

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 54/04

Date of award: 12 August 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**Cambodia Sportswear Mfg Co., Ltd.**

(Employer party)

**AND**

**Union of Workers for Prosperous Democracy of  
Cambodia Sportswear Mfg Co., Ltd.**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representative:** 1- Mr. Sar Samnang, Lawyer

**Address:** # 1533, National Route 2, Chak Angre Kraum quarter, Meanchey district, Phnom Penh.

**Tel:** 012 879 772 Fax: N/A

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Mr. Seng Sarom, President of the Union  
2- Mr. Yem Socheat, Vice-president of the Union  
3- Mr. Ly Kimyin, Union Secretary  
4- Mr. Kin Chhay, Union Activist  
5- Mrs. Kin Chhay, Union Activist  
6- Mr. Khun Phatt, Union Member  
7- Mrs. Mom Chan Srey, Union Member  
8- Mrs. Tek Bunnoeuk, Union Member  
9- Mr. San Lina, Union Member  
10- Mr. Lang Vutha, Union Member  
11- Mr. Mean Vay, Union Member.

**Address:** # 1305, National Route 2, Chak Angre Le quarter, Mean Chey district, Phnom Penh.

**Tel:** 012 398 198 Fax: N/A

## **ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The employees demand that the company comply with 26/04 - Sport Wear, dated 22 May 2004.
- 2- The employees demand that the company reinstate 14 union leaders and union members.
- 3- The employees demand that the company pay the allowances to the laid-off workers according to the law.
- 4- The employees request the company not bring guns into the company.

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

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labour 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 Labour Law. That conciliation hearing was successful in one of three issues, with two unsuccessful issues. The non-conciliation report dated 8 July 2004 was submitted to the Secretariat of the Arbitration Council on 12 July 2004.

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

Arbitrator chosen by the employer party:	<b>Mr. Hem Hour Narith</b>
Arbitrator chosen by the worker party:	<b>Mr. Tuon Siphann</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Kong Phallack</b>

### **HEARING AND EVIDENCE:**

**Date and place of hearing:** 21 July 2004 at 8.00 am 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- Certificate of business and company registration dated 11 July 2004
- 2- The company's Internal Work Rules dated 19 December 1998
- 3- The letters of suspension of 12 workers dated 29 May 2004
- 4- The minutes of the grievance resolution meeting dated 19 July 2003
- 5- Ten photos of the strike on 5 May 2004
- 6- Lay-off notification for eight workers dated 6 May 2004
- 7- Complaint to the prosecutor of the Phnom Penh Court dated 18 May 2004
- 8- Document related to the method of compensation payment due to lay-off

**Provided by the employee party:**

- 1- The Union registration letter no.108 of MoSALVY dated 6 March 2004
- 2- The Union statute dated 8 December 2004
- 3- The company's Internal Work Rules dated 19 December 1998
- 4- The complaint dated 14 November 2003
- 5- Prior Notice for the strike dated 4 June 2004
- 6- The report on the employer's abuse of the Union and its attempt to destroy the Union dated 4 June 2004
- 7- The letter to the Minister of Social Affairs and Labour dated 29 May 2004
- 8- The letters of suspension of 12 workers dated 29 May 2004
- 9- The report on destroying the Union dated 22 June 2004

**Received from MoSALVY:**

- 1- The minute on the collective dispute reconciliation dated 1 July 2004
- 2- The non-conciliation report of MoSALVY dated 8 July 2004

**Presentation by employers and employees in the hearing.**

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

**CASE SUMMARY:**

Cambodia Sportswear Mfg Co., Ltd. employs 5140 people. The workers demand that the company comply with the arbitral award of case no. 26/04 dated 22 May 2004. The employer did not agree to abide by the award because the company lodged an opposition against this award and copied this opposition to MoSALVY. This case is proceeding in court.

The workers still demand that the company reinstate the 12 leaders and members of the Union of Workers for Prosperous Democracy of the Cambodia Sportswear: Mr. Seng Sarom, Mr. Yem Socheat, Mr. Ly Kimyin, Mr. Kin Chhay, Miss. Kin Chhay, Miss. San Lina,

Miss. Tek Bunnoeuk, Mr. Lay Vutha, Mr. Un Sarin, Mr. Bo Pengleng, Mr. Mean Vay and Mr. Vat Inn. But the Company does not agree to reinstate them and is looking for permission from the Labour Inspection Department to dismiss them. While waiting for the decision from the Labour Inspectors, the company has suspended their contract without payment. Moreover, the company has sued them in court for defamation and forging private documents.

Mr. Seng Sarom, Mr. Yem Socheat, Mr. Ly Kimyin, Mr. Kin Chhay, Miss. Kin Chhay, Miss. San Lina, Miss. Tek Bunnoeuk, Mr. Lay Vutha, Mr. Un Sarin, Mr. Bo Pengleng, Mr. Mean Vay and Mr. Vat Inn's contracts were terminated and their roles in the Union were suspended too. The Company asked for suspension of eight workers; and later the labour inspectors specified that these cases were closed and it was the company's business. The workers asked for reinstatement of the 12 workers.

The employer said that the workers' procession disturbed the workers who wanted to work. When the company asked them to negotiate, they did not attend the meeting. On 29 May 2004, the company sent a letter to the Labour Inspection Department to ask for permission to suspend them, and now the company suspends them indefinitely and prohibits them from entering the factory. On 6 May 2004, the company dismissed eight workers. On 14 May 2004, the employer attended the meeting with the Labour Inspectors but the workers failed to attend. On 29 May 2004, the employer asked the Labour Inspection Department to suspend them. On 18 May 2004, the company sued in court for the misconduct committed so far.

The workers demand that the company pay the compensation for dismissal in accordance with the law. The company asserts that it legally dismissed them.

The workers stated that both parties had agreed to take the total salary for 12 months into consideration to find the average wage in order to calculate the dismissal compensation. But the company only takes the wage of the last month to calculate this dismissal compensation. The workers said that during June 2004, more than 800 workers had been dismissed. The workers said that they did not want to know the reasons for dismissals. Instead, they demand the company pay the compensation in accordance with the law. Mrs. Mom Sreychan, who has been working for three years in the company, said in the hearing that she was dismissed when she had gone home. When she came back, she was told to receive the salary for April because her contract was terminated. The company did not ask her which method she chose to calculate her compensation. The company told her that if she did not come to receive the salary by 9 April 2004, the compensation would be forfeited. The

workers continued that when the workers were absent due to the illness, even with the clinic certificate, the daily wage was not paid.

The workers requested the company allow the workers to make a choice to their own satisfaction, [amongst those] already set by the company.

In April 2004, the employer told the worker representatives that the workers could choose between the two methods in order to calculate the compensation when the contract is terminated. The first method is to take the wage of the last month to calculate the compensation; the second is to take the total wages of 12 months and divide by 12 in order to calculate the compensation. The employer said that at that time, the workers chose the first method. The employer continued that if a worker did not agree with compensation due to miscalculation, he could complain. But no one complained before this dispute arose. The company dismissed more than 800 workers because after the strike and demonstration, the company did not have enough employment for the workers. And the workers wanted to stop working because there was no employment. The dismissal was not due to the strike. The workers have been working in the company for one to four years. Some of them have written contracts for an unfixed duration and some have verbal contracts. The company states that so far there had been no such agreement for calculating the compensation. The company continued that it did not tell the worker representative nor the union but asked the workers directly once dismissed.

The company said that after the strike on 3 to 6 May 2004, an ordering company cancelled all the contracts and the workers did not have any jobs to perform.

The workers request the company not bring arms into the company. In response, the company said that it had never brought any arms into the company; now it files a complaint with the court for justice.

The workers argued that when there were conflicts, the company always brought guns and bombs as well as the authorities or bodyguards into the company. The workers requested the company introduce the people in authority or bodyguards to them if it was to bring them into the negotiation meetings.

The employer said that the workers reported to the public that during the meeting the company had placed the guns and bombs on the table. The company said that was defamation; therefore, it filed a defamation complaint in court. The company had never brought in any guns or bombs. During the strike or demonstration, people in authority with

guns did intervene. When there was a dispute in the company, the company could not prevent the authority from bringing in guns or bombs: if the company refused the arms, the authority would blame the company because it is a public service. The company said that with the presence of the authority in the negotiation meeting, the meeting could go smoothly. But if there was a strike or demonstration, the company could not prohibit the authority to use arms.

On 1 July 2004, after receiving the complaint and asking for more details, labour inspectors attempted to help the parties conciliate but failed.

On 12 July 2004, the Arbitration Council received the case from the Ministry of Labour and held its hearing on 21 July 2004.

During the hearing, both parties agreed on the fourth issue (see the agreement [attached to] this award) and gave authority to the Arbitration Council to decide on the first, second and third issues. With regard to the third issue, the Arbitration Council would only take into consideration the method to calculate the compensation for dismissal.

**FINDING OF FACT:**

- Having examined the non-conciliation report
- Having listened to the presentation by both parties
- Having checked documents as mentioned above

**We find that:**

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

The Arbitration Council issued an award dated 22 May 2004. The employer lodged an opposition on 29 May 2004.

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

From 3 to 6 May 2004, some workers went on strike in order to demand the company change some working conditions that the company refused to negotiate. After the strike, the company laid some workers off and then suspended some more.

On 6 May 2004, the company sent a letter to the director of the Labour Inspection Department in order to receive permission to dismiss eight workers: 1- Mr. Seng Sarom, 2- Mr. Ly Kimyin, 3- Mr. Kin Chhay, 4- Mr. Yem Sopheap, 5- Miss. Kin Chhay, 6- Miss. San

Lina, 7- Miss. Tit Bunnoeuk and 8- Mr. Lay Vutha. The company accused them of inciting other workers to stop working on 4, 5, and 6 May 2004, and dancing and parading in the production section. The employer said that according to Article 83 of the Labour Law and internal work rules, these actions are considered serious misconduct.

On 14 May 2004, there was a meeting between the workers and the employer as well as the Labour Inspectors to discuss the dismissal, but the worker side was absent. The Labour Inspectors asked the company to set aside the dismissal problem. During the hearing, both parties acknowledged that the dismissal of the eight workers was canceled.

On 18 May 2004, the company filed a lawsuit in court against their participation in the strike.

On 29 May 2004, the company indefinitely suspended the contracts with the 12 workers, including the eight workers above. The 12 workers are 1- Mr. Seng Sarom, 2- Mr. Ly Kimyin, 3- Mr. Kin Chhay, 4- Mr. Yem Sopheap, 5- Miss. Kin Chhay, 6- Miss. San Lina, 7- Miss. Tit Bunnoeuk, 8- Mr. Lay Vutha, 9- Mr. Un Sarin, 10- Mr. Bo Pengleng, 11- Mr. Mean Vay and 12- Mr. Vat Inn. They were accused of inciting other workers to support them and to go on strike, to dance, to parade, to cheer and to switch off electricity in the production section, on 6 May 2004. The employer proved that these actions were against Article 71, point 7 of the Labour Law and the internal work rules.

Moreover, the company prevented the Union representatives who were suspended from getting access to the factory compound. The workers believed that this kind of prohibition suspended their roles as union representatives too.

On 4 June 2004, the workers notified the Ministry of Labour about the strike since the employers did not agree to negotiate a Collective Bargaining Agreement and suspended 12 workers.

### *3<sup>rd</sup> issue:*

Up to July 2004, the company had laid off 800 workers and gave them dismissal compensations based on the reason that the factory did not have enough jobs, and the workers accepted this reason.

During the hearing, the union representatives said that the company did not pay the compensation correctly because some workers complained to the union. The employer

replied that if a worker did not receive the correct payment, he/she can complain, but up until the present, no one had communicated about this kind of problem.

The union representatives said that the problem concerned the two methods for compensation calculation. The first method is to use the wages of the last month. The second method is to take the average of 12 month wages. Some workers were permitted to choose one of the above methods; and some such as Miss. Mom Chansrey were not permitted. The company said that so far, the company had asked them to choose one of the two methods but when finding out that the average of the 12 months wage was less than the wage of the last month, the workers asked to take the wage of the last month into consideration. Therefore, the company abided by the request. Since then no one has complained about the incorrect payment.

Miss. Mom Chansrey said in the hearing that she was not permitted to choose any of the methods. She wanted to choose the average method, but the company said that it would use the method applied so far.

#### **REASON FOR DECISION:**

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

The workers demand that the company apply the arbitration award, case 26/04 dated 22 May 2004.

Article 40 of the Prakas on the Arbitration Council dated 21 April 2004 provides that if any party lodges an opposition within eight days of the date of award's issuance, the award shall be unenforceable. This Article allows either party to bring the dispute before a court of competent jurisdiction for final resolution if it is a rights dispute. Moreover, Article 319 of the Labour Law states that rights to strike or lock-out can be exercised by one of the parties to a dispute in the event of rejecting the arbitral decision.

Regarding case 26/04 of the Sportswear Company, the Arbitration Council issued its award on 22 May 2004 and the employer party lodged an opposition against the arbitral award on 29 May 2004, i.e. within the legal prescription. The result of the opposition was that the award could not be applied. Therefore, the Arbitration Council does not have the jurisdiction to re-decide on this issue.

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

Regarding the suspension, the company suspended 12 workers indefinitely on 29 May 2004: 1- Mr. Seng Sarom, 2- Mr. Ly Kimyin, 3- Mr. Kin Chhay, 4- Mr. Yem Sopheap, 5- Miss. Kin Chhay, 6 Miss. San Lina, 7 Miss. Tit Bunnoeuk, 8 Mr. Lay Vutha, 9 Mr. Un

Sarin, 10- Mr. Bo Pengleng, 11- Mr. Mean Vay and 12- Mr. Vat Inn. They are accused of inciting other workers to support them and to go on strike on 3 to 6 May 2004; to dance; to parade; to cheer and to switch off electricity in the production section. The employer party continued that these actions are against Article 71, point 7, of the Labour Law and the Internal Work Rules. The company, furthermore, prohibits their access to the factory.

Article 71 of the Labour Law permits both the company and the worker to suspend the contract with the appropriate reasons. Article 71(7) allows the employer to suspend a worker when he commits misconduct as long as this kind of sanction is provided in the internal work rules. But regarding this case, no provision in the internal work rules provides any contract suspension as punishment for the worker. Hence Article 71(7) is not applicable to this case. Moreover, Article 27 of the Labour Law provides that: *“any disciplinary sanction must be proportional to the seriousness of the misconduct. The labour inspector is empowered to control this proportionality”*. Regarding the case, the company suspended the contracts of the 12 workers indefinitely and without providing any reasons based on the law. The Arbitration Council finds that the law does not allow the employer to indefinitely suspend the contract as a means to punish workers because the indefinite period is not proportional to the seriousness of the misconduct as required by Article 27 of the Labour Law. Therefore, the employer has to stop this kind of contract suspension and permit the 12 workers return to work.

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

Regarding the calculation of the dismissal compensation, according to Article 75, 89, 91 and 166, the company takes the wage of the last month into consideration, but the workers do not agree on the calculation. According to Articles 75 and 89 of the Labour Law, the company has to pay compensation for prior notice and for dismissal based on worker seniority. How does the company calculate this compensation?

Concerning this issue, the Arbitration Council has issued its award relating to the dismissal compensation in “MS International” case no. 27/04 and Sam Hann case no. 51/04 in which the Arbitration Council finds that the dismissal compensation includes compensation for failing to give prior notice (Article 75), dismissal compensation (Article 89) and the compensation for the unused annual leave (Articles 166 and 167(2)). These components will be taken into consideration to calculate the monthly average wage based on the wages of the 12 months prior to the dismissal date. The Arbitration Council finds that Articles 102 and 103 of the Labour Law provide that wages include the actual salary, overtime payment, and allowances, etc..

To calculate the dismissal compensation, the Arbitration Council finds that the monthly average wage is equal to the total basic salary including the overtime payment and allowances for the period of 12 months prior to the dismissal date, divided by 12. The daily average wage is equal to the monthly average wage divided by 26. This daily average wage is the one used to calculate the dismissal compensation.

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

**DECIDES :**

1- Reject the workers' demand to the company to apply the arbitral award for case 26/04 dated 22 May 2004.

2- Order the employer to stop the suspension of the employment contracts of the 12 workers and to reinstate them as soon as this award takes effect.

3- Order the company

(1) To recalculate the dismissal compensations for the workers based on Articles 75, 89 and 166-167. This compensation has to be calculated based on the daily average wage as explained above.

(2) To pay workers the remaining portion (if any) within 30 days after the award takes effect.

4- The employer and workers agree in the hearing that:

(1) During the negotiation, both parties, including the third party, cannot take arms into the room or negotiation area.

(2) During a strike or demonstration, use of arms is the authority's right.

(3) In case of the third party's presence in the dispute resolution process, the third party has to introduce himself to the parties in the dispute.

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

**Arbitrator chosen by the employer party:**

Name: **Hem Hour Narith**

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.

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.