

**KINGDOM OF CAMBODIA**  
**NATION – RELIGION – KING**

**THE ARBITRATION COUNCIL**

**Case Number: 67/04**

**Date of Award: 14 August 2004**

**ARBITRAL AWARD**

Issued under Article 313 of the Labour Law

**Jasca Garments (Cambodia) Ltd.**

(Employer Party)

**AND**

**Coalition of Cambodian Democratic Apparel Workers Unions (CCAWDU)**

(Worker Party)

**DETAILS OF EMPLOYER PARTY:**

**Address:** National Road #4, Ang Snoul District, Kandal Province

**Telephone:** 023 369 599 Fax: 023 369 699

**Representatives:** Mr. Chun Yit Phong (Assistant to General Manager)  
Mr. Taan Bun Meng (Director of Human Resources)  
Mr. Kong Vara (Human Resources Manager)

**DETAILS OF WORKER PARTY:**

**Address:** House #6C, Street#4746, Toul Tump Pung I Commune, Chamkar Morn  
District, Phnom Penh

**Telephone:** 023 120 481/012 942 143 Fax: None

**Representatives:** Chorn Sokha (President of the CCAWDU Union Federation);  
Lem Thida (Dispute Resolution Officer - CCAWDU);  
Sem Vanna (President of the Jasca Union);  
Siek Tit (Deputy President of the Jasca Union);  
Yeang Sunheng (Secretary of the [CCAWDU Union] at Jasca);

**DETAILS OF THIRD PARTIES :**

**1. Solidarity Union Federation**

**Address:** House #263, Street #107, Boeng Prolek Commune, 7 Makara District,  
Phnom Penh

**Telephone:** 012 942 657  
**Representatives:** Nai Sok Veasna (President of the Solidarity Union Federation)  
Nong Phalla (President of the Solidarity Union at Jasca)

## **2. Khmer Union Federation**

**Address:** House #581, Russian Federation Blvd, Toul Kouk District, Phnom Penh  
**Telephone:** 012 837 789  
**Representatives:** Mum Thon (Officer of the Khmer Workers' Union Federation)  
Suon Vanna (President of the [Khmer Workers' Union] at Jasca)

### **ISSUES IN DISPUTE**

*(as appear in the non-conciliation report)*

The non-conciliated issue which the Ministry of Labour and Vocational Training sent for the Arbitration Council to consider and resolve contained one point:

The union federation of democratic garment workers of Cambodia (CCAWDU) does not accept the vote held to choose shop stewards and demand that the vote be held again.

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

The Arbitration Council derives its power to make this Award from Section II B2 of Chapter 12 of the 1997 Labour Law; the Prakas on the Formation of the Arbitration Council 99/04; and the Rules on the Arbitration Council Procedures.

An attempt to conciliate the collective dispute which is the subject of this Award was made in accordance with Chapter XII Section 2A of the Labour Law. However, that conciliation was unsuccessful and a non-conciliation report dated 10 August 2004 was sent to the Secretariat of the Arbitration Council on 13 August 2004.

In this case there is an issue relating to the jurisdiction of the Arbitration Council with regard to a shop steward election. Recently there was another case, 66/04 - Winner Garment, in which the Arbitration Council said that it had jurisdiction over these election disputes. The reasons given for the decision in the case of Winner were as follows:

According to the Labour Law (1997), the Arbitration Council has the power to resolve collective labour disputes which are not settled by conciliation as set out in Article 312, which states that "The Council of Arbitration has no duty to examine issues other

than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, that are the direct consequence of the current dispute.”

Further, Article 302 of the Labour Law (1997) defines a collective labour disputes as “any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness.”

Therefore with regard to the workers fourth claim, the Arbitration Council finds that this is a dispute regarding the election of shop stewards which is a collective labour dispute because this conflict arises between many workers who are represented by a union. In this case the union argued that the employer did not allow the union to fully participate in the shop steward elections as was their right according to the Labour Law (1997) and Prakas 266/01 of MOSALVY.

Article 298 of the Labour Law (1997) provides that, “Disputes relating to the election, eligibility and the fairness of the elections of shop stewards shall be referred to the Labour Court, or to the common court that has jurisdiction to rule promptly without the possibility of appeal recourse if the Labour Court does not exist.” Referring to the language which is used in this Article, neither the Arbitration Council nor the Labour Inspector is prevented from attempting to resolve such disputes as relate to shop steward elections, before they are referred to the courts for final resolution. The Arbitration Council finds that the intention of this Article is to show that if the parties complain to the court regarding such a dispute, the court should decide promptly and there shall be no appeal. Further, this Article does not provide that it is only the court which can resolve these election disputes, which is different than the language of Article 337 of the Labour Law. [Article 337] provides that, “Labour Courts or, in the absence of the Labour Courts, the common courts, have sole jurisdiction to determine the legality or illegality of a strike.” This Article provides expressly that no other institution or person can decide if a strike is illegal except the court. Additionally, if Article 12 of Prakas on the Arbitration Council 99/04 is considered, then the Arbitration Council is required to resolve collective labour disputes [which are referred to it] in accordance with Article 309 of the Labour Law, and the Arbitration Council finds that the issue in this case does constitute a collective labour dispute. Also in the hearing of this case, neither party objected to the jurisdiction of the Arbitration Council

in the resolution of this election dispute. On the contrary, the two parties demonstrated their confidence in the Arbitration Council's ability to resolve the dispute by sending the dispute to the Arbitration Council where during the hearing they decided to accept binding arbitration. If Article 298 of the Labour Law means that the Arbitration Council does not have the power to resolve these election disputes and that they can only be sent to the courts, this would then also lead to the conclusion that the skilled officers of MVLVT would also be prevented from conciliating these disputes.

For these reasons the Arbitration Council finds that it has jurisdiction to decide election disputes.

However, in the current case, the Arbitration Council does not have to decide if the elections were valid or not. Rather the Arbitration Council is only considering the conditions under which the right to participate in the elections were exercised. This means that the Arbitration Council is deciding if the CCAWDU union federation was permitted to participate in the shop steward elections at the Jasca factory.

According to Articles 309, 310 and 312 of the Labour Law, the Arbitration Council has jurisdiction over collective labour disputes as defined in Article 302 of the Labour Law as including issues relating to "the exercise of the recognized rights of professional organizations."

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

Arbitrator chosen by the employer party: **Ms. You Suonty**

Arbitrator chosen by the employee party: **Mr. Tuon Siphann**

Chair arbitrator (chosen by the above two arbitrators): **Mr. Koy Neam**

#### **EVIDENCE CONSIDERED BY THE ARBITRATION PANEL:**

- **Documents received from the employer party**
  1. Brief statement of the Jasca Garment Cambodia Ltd dated 18 August 2004,
  2. Letter dated 11 August 2004 of the Kandal Provincial Department Labour to Mr. Chun Yit Thung.
  
- **Documents received from the worker party**
  1. Brief statement of the CCAWDU union federation dated 18 August 2004,

2. Letter dated 5 August 2004 from the CCAWDU union federation requesting a delay in the vote.

- **Documents received from third parties**

1. Appointment letter to meet and negotiate with the company written by the head of the Khmer Union Federation dated 28 June 2004.

**CASE SUMMARY**

Jasca Garments (Cambodia) Ltd. is located on National Road #4, Ang Keov Village, Kontoak Commune, Ang Snoul District, Kandal Province. The company has a total of 2500 workers. On 9 August 2004 at 9:00 a.m. the Provincial Labour Office of Kandal Province received a telephone call from Jasca to say that more than 700 workers were on strike and refusing to go to work. This strike was being led by the Federation of Cambodian Democratic Apparel Workers Unions in protest against the elections [of shop stewards] where were held on 7 August 2004.

The Solidarity Union Federation (hereafter referred to as the Solidarity Federation) and the Khmer Union Federation (hereafter referred to as the Khmer Federation) consulted with Jasca Garment (Cambodia) Ltd. (hereafter referred to as Jasca) in order to organize an initial round of elections [for shop stewards] within the factory. The Federation of Cambodian Democratic Apparel Workers Unions (hereafter referred to as the CCAWDU Federation) did not participate in these consultations. After these consultations, Jasca held the vote on 7 August 2004 without participation of the CCAWDU Federation.

The CCAWDU Federation claimed that they have members in the factory who are not satisfied with the outcomes of the vote and demanded that the vote be held again. The other federations, namely Solidarity and Khmer, do not agree although the company does not object to the restaging of the elections. Even though there was an attempt by the company to resolve the dispute by suggesting that the CCAWDU Federation add a number of their activists to the group elected as shop stewards, and this idea was accepted by the other two unions, CCAWDU did not agree to this resolution because they said that it was undemocratic.

**1. Jasca's Response**

On 12 July 2004 Jasca received a letter from the Solidarity Federation requesting that shop steward elections be held at the factory. On 22 July 2004 the company consulted with the two union federations, namely Solidarity and Khmer, and it was decided that there would be

shop steward elections; however, a date for the elections was not set at this stage. On 27 July 2004 the company put up a notice on its notice board stating that there would be elections in the future. On the same day, Mr. Tan Bun Meng, the human resources director, went to the Provincial Labour Office of Kandal Province in order to consult with regard to the date of the elections.

On 2 August 2004 Mr. Tan Bun Meng met with the representatives of the CCAWDU Federation at Jasca, Mr. Soem Vanna and Mr. Yeang Sunheng, who asked to be able to make nominations for the elections, but Mr. Tan Bun Meng did not allow them to participate in the elections saying that they had not been registered [as a union with MOSALVY] yet. The CCAWDU union at Jasca only had the receipt showing that they had filed their request for registration which was issued by the Department of Labour Inspection on 27 May 2004.

On 03 August 2004 Mr. Tan Bun Meng met Mr. Soem Vanna again, the latter having come to explain about the validity of registration on the basis of proof of application. Mr. Tan Bun Meng acknowledged receipt of their application but said that he could not allow them to stand for election unless the other two unions agreed.

On 04 August 2004 Mr. Tan Bun Meng and Mr. Soem Vanna met with the other two unions in order to consult and request a decision. During these consultations, the other two unions decided not to allow CCAWDU candidates to stand for election.

Also on 4 August 2004 at 3:00 p.m., the company put up a notice stating that the date for the elections would be 7 August 2004.

The CCAWDU Federation sent a letter dated 5 August 2004 in order to request a delay in the elections. Mr. Bun Meng received this letter on the morning of 6 August 2004. Mr. Tan Bun Meng refused to delay the date explaining that the company had sent the list of candidates to the Provincial Labour Office already. Further, Mr. Bun Meng was still following the decision of the other two unions.

Besides the matter described above, Mr. Tan Bun Meng was aware of information since May 2004 that CCAWDU has members at Jasca. Further, as the person who was responsible for the organization of the ballot, Mr. Tan Bun Meng knew that the company had legal duties. He knew that if the various unions participated in the elections, then each union must have the right to nominate a number of candidates equal to the number of seats allotted by law. In the company's notice posted 22 July 2004 the company knew that the elections had to be

organized within 45 days “after they had received the request from the Solidarity and Khmer Federations.”

### **Jasca’s Claim**

The company does not have a claim. They agree to follow whatever decision the Arbitration Council makes.

## **2. The Workers’ Response**

### **A. The CCAWDU Federation**

The CCAWDU Federation knew that there would be shop steward elections when the company distributed a notice on 4 August 2004. The CCAWDU Federation did not see the notice posted on 29 July 2004 stating that there would be elections, but on 31 July 2004 they did hear about it from workers who said that they knew there was going to be a vote, but did not know when. After finding out about the date of the vote, the CCAWDU Federation had Mr. Soem Vanna and Mr. Yeang Sunheng (President and Secretary of the CCAWDU Union at Jasca) go to meet Mr. Tan Bun Meng on 2 August 2004 in order to ask if there were going to be elections or not and to request that their candidates be allowed to stand.

Mr. Tan Bun Meng refused this request saying that this Federation had not yet been registered and that the receipt of application could not be used to participate in the shop steward elections. The other two unions also refused to allow them to participate, relying on the same reasons as the company. The CCAWDU union knew of the date of the elections on 4 August 2004 when the company put up its notice. Thus the company did not allow the CCAWDU Federation to participate in the elections as this federation was not registered, having only a receipt of application. Although the union wrote a letter dated 5 August 2004 requesting the delay of the elections, the company did not agree. The other two unions suggested that the CCAWDU union wait two years [until the next elections].

The CCAWDU Federation requested registration with MoSALVY but the Ministry did not issue proof of registration. This receipt of application was issued on 24 May 2004. The CCAWDU Federation, though they did not have proof of registration, had a receipt of application which has the same value as registration according to Article 268 paragraph 2 of the Labour Law which states that:

“If the Ministry in Charge of Labour does not reply within two months after receipt of the registration form, the professional organization is considered to be already registered.”

According to this Article, although close to the date of the elections, the CCAWDU Federation went to remind the Ministry to issue proof of registration, but the Ministry responded that they could not do so because they had to develop a new system after the formation of the new government.

## **B. The Solidarity and Khmer Federations**

The representatives of the Solidarity and Khmer Federations stated during the meeting with the representative of the company and the CCAWDU Federation on 4 August 2004 that they refused to allow the CCAWDU Federation to participate in the elections as their union was yet to be registered. These two unions thought that the receipt of application for registration had no validity for the purpose of participation in elections.

### **Workers' Claim**

The CCAWDU Federation requested that the vote be reheld. The Solidarity and Khmer Federations requested that the results of the elections of 7 August 2004 be upheld.

### **Findings of Fact**

After having considered the minutes of the conciliation of the collective labour dispute, the documents provided by the company, and the CCAWDU Federation, and having heard the evidence provided by the employer and worker parties:

#### **The Arbitration Panel finds that:**

- 1- The CCAWDU Federation has members at the company according to the claims of CCAWDU and as acknowledged by the company.
- 2- On 22 July 2004, the company met to consult with two union federations, namely the Solidarity and Khmer Federations whereby it was decided that elections should be held, but during which no date for elections was fixed.
- 3- The CCAWDU Federation asked for registration for the elections with the company on 2 August 2004.
- 4- The company rejected the CCAWDU Federation's request to participate in the elections on the basis that they were not registered as would be required for recognition at Jasca, and because of the objections of the Solidarity and Khmer Federations.

- 5- The company did not agree to delay the elections as requested by the CCAWDU for the reasons set out above.
- 6- The company knew that it had a legal obligation arising out of its responsibility for organizing the elections at their factory.
- 7- The elections were conducted on 7 August 2004 even though there was a request for a delay and even though the company knew that they could have organized the elections on another day within the 45 day period after the two unions asked for elections to be held.

### **REASONS FOR DECISION**

The issue which must be resolved here is whether the CCAWDU Federation was deprived of its rights to participate in the shop steward elections just because they were not registered; and if there was an interference with these rights, how should this be remedied?

The company gave the following three reasons for not allowing the CCAWDU Federation to take part in the elections:

1. The CCAWDU Federation had not registered. The production of a receipt of application for registration could not be used to prove that the CCAWDU Federation was registered.
2. The Solidarity and Khmer Federations would not allow the CCAWDU Federation to participate in the shop steward elections because the latter was not registered.
3. They could not delay the elections because the list of candidates had been sent to the Provincial Office of Labour in Kandal Province already.

Article 268 of the Labour Law requires the Ministry of Labour to respond within two months after receipt of an application for registration [of a union], and if this is not done then the union which makes the application is considered to be registered. A receipt of application for registration was issued by MoSALVY on 27 May 2004. If the time is counted up until when the CCAWDU Federation requested to join the elections (2 August 2004) it is two months and eight days. Furthermore, on the receipt of application, the Ministry notes 9 June 2004 as the date on which the Ministry had to respond to the application with a request for more information or with a decision (see bottom of receipt). Accordingly, the Ministry's extension of time for internal administrative reasons cannot result in the CCAWDU Federation losing their rights.

The company may not have sufficient knowledge of the law in order to interpret the validity of the receipt; meaning that the company could not have known that a receipt of application which was two months and eight days has by force of law the same value as registration. But in case of doubt like this, the company should have sought legal advice in order to evaluate the validity of the receipt or should have delayed the vote and resolved this sensitive issue before finally deciding to hold a vote. The company knew well that that the law says that elections could be held within 45 days of the day on which they received a request from the unions (Labour Law Article 292). In this case the date of the request was 22 July 2004. If you calculate from this date until the last day on which the law would allow the company to hold the elections this would be 5 September 2004. The reason which the company gave for not postponing the vote is namely that the list of candidates had already been sent to the Provincial Office of Social Affairs [and Labour] cannot be accepted as a justification because the law does not provide for such a rule. The law only stipulates that the employer must send minutes of the elections to the Department of Labour Inspection at MoSALVY (see Article 4 of Prakas 286/01). The company did not act to resolve this issue; on the contrary they decided to hold the election urgently.

That the company relied on the decisions of the Solidarity and Khmer Federations denying the CCAWDU Federation the right to participate in the elections was not reasonable because the company itself was responsible for organizing the elections (Article 292). Additionally, Article 288 of the Labour Law and Article 2 of Prakas 286/01 state that representative unions have the right to nominate candidates for shop steward elections. If there are no representative unions then all workers (including unions) have the right to nominate candidates for the elections (see Article 290 of the Labour Law and Article 2 of Prakas 286/01).

Furthermore, the list of unions with representative status is kept by the Department of Labour Inspection in accordance with Article 277 of the Labour Law. The Department of Labour Inspection has stated that at Jasca there is no union which is registered as having representative status. Thus the employer must accept nominations from any union as well as from workers without unions.

For the above reasons, the Arbitration Council finds that no federation or union has the legal right to decide that another union may or may not participate in shop steward elections. Further, according to equity, the company should not decide such issues in consultation with the two other unions who are also parties to the dispute because these unions have a conflict of interest.

In accordance with the above reasons the Arbitration Panel finds that Jasca impinged upon the right of the CCAWDU Federation to participate in the shop steward elections. This should be made good by allowing all unions who have members in the factory to be given equal rights before the law.

**DECISION**

Jasca Garments (Cambodia) Ltd. must organize new elections to choose shop stewards allowing the CCAWDU Federation to participate on equal footing with the other two unions. These elections must be held in accordance with the law and Prakas 286/01 of MoSALVY.

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

Arbitrator chosen by the employer party:

Name: **Ms You Suonty**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Mr. Tuon Siphann**

Signature: .....

Chair of arbitration panel:

Name: **Mr. Koy Neam**

Signature: .....

This Award will become binding on the two parties 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.