



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្នា

THE ARBITRATION COUNCIL

Case number and name: 65/08-Camwell

Date of Award: 3 June 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Ann Vireak**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTING PARTIES

Employer party:

Name: **Camwell MFG Co., Ltd**

Address: Thnot Muoy Deum Village, Bekchan Village, Angsnoul District, Kandal Province

Telephone: 012 522 266 Fax: N/A

Representative:

1. Mr. Long Heang Officer of employer association (representative of the company)

Worker party:

Name: **Local union of Free Trade Union of Workers of the Kingdom of Cambodia (FTUWCK) at Camwell Factory**

Address: Thnot Muoy Deum Village, Bekchan Village, Angsnoul District, Kandal Province

Telephone: 012 263 543/ 012 568 509 Fax: N/A

Representative:

1. Mr. Koy Sok Im Vice-president of FTUWKC at Camwell Factory
2. Mr. Vorn Vanna Secretary of the union
3. Mr. Lei Sokchea Member of the union
4. Mr. Buth Bunthoeurn Member of the union

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- On 30 April 2008, the day the workers went on strike, the company deducted their daily wages and US\$2 of their attendance bonus:
 1. For those workers who punched in to work on the day of strike, the company did not deduct their wages and bonus.
 2. The worker party does not agree to this and insists that the company maintain the whole [attendance] bonus.
- 2- The workers demand that when they take sick leave, the company should:
 1. maintain 100 percent of their wages during the first month.
 2. maintain 60 percent of their wages during the second month.
 3. maintain 40 percent of their wages during the third month.
 4. consider it unpaid leave during the fourth to the sixth months. The Company does not agree.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); 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 Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

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 was unsuccessful, and the non-conciliation report No. 260/08 KB/KN, dated 6 May 2008 was submitted to the Secretariat of the Arbitration Council on 7 May 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing:

Procedural issues:

On 30 April 2008, the Department of Labour and Vocational Training of Kandal Province conducted a conciliation of a collective labour dispute on 23 issues; as a result 21 issues were resolved and the two remaining non-conciliation issues were referred to the Arbitration Council on 7 May 2008.

After receiving the case, the Arbitration Council summoned the employer and the FTUWKC and the workers involved in this case to the hearing and conciliation on the two non-conciliation issues on 16 May 2008 at 2:00pm.

Both parties were present as invited by the Arbitration Council. On the hearing day, the Arbitration Council attempted to further the conciliation but the two parties did not reach conciliation on the two issues. Thus, in this Arbitral Award, the Arbitration Council will consider the two issues based on the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Minutes of collective labour dispute conciliation at Camwell MFG Co., Ltd, dated 1 May 2008.
2. Internal Work Rules of Camwell MFG Co., Ltd No. 046 SKBY, dated 18 November 2004.
3. Minutes of collective labour dispute conciliation at Tai Yang, dated 3 May 2006.

B. Provided by the worker party:

1. Certificate of union registration of FTUWKC No. 1423 KB/VK, dated 21 April 2008.
2. Letter No. 112 KB by the Minister of Labour and Vocational Training regarding the confirmation of registration of Khmer Youth Trade Union, dated 21 April 2008.

C. Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report of collective labour dispute resolution at Camwell MFG Co., Ltd No. 260/08 KB./KN, dated 6 May 2008.
2. Minutes of collective labour dispute conciliation at Camwell MFG Co., Ltd, dated 1 May 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the employer party to attend the hearing, No. 316 KB/AK/VK/LKA, dated 9 May 2008.
2. Letter of invitation to invite the worker party to attend the hearing, No. 315 KB/AK/VK/LKA, dated 9 May 2008.

FACTS

- Having examined documents submitted to the Arbitration Council
- Having reviewed the collective labour dispute conciliation report
- Having listened to the statements by the worker party and the employer party

- Having examined additional documents

The Arbitration Council finds that:

Issue 1: The workers demand that the employer should not deduct US\$2 from their attendance bonus but should maintain the whole US\$7 attendance bonus for the workers who joined a one day strike on 30 April 2008

- The workers and representatives of FTUWKC filed a complaint on 21 April 2008 with the director of Camwell Company seeking a negotiation on 28 April at 9:30 a.m in relation to 23 demands about working conditions. However, the meeting on 28 April 2008 was not able to resolve the issues.
- For this reason, on 29 April 2009 workers and union representatives made a verbal announcement that on 30 April 2008 they would go on strike.
- On 30 April 2008 approximately 1,970 workers and union representatives, among 3,200 workers, commenced a strike and did not work from 7:00 a.m. to 9:00 a.m.
- The 1,970 strikers did not punch in to work and the company deducted one day of wages and US\$2 from their attendance bonus from each worker who joined the strike on that day.
- At Camwell Company, workers receive a US\$7 attendance bonus.
- Both parties agree that the Tai Yang and Camwell Company are the same and the employment conditions and procedures used in the Tai Yang Company have also been used in the Camwell factory.
- Both parties also agree that the Tai Yang Company entered into an agreement with the local union of FTUWKC at Tai Yang Company at the Department of Labour at Kandal Province regarding the procedure for deduction of a worker's attendance bonus during the period a worker takes leave **(for sickness or personal commitment)**; the procedure for this is as follows: (1) deduction of US\$2 for one days leave, (2) deduction of an additional US\$4 for two days leave, (3) deduction of an additional US\$ 1 for three days leave. Thus, on the third day, the worker will not receive the attendance bonus.
- Both parties also agree that Camwell Company has followed the above procedure regarding deduction of the attendance bonus of workers in the company.
- Neither party objects to the fact that their daily wages were deducted on the day of the strike but the worker party insists that the company should not deduct US\$2 from their attendance bonus in accordance with the agreement above as the company has already deducted more than US\$2 from their wages; moreover, the agreement applies only to leave and it should not be applicable in the case of a strike. Representative of workers state that they read in one of the books by the

International Labour Organization that during a strike workers are not entitled to wages but their bonuses are maintained.

- The company party does not agree to the workers' demand claiming that the company has already made a big concession as it has only deducted US\$2, in accordance with the agreement, while it should have had deducted the whole bonus for the strike period.

Issue 2: The workers demand that when they take leave for a serious illness, the company should (1) maintain full wages during the first month (2) maintain 60 percent of their wages during the second month (3) maintain 40 percent of their wages during the third month and consider it unpaid leave during the fourth to the sixth months.

- In the hearing the workers state that they no longer make the demand as mentioned above but they request that the company follow Clause 4(7), of the Company's Internal Work Rules regarding sick leave.
- The workers add that in the past some workers were very sick for up to three weeks, [supported by a] doctor's certificate from their doctor, but the workers did not receive their wages.
- The employer party does not object to the workers' claim regarding unpaid sick leave and does not make any response to this demand but requests that the Arbitration Council decide on this issue by an award.
- Based on the evidence provided by the company, the Arbitration Council finds that Clause 4(7), of the Company's Internal Work Rules regarding sick leave states:
 - When a worker becomes sick when s/he is working in the factory, s/he will be permitted to take leave for a medical check by a doctor but a doctor's certificate is required.
 - When a worker becomes sick at home, s/he needs to inform the central office of the company and provide a medical letter from a doctor ([state] doctor); without a letter requesting permission and a letter from the doctor, the worker is considered absent without permission. In case the doctor prescribes that the worker should take leave, the company will abide by and provide half wages and perquisites to the worker.
- In the hearing, the Arbitration Council advised the worker party to submit relevant evidence such as the number and names of workers who were sick by 21 May 2008. However, the worker party did not submit the evidence as requested by the Arbitration Council.

REASONS FOR DECISION

Issue 1: The workers demand that the employer should not deduct US\$2 from their attendance bonus but should maintain the whole US\$7 attendance bonus for the workers who joined a one day strike on 30 April 2008

Article 337 of the Labour Law provides sole jurisdiction to the court to determine whether a strike is illegal or legal; however, the Arbitration Council finds that it is necessary to consider the validity of the workers' strike procedure as a part of its decision regarding the demand for wages and/or bonus of the workers during the period they went on strike. In case 04/03-Lida, dated 19 June 2003, the Arbitration Council also considered whether the strike procedures were in accordance with the Labour Law as a part of a demand for wages during the strike period.

In order to determine whether the strike was carried out in accordance with the Labour Law, the Arbitration Council will make a decision based on Article 336, which is about illegal strikes that do not comply with the procedures in the Labour Law, and Article 330 of the Labour Law, which provides that a strike which is not conducted peacefully will become an illegal strike.

The strike procedures set out in Article 321 of the Labour Law also provide that the right to strike can only be exercised when all peaceful methods for settling the dispute with the employer have been exhausted.

In this case, the worker party met the employer once on 28 April 2008 to negotiate the 23 demands after submitting an official letter of demand to the company on 21 April 2008. Then on 29 April 2008 the workers advised [the employer] of its intention to hold a strike which would start on 30 April 2008. The Arbitration Council considers such action is not in accordance with the proper strike procedures because the workers did not undergo a negotiation by an officer of the Ministry of Labour and Vocational Training or any arbitration procedure.

Article 333 of the Labour Law states, "*The employer is prohibited from imposing any sanction on a worker because of his participation in a strike.*" This prohibition is effective only if the strike was conducted in accordance with [the proper] strike procedures. If the workers do not follow the law they cannot enjoy the full protection of the law. Thus, while the workers consider that deduction of their attendance when they participated in an illegal strike is not in accordance with Article 333 of the Labour Law, the Arbitration Council cannot expand the scope of the protection for the workers because they did not follow the [proper] procedures set out in Chapter 13 (See Arbitral Award 04/03-Lida and 16/06-LA).

In this case, the workers went on a strike which was not conducted in accordance with the [proper] legal procedures. The employer decided to deduct US\$2 from the US\$7 attendance bonus of each of 1,970 workers who went on strike; this was in accordance with the agreement they had with the Tai Yang Company regarding the procedures for deduction

of a [worker's] attendance bonus when a worker takes leave, as practiced in the Camwell factory. The procedure for deduction of a [worker's] attendance bonus when they take leave (for sickness or personal commitment) is as follows: (1) deduction of US\$2 for one days leave, (2) deduction of an additional US\$4 for two days leave, (3) deduction of an additional US\$1 for three days leave. Thus, on the third day, the worker will not receive the attendance bonus.

The Arbitration Council considers that the agreement regarding deduction of an attendance bonus is applicable only to leave for sickness or personal commitments, i.e., it does not state anything about the deduction of a [worker's] attendance bonus during a strike.

Therefore, the Arbitration Council will consider [this issue] as follows:

In previous cases, the Arbitration Council held that workers who went on strike not in accordance with the legal procedure meant that they were absent, i.e., not coming to work regularly. Thus, they are not entitled to an attendance bonus. (*See Arbitral Awards 04/03-Lida, Issue 1; 15/04-Lucky Zone, Issue 4, 03/05-Flying Dragon, Issue 3 and 63/07-Phnom Penh Garment*). In this case, the Company cannot apply the procedure to deduct attendance bonus to this case.

Therefore, the Arbitration Council decides to reject the workers' demand that the employer should not deduct US\$2 of their attendance bonus.

Issue 2: The workers demand that when they take leave for a serious illness, the company should (1) maintain full wages during the first month (2) maintain 60 percent of their wages during the second month (3) maintain 40 percent of their wages during the third month and consider it unpaid leave during the fourth to sixth months.

Article 23 of the Labour Law states, "*Internal regulations adapt the general provisions of this law ... such as provisions relating to the condition of hiring ... working hours, breaks and holidays ...*" Based on this, the company's Internal Work Rules are general regulations that set rules for the operation of the company, activities of workers and the employer relating to working conditions and the relationship between the workers and the employer. Thus, normally, provisions relating to sick leave are mentioned in the company's Internal Work Rules.

In this case, in relation to a serious illness, Clause 4 (7) of the Company's Internal Work Rules regarding sick leave states: "... When a worker get sick at home, s/he needs to inform the central office of the company and provide a medical letter from their doctor ([state] doctor); without a letter requesting permission and letter from the doctor, the worker is considered absent without permission. In case the doctor directs the worker to take leave, the company will abide by [this] and provide half wages and perquisites to the worker."

Before coming to the Arbitration Council, the worker demanded that the company should (1) maintain full wages during the first month (2) maintain 60 percent of their wages

during the second month (3) maintain 40 percent of their wages during the third month and consider it as unpaid leave during the fourth to the sixth months.

However, in the hearing, after reading Clause 4(7), of the company's Internal Work Rules, the workers modified their demand on this issue and demanded that the company should follow this provision because in the past some workers took leave for a long period for a serious illness (with a proper letter from a state doctor) but they did not receive any wages.

The Arbitration Council considers that the company's Internal Work Rules provide for payment of half wages to workers for the period they take sick leave, provided it is supported by a proper medical letter from a doctor.

Thus, the Arbitration Council considers that the workers' demand regarding leave for a serious illness is sufficiently clear in Clause 4(7), of the company's Internal Work Rules; thus the company should comply with Clause 4 and allow workers who are seriously ill to take leave on half wages for the period prescribed by a qualified doctor.

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

DECISION AND ORDER

Issue 1: Reject the workers' demand that the employer should not deduct US\$2 from the attendance bonus of 1,970 workers who participated in the strike on 30 April 2008.

Issue 2: Order the company to comply with Clause 4 [of its Internal Work Rules] and allow workers who are seriously ill to take leave on half wages for the period prescribed by a qualified doctor. [This order will be effective] from the date this Arbitral Award comes into effect.

Type of Award: Non binding or binding awards

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: