

**KINGDOM OF CAMBODIA**  
**Nation King Religion**

**ARBITRATION COUNCIL**

**Case number and name:** 64/04

**Date of Award:** 27 August 2004

**ARBITRAL AWARD**

Issued under Article 313 of the Labour Law

Mercury Garment Co., Ltd. ("**MG**")

(Employer Party)

and

Khmer Youth Union of Mercury Garment Co., Ltd. ("**KYUMG**") and Khmer Youth Free Trade Union ("**KYFTU**") Federation

(Worker Party)

**Details of employer party**

Representatives:

- 1- Mr. Sao Sary, Administration Manager
- 2- Mr. Vong Vanny, Executive Officer

Address: No. 368, Tomnop Thmei Boeng Tompon (new dam in Tompon lake) Street, Moal village, Dangkao commune, Dangkao district, Phnom Penh.

Telephone: 012 948286 or 011 669 315

**Details of worker party:**

- Representatives:
- 1- Ms. Kong Srey Aun, KYUMG Vice President
  - 2- Thoeung Bunthoen, KYUMG member
  - 3- Ms. Nuon Yim, Union Secretary
  - 4- Mr. Mai Vathana, KYFTU Federation Officer
  - 5- Mr. Sie San, KYFTU Federation Officer

Address: No. 365, Tomnop Thmei Boeng Tompon (new dam in Tompon lake) Street, Moal village, Dangkao commune, Dangkao district, Phnom Penh.

Telephone: 011 637727

### **Issues in Dispute**

1- The worker party demands that the company properly reimburse medical check costs to all workers. The company agrees to reimburse the medical check costs only to workers who did the medical check following employment; those who did the medical check prior to employment would not be reimbursed by the company.

### **Jurisdiction<sup>1</sup> of the Arbitration Council**

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B<sup>2</sup> of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; and the Prakas on the Appointment of Arbitrators 103/04.

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing took place on 30 July 2004 was successful in one of two issues. The non-conciliation report number No. 2185 dated 4 August 2004 was submitted to the Secretariat of the Arbitration Council on 9 August 2004.

### **Composition of arbitration panel**

Arbitrator chosen by the employer party: Mr. **Kao Thach**

Arbitrator chosen by the worker party: Mr. **Ven Pov**

Chair arbitrator chosen by the two arbitrators: Mr. **Kong Phallack**

### **Hearing and evidence**

#### **Place and Date of hearing:**

- Conciliation: Tuesday, 10 August 2004 at 8:00 a.m.
- Hearing: Tuesday, 24 August 2004 at 8:00 a.m. at the Secretariat of the Arbitration Council

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<sup>1</sup> Jurisdiction means court power.

<sup>2</sup> Article 309 to Article 317 of the Labour Law

**Witnesses and experts: N/A**

### **Evidence considered by the Arbitration Council**

#### Obtained from the employer party:

- 1- Letter of delegation dated 10 August 2004;
- 2- Memorandum on the appointment of Vong Vanny, an executive officer, dated 18 May 2004; and
- 3- Internal Work Rules dated 30 December 2003 and officially recognized by the Ministry of Labour on 25 February 2004.

#### Obtained from the worker party:

- 1- Certificate of union registration (No. 594 of 29 April 2004) and letter of registration (No. 333 of 29 April 2004);
- 2- List of workers who demand medical check costs; and
- 3- Letter from security dated 10 August 2004, not allowing workers to come for conciliation.

#### Obtained the Ministry of Labour and Vocational Training (“MoLVT”):

- 1- Collective dispute non-conciliation report dated 4 August 2004 by MoLVT;
- 2- Minutes of the collective dispute conciliation dated 20 July 2004.

#### Presentation of evidence and testimony by the worker party during the hearing.

### **Case Summary**

MG is located at No. 365, Tomnop Thmei Boeng Tompon (new dam in Tompon lake) Street, Moal village, Dangkao commune, Dangkao district, Phnom Penh and employs 530 workers. The workers filed a complaint with the Dangkao district Labour Inspection Office on 13 July 2004, demanding the company improve certain working conditions. As soon as he received the information, the Labour Inspector visited the factory for conciliation and settlement on 30 July 2004; the two parties successfully conciliated one of the two issues. The other issue, which was not successfully resolved, was that the worker party demanded that the company properly reimburse medical check costs to all the workers with the company. The company party agreed to reimburse medical check costs only to workers who had their medical checks conducted subsequent to employment, but the company would not reimburse the workers who se medical checks were conducted prior to employment

At the hearing, the Arbitration Council inquired about further information and tried to conciliate the parties but it was not successful; therefore, the Arbitration Council decides as follows:

### **Finding of Facts**

- Having reviewed the collective dispute non-conciliation report,
- Having listened to the presentation by the worker party as is described above and in the hearing minutes, and
- Having reviewed the documents above

We find that:

1. MG has been in operation for six months. The contracts in the company are made for an undetermined duration. There are two types of workers in the factory:
  - Type 1: 230 workers who received medical checks prior to employment and are on verbal contracts with the company and offered to pay for the medical check costs. These workers, who already had medical checks, paid 10,100 riels each and gave the invoices for their medical checks to the administrator, Vong Vanna, in exchange for employment cards.
  - Type 2: Workers who have not received medical checks. Those who have not received medical checks have not received employment cards.
2. Prior to employment, the employer requires all workers to receive medical checks, and only if they agree will they be accepted as employees. If they do not agree to receive medical checks, the employer will not hire them.
3. Article 3 of the company's Internal Work Rules sets out the requirement for medical check costs prior to service, but does not provide who shall pay for it.
4. The employer parties offer to reimburse medical check fees to all Type 2 workers who have not received medical checks. The workers also consent to this (please read page 9 of the agreement); therefore, the Arbitration Council will only consider Type 1 workers.

## **Reasons for Decision**

According to (1) 02/03-Chou Sing Garment, 21/03-Loyal Garment, 19/04-Kbal Koh, 53/04-Kong Hong, 60/04-United Art, and 63/04-Shine Well; and (2) Article 247 (c) of the 1997 Labour Law, the employer must pay the workers' medical check costs. Article 247 of the Labour Law states further that the Ministry of Labour shall issue a Prakas to determine: (a) the conditions under which pre-employment, re-employment, periodical and special physical exams are given; and (c) the conditions under which employers are required to establish and provide at their expense the medical exams of workers as stipulated in point (a) of such article.

Albeit a new Prakas has not been made by the Ministry of Labour, the Arbitration Council finds that Article 247 of the 1997 Labour Law provides sufficient legal basis to arrive at the conclusion that the employer is obligated to pay for workers' medical check fees, including the medical check fees upon recruitment of new staff members. Article 247 (c) states clearly that when a new Prakas is made, the employer is required to pay for workers' medical check fees. *(Please read the dissenting decision in 60/04-United Art)* and (3) - Joint Prakas No. 09 dated 19 January 1994 on medical checks for Cambodians and foreigners who come to work in Cambodia that requires the employer to pay for workers' medical check costs.

In previous decisions, the Arbitration Council based [its decision] on Joint Prakas 09/04 made under the 1992 Labour Law, which was overruled by the 1997 Labour Law. Article 7 of the Prakas clearly provides that the enterprise or company must pay for its workers' medical checks. But the Arbitration Council had contrasting opinions about Prakas 09/04 as to whether or not it remained in effect *(please read 60/04-United Art and the Annex attached)*. Thus, in this case, the Arbitration Council notes that Article 247 of the 1997 Labour Law requires that the employer pay for their workers' medical check prior to employment.

In this sense, the employer is obliged to pay for their workers' medical checks. In this case, the workers paid for medical check with their own money and submitted the invoice to the employer to receive the results of the medical check. Requiring workers to pay for medical checks using their own money does not exempt the employer from the legal obligation as set forth in Article 7 of the above Joint Prakas and Article 247 (c) of the 1997 Labour Law.

In addition, Article 377 of the Labour Law provides that those guilty of violating the provisions of Article 247 and/or violating the the Prakas of labour health are liable for a fine of 120 to 360 days of the base daily wage and to imprisonment of one to five years, or to only one of

the penalties. The Article means that if the employer does not comply with Article 247, the employer must suffer fines and punishment in accordance with the law.

Therefore, the Arbitration Council decides that the employer must reimburse 10,100 riel to each worker who has received medical checks using their own money and must pay for the medical checks of workers who have not yet received the medical checks.

Based on the foregoing facts, evidence and law, the Arbitration Council decides as follows:

**Decision**

1- The employer must reimburse the medical check costs of 10,100 riel to each worker who has received the medical check using his/her own money. The reimbursement must be carried out within seven days after this award comes into effect.

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

Arbitrator chosen by the employer party:

**Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

**Ven Pov**

Signature: .....

Chair of arbitration panel:

**Kong Phallack**

Signature: .....

*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.*