitration Council decides to issue the decision and award as follows:

1. The employer must stop collecting money from workers for third parties when there is no prior written agreement from the workers or law requiring the employer to do it.
2. The Council rejects the workers' complaint that the employer must pay 3,000 riels to each worker for the profile contribution fee.
3. The employer must pay 100,000 riels in compensation to the Khmer Youth Union in Da Joo factory as compensation for the wrongful action of the employer in collecting their money by the end of July 2004.
4. The employer party must keep its promise to contact the proper authorities to find the profile documents that workers paid for and give them back to the workers within 3 months of when this award come into effect.
5. Based on both parties' agreement, the employer must pay 4,000 riels back to each worker for medical examinations that the workers have paid for. Both parties agree to pay and receive this money, respectively, on July 10, 2004.

### **Signatures of Members of the arbitration panel:**

Arbitrator chosen by the employer party:

Name: Mar Samborana

Signed

Arbitrator chosen by the worker party:

Name: Tuon Siphann

Signed

Chair of arbitration panel:

Name: Sok Mathoeung

Signed

*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.*

*This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*