

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 49/04

Date of award: 27 July 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**Ho Hing Garment Company**

(Employer party)

**AND**

**Workers of Ho Hing Garment Company**

(Employee party)

**ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The workers demanded the company grant special leave to general workers by preserving their daily wage and attendance bonus but allow the company to deduct the special leave from the workers' annual leave.
- 2- The workers demanded the company provide women, who have been working for one year and have taken maternity leave, 50% of their wages, 100% of their attendance bonus (\$5) and 100% of their seniority bonus.
- 3- The workers demanded the company make a piecework record book everyday.

**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 successful in respect of seven of 10 issues leaving two unsuccessfully conciliated issues.

The non-conciliation report dated 24 June 2004 was submitted to the Secretariat of the Arbitration Council on 25 June 2004.

**COMPOSITION OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:	<b>Mr. Kao Thach</b>
Arbitrator chosen by the worker party:	<b>Mr. Tuon Siphann</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Sok Mathoeung</b>

**HEARING AND EVIDENCE:**

**Date and place of hearing:** 2 July 2004 at 8:00am at the Secretariat of the Arbitration Council.

**Witnesses and Experts:** No

**CASE SUMMARY:**

Ho Hing Garment Company employs 533 workers. On 31 May 2004, the workers made a complaint to the Labor Inspection Office in Khan Reussey Keo to demand the company to improve their working conditions in compliance with the Labor Law. The Labor Inspectors then went to conciliate this dispute from 2 to 12 June 2004 and succeeded in conciliating seven of 10 issues.

When the employees take special leave, the employees ask the company to maintain the USD5 attendance bonus for all workers, including regular and irregular workers, and the employees will allow the company to cut the daily wage of irregular workers.

The employees confirmed that they have the right to a day and a half of annual leave when they have worked for the employer for a full month. So the employees demand the company maintain the full attendance bonus and daily wage and agree to let the company deduct special leave from the worker's annual leave. If any worker does not have the right to take annual leave, the company can deduct the amount [of special leave taken] from his wage at the end of his contract.

The employer attests that only regular workers have the right to take special leave, while the irregular workers do not have such a right. The employer realizes that after working for the company for three months, all workers become permanent workers but in practice the workers are not entitled to special leave until they have worked for six months. In practice, the company gives the attendance bonus and cuts the daily wage when an employee takes

special leave. The employer prefers to have an agreement that preserves the attendance bonus for all workers when they take special leave and cut the daily wage for workers who have worked for the company for less than one year.

The employees argue that according to Article 183 of the Labor Law, women are entitled to maternity leave of ninety days and payment of half of their wage [for this period]. They added that according to the Notification of the Ministry of Social Affairs and Labor No. 017, women who take maternity leave could receive 100% of their seniority bonus and 100% of their attendance bonus (USD5). Moreover, they argue that Mr. Huot Chanthy, Director of the Labor Inspection Department, clearly mentioned in his explanation that the women would be entitled to ninety days leave, 50% of their wage, 100% of their seniority bonus, and 100% of their attendance bonus (USD5).

The employer affirms that he will comply with the rules of the Ministry of Social Affairs and Labor. He allows women workers to take 90 days of maternity leave, to be paid 50% of their wage, and 50% of their seniority bonus. But he does not provide the attendance bonus because a worker can only get this attendance bonus when she has worked for the company for one month without interruption. As an aside, the employer states that he provides those employees with USD15 for baby milk. He thinks that 50% of the seniority bonus is similar to 50% of the wage that the worker would receive during the maternity leave.

The employees demand the company make a piecework record book everyday because:

- 1- In other factories, a piecework record is done daily or weekly;
- 2- The company never shows them the way to calculate a wage and the number of hours that machines were broken in each month; and
- 3- The workers suspect that the company could incorrectly calculate the actual amount of work that they have done.

The employees affirm that the company uses old machines, bad spare parts and that the machines are often broken. The mechanics are not skillful in repairing machines. The Chinese team leaders are sometimes reluctant to sign to confirm that there are broken machines. The workers agree that if the machine is broken for less than half an hour, they will not ask for payment, but if the machine is broken for more than half an hour, the company must pay them.

The employer stated that there are only three accountants in the company. If the workers require the company to make a piecework record everyday, this would be impossible because there are a lot of workers. The workers can check their piecework every week. In

actual practice, the company collects piecework everyday and distributes the wage-calculating list to every team leader in order to inform his team members every week. If there is a mistake, the company will recalculate. The company notes that most of the workers can sew faster and have received an increase in wages since the company introduced the piecework sewing system. Since July 2004, when there was not any work, the company pays workers USD1.73 per day added to their piecework if they are present in the company or helping to work in another work place. But if the company asks the workers to go home when there is not any work, the company will pay them only 50% of their wage. If the machines are broken for less than two hours, the company will not pay them; but the company will pay them if the machines are broken for more than two hours.

In the hearing, the parties reached an agreement on the first issue and let the Arbitration Council issue an award in respect to the second and third issues.

**FINDINGS OF FACT:**

- Having examined the non-conciliation report
- Having listened to the representative of both the employer and employee parties
- Having checked relevant documents

**We find that:**

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

In respect of maternity leave, the company has provided women workers with 90 days leave, 50% of their wage, 50% of their seniority bonus, and USD15 for baby milk. [The employer has not provided] the USD5 attendance bonus [for this period]. The employees think that in respect of maternity leave, the women workers should have 90 days leave, 50% of their wage, 100% of their seniority bonus and 100% of their attendance bonus (USD5).

***3<sup>d</sup> issue:***

The company used to show workers the wage-calculating list, but did not ever show them how many hours the machines were broken in each month. The company did not pay workers when the machines were broken. The employees said that they did not have enough time to check that list and also did not have an ability to understand the list in by viewing it for a short time. They suspected that the company may incorrectly calculate their wages. At the hearing, the employee party agreed to accept that if the machines are broken for less than one hour, they would not be paid. But if the machines are broken for more than one hour, they must be paid.

There are three accountants in the company. The company collects piecework everyday and distributes the wage-calculating list to every team leader in order to inform his team members about it every week. If there is a mistake, the company will recalculate. The company confirms that since July 2004 when there are periods of no work, the company will pay the workers USD1.73 per day in addition to their piecework if they are present in the company or helping to work in another work place. But if the company asks the workers to go home when there is not any work, the company will pay them only 50% of their wage. The company mentions that if any worker does not receive wages up to USD45 per month, the company shall provide an extra amount in order to meet the USD45 per month [minimum]. If the machines are broken for less than three hours, the company will not pay the workers, but the company will pay if the machines are broken for more than three hours.

The employees maintain their demand that if the machines are broken for one hour or less than one hour, the company need not pay them, but if the machines are broken for more than one hour the company must pay them.

Both parties agree to keep the old system of piecework recording and the company promises to provide to the workers every week via the team leaders the number of piecework completed so the employees can check their completed piecework rate for that week. The company will provide them with 15 minutes at the end each week to check [the record]. The company will also post large signs showing the workers how many hours the machines were broken.

#### **REASONS FOR DECISION:**

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

The company allows woman to have 90 days leave. The first paragraph of Article 182 of the Labor Law 1997 stipulates that “in all enterprises covered by Article 1 of this law, women shall be entitled to maternity leave of ninety days.” So the practice of the company is in conformity with Article 182 of the Labor Law. Both parties are therefore no longer in dispute in relation to this issue.

The company also provides payment of 50% of their wage to women workers [on maternity leave]. The first paragraph of Article 183 of the Labor Law stipulates that “during maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites paid by the employer.” So the practice of the company is in conformity with Article 183 of the Labor Law. Both parties are therefore no longer in dispute in relation to this wage issue.

The employer agrees to pay 50% of the seniority bonus to women taking maternity leave. According to the above Article 183, the Arbitration Council finds that the seniority bonus is considered as a perquisite because the purpose of this Article is to allow women taking maternity leave to receive at least 50% of their usual benefits. Moreover, according to the fifth point of the Notification No. 017 of the Ministry of Social Affairs and Labor dated 18 July 2000, the employer must pay all employees this seniority bonus. This fifth point states that "any worker who has been working for one year, two years, three years and four years shall be paid \$2, \$3, \$4 and \$5 per month relatively as seniority bonus." The Arbitration Council finds that this seniority bonus is covered by Article 183 of the Labor Law and that the employer must pay women taking maternity leave at least 50% of this seniority bonus.

The employer has provided USD15 for baby milk to the women taking maternity leave. According to the principle of Article 13 of the Labor Law 1997 on the public order, the Labor Law is not an obstacle against the company providing the workers with benefits better than the law. Additionally, the second paragraph of Article 183 states that "women fully reserve their rights to other benefits in kind, if any." The Arbitration Council finds that the company's act of providing USD15 for baby milk to women taking maternity leave is a good practice.

However, the company still disagrees about providing the USD5 attendance bonus to women taking maternity leave.

The employees argued in the hearing that women taking maternity leave must be paid the USD5 attendance bonus based on a letter from Mr. Huot Chanthy, Director of the Labor Inspection Department, dated 24 January 2003 to the Director of Sam Han Company. In his letter, Mr. Huot Chanthy had specified in the second point that "Women have ninety days for taking maternity leave. In reference to Article 183 of the Labor Law, any woman worker who has worked for the enterprise for at least one year must be paid 50% of her wage and other perquisites including the attendance bonus and seniority bonus without any change." The Arbitration Council finds that this letter is an interpretation of Article 183 based on his own opinion. His interpretation is not a juridical norm for the employer and employees to follow. It is simply an instructional document. Moreover, the Arbitration Council finds that his interpretation is not persuasive.

Regarding the attendance bonus, the Arbitration Council considers that it is covered by Article 183 of the Labor Law as a "perquisite". However this Article does not clearly mention what else is included in the term perquisites. The Arbitration Council finds that the third point of the Notification No. 017 is clear enough in regard to the attendance bonus. It stipulates that "workers who punctually work by following correctly to the number of the days in each

month will receive a bonus of at least \$5 per month.” With reference to only this Notification, the women taking maternity leave might not be able to receive this attendance bonus because they do not actually come to work. However their maternity leave is legally permitted and the Labor Law states clearly that they must receive their wages and benefits equal to at least 50% of what they usually receive.

Regarding wages, point 4 of Article 103 of the Labor Law states that the wage includes bonuses and indemnities. The Arbitration Council finds that the attendance bonus is included in the terms of this Article if the worker used to receive it before taking leave. Meanwhile, the last paragraph of Article 183 of the Labor Law stipulates that “the wage benefits specified in the first paragraph of this Article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.” Therefore the Arbitration Council considers using the one-year period before taking maternity leave to calculate the attendance bonus. This is reasonable and fair for both employer and employee parties. This means that this wage should be calculated by dividing by 12 the wages and benefits which the worker has received in the 12-month period before taking maternity leave. In this way we can find the average of each month. This average is then divided by two in order to calculate 50% of the wage. The employer should provide this amount of money to women workers taking maternity leave.

**3<sup>d</sup> issue:**

In regard to the employees’ demand that the company make a piecework recording book everyday, this is a demand of a kind to change the company’s management system which is the exclusive right of the company. In general, workers have no right to interfere in the management of the company, except where a management decision affects their interests. In the hearing, the workers said that they are afraid of miscalculations of their piecework and of receiving lower benefits. The Arbitration Council finds that the concern of the workers is founded because they sew by piecework. In fact, the workers have not provided enough evidence to show the Arbitration Council loss caused by the company’s management style. In the hearing, both parties agreed to keep the old style of piecework record, and the company promised to provide the workers with written information on piecework recording every week via the team leaders. Meanwhile, the workers can record by themselves the piecework that they have done each week and the company will provide them 15 minutes at the end of every week to verify their piecework rate.

In regard to the broken-down machines, the Arbitration Council finds that the broken-down machines mean that the workers cannot sew as much as possible and it appears that the company does not have any work for the employees to do. It is the company’s responsibility

to provide work to the workers. If there is no work, the employer is still required either to go on paying the workers or to temporarily suspend the workers' employment contract in reference to Article 71 of the Labor Law. However, the company does not follow this Article. So the company has to meet the employees' demand to pay them when the machines are broken for more than one hour. The way to calculate the hourly wage when the machines are broken is:

- 1- Divide USD45 of minimum wage by 26 working days per month = USD1.73 per day
- 2- Divide USD1.73 by 8 hours per day = USD0.31625 or 865 riels per hour
- 3- Multiply 865 riels per hour by the actual number of hours which the machines were broken.

In the hearing, both parties agreed that the daily wage is USD1.73.

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

#### **DECISION:**

*1<sup>st</sup> issue: during the hearing, the parties reached an agreement as follows:*

- 1- The employer will allow the workers to take special leave in any urgent case.
- 2- The employer will not deduct the daily wage and attendance bonus of the workers who have worked for the company at least one year when they take special leave.
- 3- The employer will deduct the daily wage and preserve the attendance bonus of the workers who have worked for the company less than one year when they take special leave.

*2<sup>nd</sup> issue: Order the employer to provide women workers who take maternity leave as following:*

- 1- 90-days leave; and
- 2- Half wages and all perquisites. This amount will include the seniority bonus and the attendance bonus of the 12-month period before the taking of leave and will be divided by 12 months in order to calculate the average amount of each month; then divided by two in order to find the amount to be provided to the women workers in each month.

*3<sup>rd</sup> issue: Order the company to:*

- 1- Inform the workers of the piecework record every week via team leaders.

- 2- Provide the workers 15 minutes at the end of every week to check the number of piecework they have done that week.
- 3- Post at the information table a large note about the broken machines and the time that the breakage will last.
- 4- Pay the workers if the machines are broken for more than one hour. Pay each worker 865 riels per hour during the period that the machines are broken.

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

**Arbitrator chosen by the employer party:**

Name: **Kao Thach**

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 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.