

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 52/04

Date of award: 22 July 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Cinkamp Apparel Corp

(Employer party)

AND

Cambodian Workers Union Federation

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives:

- 1- Mr. Herman Fan, President of the company
- 2- Mr. Ing Sineng, Administration Chief
- 3- Mr. Phol Tha, Security Chief of the company
- 4- Mr. Kim Heng, General Manager

Address: Prey Pring Village, Chom Chao quarter, Dagnkor district, Phnom Penh.

Tel: 016 909 002 Fax: N/A

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

- 1- Mr. Chay Sophea, Coordinator
- 2- Mr. Yin Sokhorn, CLUF Coordinator
- 3- Mr. Srieng Narath, CLUF Coordinator
- 4- Mr. York Sokan, President of the Union
- 5- Ms Soeurn Vanna, Vice-president of the Union
- 6- Mr. Un Sok, Secretary General of the Union
- 7- Mr. Soung Sokcheang, Advisor of the Union
- 8- Mr. Soung Bunthoeurn, Union Assistant.

Address: # 788, Street 474, Boeung Trabek quarter, Chamkarmorn district, Phnom Penh.

Tel: 012 670 237 Fax: N/A

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The employees demand that the company's security guards not use guns in the factory.
- 2- The employees demand that the company increase the wage for permanent workers as follows:
 - If the employees have been working for six months up to one year, there will be an increase of USD5 a month.
 - If the employees have been working for one to two years, there will be an increase of USD7 a month.
 - If the employees have been working for more than 2 years, there will be an increase of USD10 a month.
- 3- The employees demand that the company dismiss the current Administration Manager, Mr. Ing Sineng.

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 one of three issues, with two unsuccessful issues. The non-conciliation report dated 29 June 2004 was submitted to the Secretariat of the Arbitration Council on 1 July 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Mar Samborana
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Kong Phallack

HEARING AND EVIDENCE:

Date and place of hearing:

1st hearing: 7 July 2004 (2:00-6:00 pm) at the Secretariat of the Arbitration Council

2nd hearing: 12 July 2004 (2:00-5:00 pm) at the Secretariat of the Arbitration Council

Witnesses and experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:

Provided by the employer party:

- 1- Internal Work Rules
- 2- Letter of resignation
- 3- Minute dated 12 March 2002
- 4- Inactive balance sheet dated 31 December 2002
- 5- Inactive balance sheet dated 31 December 2003

Provided by the employee party:

- 1- Letter notifying the election of the president of the union, dated 16 March 2004
- 2- Letter approved by the Minister of MoSALVY, dated 26 September 2002
- 3- Certificate of registration dated 26 September 2004
- 4- Minute on collective dispute conciliation dated 25 June 2003

Presentation by employers and employees in the hearing.

The two parties decided in the hearing that: This award is not immediately binding.

CASE SUMMARY:

Cinkamp Apparel Corp totally employs 720 workers. On 22 May 2004 the Cambodian Workers Federation complained to the labor inspection office of the Dangkor district, asking the employer to resolve a ten-point problem. Having received the complaint, the labor inspection office of Dangkor district conciliated both employer and employees, and the two parties reached an agreement regarding seven points. The remaining non-conciliated points were submitted to the Arbitration Council on 1 July 2004. The Arbitration Council summoned the two parties to its first hearing on 1 July 2004 at 2 pm and the second hearing on 12 July 2004 at 2 pm.

The employees said that when they saw the security guards holding guns in the factory they were scared. In other factories the security guards do not use any guns. Rather, they use sticks. There are eight security guards in total, three of whom have guns.

The employees said that the company made a profit and was prosperous because previously there had been only about 400 to 500 employees, but now there are about 700

employees in total. The employees argued that if the company had not made any profits, it would not have hired more employees. As such, the employees demanded the company increase their wages based on seniority of workers—they demanded an increase of USD5 for working for six months to one year, USD7 for one to two years, and USD10 for working for more than two years.

The employees said that Administration Manager Mr. Sineng had threatened Ms. Vanna, the Union vice-president, twice but she did not remember exactly when. But, a threat took place on 15 June 2004 at around 8 am in the factory's meeting room. There were only two people, Mr. Sineng and Ms. Vanna. Ms. Vanna said Mr. Sineng said to her: *"You, stop working here. Otherwise, I will ask Brother Heng to do something, but I don't know what he's going to do. If you hit the ball hard, it will bounce back at you hard. If the Union leads any strikes, the company might suffer for at most three months. Then, it will be its turn for revenge."* Mr. Sineng asked Ms. Vanna to resign or to find other work. At that time, Ms. Vanna responded, *"It is not easy to buy me. I won't accept USD500 but USD2000."* The employees also said that in June 2004 during the conciliation process, the company changed Ms. Vanna's position from number punching position to pocket counting, which was not her regular position. In the number punching team, there were six workers, all of whom worked differently. But, the company only changed Mrs. Vanna's position. The employees said that the change was related to Ms. Vanna's position in the Union because the other five employees were not members of the Union. They also said that on 15 June 2004, the company had suspended Ms. Vanna for one week since she did not change her work as assigned by the company. The company said she could file a lawsuit if she wanted to. On 24 June 2004 she was allowed to return to work.

The employer argued that the security guards used guns to protect the workers as well as the company, and they never used guns to threaten any workers. The factory had just moved to a new place where there were gangsters who had swords with them. The gun use was to prevent the gangsters from disturbing the company.

The company said it had complied with the Announcement of MoSALVY to increase wages based on seniority of USD2 to USD5 a month to its workers. The company could not afford the amount demanded by the workers because according to the company's financial report, it was still not making profits. [The employees'] demand, based on the [argument] that the production had increased and so the company had to increase their wages, was not reasonable. The relocation of the company cost the company a fortune, and it had to make the working environment more favorable by equipping it with heat-absorbing fans etc. The company said that it had paid its employees the monthly USD5 for regular working, and at the end of the year the employees who had no absences were given a USD 10 bonus.

The employer said that the company could not fire Mr. Ing Sineng because he had not made any mistakes as accused by the Union. Sineng had never had any disputes with anyone. The President of the company said he had asked Sineng whether he dared to swear, and Sineng responded that he did. Moreover, some shop stewards and workers were unaware that there were some workers and the Union who demanded that the company dismiss Mr. Sineng. Sineng. He acknowledged that he had talked with Mrs. Vanna and asked her to move to another job. She was suspended for seven days for disagreeing to move. He had told Mr. Heng not to allow Vanna to return to work, pending a resolution. He did talk about the ball hitting [analogy]. The company argued that there was only one employee, Ms. Vanna, whose work is to number the trousers. She often gave the wrong numbers, and she was warned once in March 2004 for working slowly. Mr. Sineng had told Ms. Vanna not to work slowly as she was Vice President of the Union. But, she had to comply with the Internal Work Rules and Labor Law, and Union members had to work just like other workers.

In the hearing the two parties agreed on the 1st and 2nd points (See the attached agreement on page 9). As for the 3rd point, the Arbitration Council made its decision as follows:

FINDINGS OF FACT:

- Having examined the above documents
- Having listened to arguments and presentations of the two parties in the hearing

We find that:

The 3rd issue:

Mr. Sineng is the Administration Manager. He had talked at least once with Ms. Vanna, the vice-president of the Union, about the issues in the company and the Union affairs in the company meeting room on 15 June 2004 at around 8 am. Mr. Sineng said: *"You, I had told you to stop working in the Union, or I will ask Mr. Heng to do something, but I don't know what he is going to do. If you hit the ball hard, it will bounce back at you hard. If the Union leads any strikes, the company might suffer for at most three months. Then, it'll be its turn for revenge"*. Sineng asked Ms. Vanna to quit the Union or resign to find another job. Ms. Vanna refused to quit and find another job. In June 2004, she was transferred by the company from punching numbers to stamping pockets on clothing. On 15 June 2004 the company suspended Ms. Vanna for seven days when she refused to follow orders. Sineng had told Mr. Heng not to allow Ms. Vanna to return to work, waiting for a prior solution.

Ms. Vanna was blamed once in March 2004 for working slowly. But, she was never warned. At that time, Mr. Sineng had told Ms. Vanna not to work slowly as she was Vice

President of the Union. But, she had to comply with the Internal Work Rules and Labor Law, and the Union had to work just like other workers.

REASONS FOR DECISION:

3rd issue:

Mr. Sineng is the company's Administration Manager; therefore, his work concerns the employees, particularly when there are issues related to the work of the employees. Since Ms. Vanna is the vice-president of the Union, Mr. Sineng, who has to resolve issues arising in the company, must unavoidably deal with Ms. Vanna. The communication between Mr. Sineng and Ms. Vanna is not illegal.

Mr. Sineng told Ms. Vanna to quit the Union or resign to find another job. Ms. Vanna did not comply. After that, the company transferred Ms. Vanna from her work of punching clothes number to the stamping pockets team, but Ms. Vanna refused the transfer. As a consequence, the company suspended Ms. Vanna for one week. The Arbitration Council finds that this is discrimination by the company due to union membership, which is against the law. Article 279 of Labor Law states that: "*Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.*" Therefore, the employer's punishing of Ms. Vanna by changing her work and suspending her for one week owing to her involvement in the union rather than for any misconduct is contradictory to Article 279 of Labor Law of 1997. Since the employer committed the misconduct, he must be held responsible before the law. In this case, the employees could have demanded damages, but the employees did not demand damage payments only the dismissal of Mr. Ing Sineng. Therefore, the Arbitration Council does not decide on any damage payments to the employees, but considers the demand to dismiss Mr. Ing Sineng.

Based on the hearing so far, the Arbitration Council finds that the demand of the employees to dismiss Mr. Ing Sineng is inconsistent with lawful procedures to terminate a labor contract. The Arbitration Council also finds that it has no jurisdiction to order the employer to dismiss employees, including those in management. (See Linda case no. 04/03; Chou Sing case no. 14/03; Ho Hing case nos. 17/03 and 18/03; Chou Sing case no. 06/04; Lucky Zone case no. 15/04; Yada Printing case no. 16/04; Yshin case no. 32/04; and Full Value case no. 34/04).

The Arbitration Council notes that there are some exceptions in which the Arbitration Council can order the employer to dismiss or transfer employees including those in management if any employee or manager endangers the health and security of other employees or the company. (See Chou Sing case no. 14/03).

Article 65 of Labor Law of 1997 states that ["*a labor contract establishes working relations between the workers and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.*"] [(emphasis added)] Since this employment contract is subject to the ordinary law, Decree # 38 also has its jurisdiction over the employment contract. Article 22 of the Decree-Law stipulates that: "*A contract is regarded as law as between the parties. Alterations to the contract can only be made if the other party agrees to the alterations. A contract shall be executed honestly and in accordance with the purposes agreed upon by the parties. A contract binds only the parties to the contract.*"

So, it is only the parties of the contract who can end the contract, meaning that any employment or dismissal of any employee in a company is a right of the employer and employees, who are parties to the contract. Even if an employee commits serious misconduct as provided in Article 83 of the Labor Law, it is up to the employer whether to dismiss the employee. The Labor Law does not compel the employer to dismiss the workers in this case. Instead, the Labor Law merely gives the employer the right to dismiss employees in case they commit serious misconduct. (See Chou Sing case no. 14/03 and Hu Hing case nos. 17/03 and 18/04).

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

DECISION:

1. Order the company and the employees to comply with the agreement as follows:
 - 1.1. The security guards of the company can use guns at the gates of the company.
 - 1.2. The security guards of the company can use guns, but the guns must not be seen by the general public in the company campus.
 - 1.3. The security guards of the company cannot use guns (neither shown to the workers nor kept out of sight) in the factory or the places where the employees work.
2. Order the company and the employees to comply with the agreement as follows:
 - 2.1 The company gives a US\$10 bonus once every six months of each year, counting from January to June and from July to December. The payment of the bonus is counted from 1 July 2004 onwards. The first bonus has to be paid in June, and the second in December of each year.
 - 2.2 An employee can receive the payment in point 2.1.1 as long as he or she has been paid the monthly regular attendance bonus for during the previous period.

2.3 The company pays a bonus of USD5 at the end of December 2004 to any workers who have received the monthly regular attendance bonus from January to December 2004.

3. Reject the employees' demand to dismiss Mr. Ing Sineng.

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: Kong Phallack

Signed:

This Award will become binding after eight 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.

If either party lodges an opposition in accordance with the law, either party can proceed to the court or go on strike or lock out.

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.