

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 57/04

Date of award: 9 August 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

Evergreen Garment Co., Ltd.

(Employer party)

AND

Independent Apparel Workers Union

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives: 1- Mr. Khov Chantha Lawyer
2- Ms. Chao Sreya Administrator
Address: # 289, National Road No 5, Sangkat Reussey Keo, Khan Reussey
Keo, Phnom Penh.
Tel: 023 722 571 Fax: 023 724 078

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives: 1- Ms. Lim Thida Labour dispute official of the
Coalition of Cambodia Apparel Workers Democratic Union (CCAWDU)
2- Mr. Sok Saveth President of the Independent
Apparel Workers Union.
3- Mr. Tay Boreth Vice President of the
Independent Apparel Workers
Union.
4- Mr. Suong Khaysy Official of CCAWDU.
Address: # 738, National Road No 5, Sangkat Kilometer No 6, Khan Reussey
Keo, Phnom Penh.
Tel: 012 650 013 Fax: N/A

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The employees demanded the company provide them with 100 percent of wages (US\$1.73 per day) when the company does not have work for them to do for periods less than three days, and 50 percent of wages when the company does not have work for them to do for more than three days. The company said that when it does not have work for them to do for one day, and it does not give them notice in advance, it would provide them 100 percent of wages (US\$1.73 per day). However, if the company gives them notice in advance when there is no work to do for more than two days, the company will provide them with 50 percent wages.
- 2- The employees demanded the company start working from 6:00 a.m. to 2:00 p.m., including half an hour for a lunch break when there are two or three working shifts. The company said the working hours are from 6:00 a.m. to 2:30 p.m., including half an hour for a lunch break when there are two or three working shifts.

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 338/02; the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Nomination of Arbitrators 103/04.

An attempt to conciliate the collective dispute that is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. That conciliation hearing was unsuccessful. The non-conciliation report No 2022 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. Kao Thach
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE:

Date and place of hearing: 26 July 2004 at 2:00 p.m. at the Secretariat of the Arbitration Council.

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

Provided by the employer party:

- 1- The minutes of the conciliation of the collective dispute dated 19 February 2004;
- 2- The minutes of the conciliation of the collective dispute dated 30 June 2004;
- 3- The request letter for the approval of the company's Internal Work Rules dated 14 January 2004, and the company's Internal Work Rules;
- 4- The attendance list of the Evergreen company from April to May 2004;
- 5- The status of Evergreen Garment Co., Ltd.;
- 6- The certificate of commercial registration dated 15 October 2004;
- 7- The delegating letter to Ms. Chao Sreya dated 22 July 2004;
- 8- The most representative certificate of the Cambodian Independent Apparel Workers Union of Evergreen Garment Co., Ltd. dated 18 February 2004;
- 9- The registration certificate of the Cambodian Independent Apparel Workers Union of Evergreen Garment Co., Ltd. dated 17 November 2003; and
- 10- The agreement minutes between the company and the employees dated 5 August 2004.

Provided by the employee party:

- 1- The minutes of the conciliation of the collective dispute dated 30 June 2004;
- 2- The workers' letter asking for the intervention of the union dated 4 June 2004;
- 3- The Internal Work Rules of the company;
- 4- The list of ironing workers who demanded the company reimburse them 50 percent of their wages cut by the company;
- 5- The list of workers who agreed to be witnesses;
- 6- The status of the Independent Apparel Workers Union;
- 7- The Internal Work Rules of the Independent Apparel Workers Union; and
- 11- The registration certificate of the Independent Apparel Workers Union of Evergreen Garment Co., Ltd. dated 17 November 2003.

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

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

CASE SUMMARY:

Evergreen Garment Co., Ltd. employs a total of 1000 workers. On 7 June 2004, the Labour Inspection Office of Khan Reussey Keo received a complaint from the Independent Apparel Workers Union requesting the company follow working conditions in compliance with the Labour Law. After receiving the complaint, the Labour Inspection Office of Khan Reussey Keo on 9 June 2004 went to conciliate the problems. During the last conciliation on 30 June 2004, the parties reached agreement on five of the seven issues. The non-conciliation report was submitted to the Arbitration Council on 16 July 2004.

After receiving the case, the Arbitration Council on 26 July 2004 at 2:00 p.m. summoned both parties to a hearing. On 6 August 2004, after the hearing, the parties agreed on the first issue and let the Arbitration Council resolve and issue an award on the second issue.

FINDINGS OF FACT:

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

We find that:

In the past, there were three shifts of work. Each shift lasted eight hours, including a 30-minute lunch break. After the new employer started, there was not much work for the factory, so the employer allows only one shift starting from 6:00 am to 2:30 p.m., including 30 minutes for a lunch break. Therefore, the workers now work for a full eight hours.

The employer agreed that if there were three shifts, the company would allow the workers to work only eight hours per day including 30 minutes for a lunch break; but if there were one or two shifts, the workers would need to work a full eight hours per day excluding 30 minutes for a lunch break.

The employees demanded the company limit the working hours from 6:00 a.m. to 2:00 p.m., including 30 minutes for a lunch break when there are one or two shifts.

The Arbitration Council finds that the union to this dispute is not entitled to be considered most representative union in the factory, and that there is no written employment contract in the factory. However, Article 4 of the Internal Work Rules of the company states that all workers have to work eight hours per day or 48 hours per week and are allowed to have a one-hour break during lunchtime.

REASON FOR DECISION:

Article 137 of the Labour Law 1997 states, "In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week." The first paragraph of Article 138 of the Labour Law states, "The work schedule is set by each enterprise for different jobs based on the nature of their activities and organization of work."

The Arbitration Council finds that the work schedule set by the employer does not exceed eight hours per day and that scheduling working hours is the right of each company under the Labour Law. Therefore, the work schedule of the company from 6:00 a.m. to 2:30 p.m. including 30 minutes for a lunch break is the company's legal right. The Arbitration Council finds that 30 minutes lunch break does not constitute working hours as stated in the Labour Law, and that the workers can get 30 minutes for having lunch during the eight working hours when the employer agrees.

The Arbitration Council finds that the 30 minute lunch break included in the paid working hours is likely to give the workers more benefits than the law does. However, The Arbitration Council finds that there is not any provision in the employment contract or the Internal Work Rules of the company concerning the obligation of the company to provide 30 minutes to the workers for lunch during the eight working hours.

Because there is not any legal provision to oblige the company to provide 30 minutes with pay to the workers for lunch, and this union is not entitled to the of most representative union, the Arbitration Council finds that this dispute is not a rights dispute but an interests dispute. Therefore, the Independent Apparel Workers Union is not legally entitled to represent all workers in the factory for resolving this interests dispute. (See 31/03 - Hong Wah Garment Cambodia).

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

DECISION

- Rejects the demand of the employees to include 30 minutes of lunch break into the working hours from 6:00 a.m. to 2:00 p.m. when the company divides the total work time into one or two shifts.

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: Ang Eng Thong

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.