

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 69/04

Date of award: 8 September 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

Common Way Fashion Company (Cambodia) GMT MFG

(Employer party)

AND

Khmer Youth Union in Common Way Company and Khmer Youth Union Federation

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives:

1- Mr. Tan Allan	Director
2- Mr. Seng Tekhuot	Administration Manager
3- Mr. In Meng	Representative of the Garment Manufacturers Association in Cambodia (GMAC)

Address: # 778, Street North Bridge, Sangkat Chom Chao, Khan Dangkor,
Phnom Penh

Tel: 011 788 841/ 023 802 283 Fax: N/A

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

1- Mr. May Vathana	Official of Khmer Youth Union Federation
2- Mr. Long Sophat	Official of Khmer Youth Union Federation
3- Mr. Chhuon Seyha	President of Khmer Youth Union in Common Way Company
4- Ms. Sun Sophy	Vice-President of Khmer Youth Union in Common Way Company
5- Ms. Eng Kimhor	Secretary of Khmer Youth Union in Common Way Company
6- Mr. Sok Kimhun	Shop steward

Address: # 58E, Street 265, Sangkat Tek Lahok 3, Khan Tuol Kok, Phnom Penh

Tel: 011 975 670/ 011 754 317 Fax: N/A

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The employees demanded that the company consider the workers who have worked more than two months to be permanent workers and to provide them wages in accordance with the Labour Law.
- 2- The employees demanded that the company reimburse them 15,000 riels for medical check-up fees and US\$3 for employment cards.

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 99/04; 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 2240 MoSALVY/LI, dated 18 August 2004 was submitted to the Secretariat of the Arbitration Council on 19 August 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Mar Sambona
Arbitrator chosen by the worker party:	Mr. Ven Pov
Chair arbitrator (chosen by the two arbitrators):	Mr. Kong Phallack

HEARING AND EVIDENCE:

Date and place of hearing: Tuesday 24 August 2004 at the Secretariat of the Arbitration Council, Phnom Penh Center, Building A, Street Sothea Ros, Sangkat Tonle Bassac, Phnom Penh.

Witnesses and experts: None

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

Provided by the employer party:

- 1- The letter of Cambodian Development Council No. 746, dated 17 June 2003
- 2- The status of Common Way Company, dated 20 February 2004

- 3- The Internal Rules of the company, dated 21 April 2003
- 4- The name and signature list of workers who borrowed money of the company in order to pay medical check-up fees, dated 30 January 2004 (25 pages)
- 5- The name and signature list of workers who borrowed money of the company in order to pay for employment cards, dated 16 September 2003 (26 pages)
- 6- The contract for the probationary period of the worker named Meas Sarin, dated 24 March 2004
- 7- The contract for the probationary period of the worker named Sem Sreyphea, dated 13 March 2004.

Provided by the employee party:

- 1- Notification 315/04 on the election of Khmer Youth Union Committee
- 2- The report of the workers of Common Way factory (4 pages)
- 3- The Curriculum Vitae, Certificate, application form, and labour contract of the worker named Sem Makara, dated 1 May 2004
- 4- The Curriculum Vitae, Certificate, application form, and labour contract of the worker named Leng Chenda Rasmey, dated 1 May 2004
- 5- The Curriculum Vitae, Certificate, application form, and labour contract of the worker named Chheun Sithon, dated 4 May 2004
- 6- The Curriculum Vitae, Certificate, application form, and labour contract of the worker named Chek Chamreun dated 1 May 2004
- 7- The Curriculum Vitae, Certificate, application form, and labour contract of the worker named Ol Samath, dated 1 May 2004
- 8- The labour contract of the worker named Mar Lach dated, 14 August 2004

Received from the Ministry of Labor and Vocational Training:

- 1- The non-conciliation report of the Ministry of Labour and Vocational Training, dated 17 August 2004
- 2- The minutes from the conciliation of the collective dispute dated, 12 August 2004

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

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

CASE SUMMARY:

Common Way Company is located in Kok Chambok village, Trong Mean street, Sangkat Chom Chao, Khan Daun Penh, Phnom Penh. It employs 980 workers in total. The workers

filed, on 9 August 2004, a complaint to the Labour Inspectorate of Dangkor district demanding the company improve some working conditions. After receiving the complaint, the Labour Inspectors mediated between the parties in the factory on 12 August 2004. During the conciliation, both parties reached an agreement on seven of nine issues. The Ministry of Labour and Vocational Training submitted the non-conciliation report to the Arbitration Council on 19 August 2004.

The Secretariat of the Arbitration Council required both parties to provide relevant documents and witnesses and summoned both parties to a hearing on 24 August 2004 at 2:30 p.m. On the hearing date, both parties were present on time and the Arbitration Council began to conciliate both parties again before starting its procedures.

Regarding the second issue, the Arbitration Council will not consider it because the employer agreed to reimburse the employees, according to the Labour Law and the employees agreed on this issue as well. (Please see the agreement annexed hereto.)

FINDINGS OF FACT:

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

We find that:

1st issue:

The company started its business in January 2004. Among all 980 workers, there are about 300 workers whose contracts are either probationary contracts or apprenticeship contracts. These workers have not yet received all their benefits as provided in the Labour Law. The company classified its workers into three groups:

1- First group: apprentice

This first group of workers must complete an apprenticeship for two months and they receive US\$35 per month as salary. After finishing the apprenticeship, these workers become probationary workers. The company agreed to refund the apprentices who were not paid correctly according to the law and to consider them as regular workers.

2- Second group: probationary workers

This group of workers must complete probationary work for two months and receive US\$40 per month as salary. They will become permanent workers if the company finds that their work is performed well. The company agreed to refund the probationary workers who were not paid correctly according to the law and to consider them as regular workers.

3- Third group: floating worker

There are about 80 floating workers and most of them have worked since the company started its business. They receive US\$1 per day as a daily wage. These floating workers were working full time: 8 hours per day and 6 days per week like other permanent workers in the company. The company also agreed to consider the probationary workers who have worked for more than two months as regular workers if they signed new contracts for two months duration in order to evaluate their works. But the workers disagreed with this fixed duration contract.

REASON FOR DECISION:

1- The classification of workers

The Arbitration Council finds that there are about 80 workers that have worked for the company since January 2004 (more than 7 months) and receive US\$1 per day. The company considers them as floating worker; but this kind of worker is not mentioned in the Labuor Law.

Article 9 of the Labour Law states, "In accordance with the stability of employment, it is distinguished:

- a- regular workers;
- b- casual workers who are engaged to perform an unstable job.

Regular workers are those who regularly perform a job on a permanent basis.

Casual workers are those who are contracted to:

- perform a specific work that shall normally be completed within a short period of time.
- perform a work temporarily, intermittently and seasonally."

According to the above Article, there are only two kinds of workers: the first type is regular workers, and the second type is casual workers. Casual workers are those who are contracted to perform a work for short time, temporarily, intermittently and seasonally.

In this case, most of the 80 floating workers worked full time for more than seven months.

According to the awards of 53/04 – Kong Hong and of 55/04 - You Chheng case, the Arbitration Council decided that an employee who has worked for an employer for an average of more than 21 days per month and more than two continuous months cannot be considered to work for a short time, temporarily, intermittently and seasonally. The Arbitration Council finds that these 80 floating workers are regular workers.

According to Cambodian Labour Law, the regular worker could be either a fixed duration worker or an unfixed duration worker (Please see Articles 10, 66, and 67 of the Labour Law). Article 67(7) of the Labor Law states, "A contract of a specified duration must be in writing. If not, it becomes a labor contract of unspecified duration".

On 31 August 2004, the Secretariat of the Arbitration Council asked the company to copy the contract of floating workers, but the employer did not provide their contracts. The Arbitration Council finds no written contract exists. According to Article 67(7), the contracts of these 80 workers are unfixed duration contracts. In order to change the nature of contract from unfixed duration contract to fixed duration contracts, there must be an agreement between the parties to change the contract..

In this case, the employer asked the floating workers to sign the contract for a fixed duration of two months, but the workers disagreed with this proposal. Therefore, the change of the contract nature cannot be done.

2- The refund and reimbursement

Article 10 of the Labour Law states, "Casual workers are subject to the same rules and obligations and enjoy the same rights as regular workers, except for the clauses stipulated separately." In accordance with this Article, a casual worker should receive the same wage and benefits as a regular worker. Thus, the Notification 06/97 and 017/00 on the wage in the garment industry sector should be implemented for all workers employed by the Common Way factory. The minimum wage should be provided as follow:

- 1- US\$30 per month for apprentice (Notification 06/97)
- 2- US\$40 per month for probationary worker (Notification 017/00)
- 3- US\$45 per month of regular worker (Notification 017/00)

Additionally, the [attendance] bonus US\$5 per month should be provided to the workers who have worked regularly in each month (Notification 17/00).

With reference to the Notification 06/97, Prakas 04/00 and Articles 54 and 61 of the Labour Law, the apprenticeship duration in the garment industry in Phnom Penh should not last more than two months. After finishing this apprenticeship, the workers can be continuously employed in the probationary contract form. Based on the Article 68 of the Labour Law, the maximum probationary period of most workers in garment factory is two months because they are specialized workers. After this probationary period, they will be considered as regular workers.

Therefore, the floating workers, who have received US\$1 per day, were not paid correctly according to the law.

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

DECISION

- 1- Orders the company to treat the floating workers, who have worked for the company 8 hours per day, 21 days per month and two continuous months, as

regular workers (full rights) immediately after this award comes into force. Their contracts shall be unfixed duration contracts

2- Orders the company to refund and reimburse all workers to this dispute in compliance with the Labour Law and the basic salary as follow:

2.1- For floating workers

2.1.1- Provide the wage US\$30 per month (including attendance bonus of US\$5) for the first two months as a casual worker

2.1.2- Provide the wage US\$40 per month (including attendance bonus of US\$5) for the first two months as a regular worker

2.1.3- Provide the wage US\$45 per month (including attendance bonus of US\$5) for the following months

2.1.4- The above wages have to be calculated from the time these floating workers started working for the company

2.2- For apprentices

2.2.1- Provide the wage US\$30 per month (including attendance bonus of US\$5) for the first two months

2.2.2- Provide the wage US\$40 per month (including attendance bonus of US\$5) for third and fourth months

3- 2.2.3- Provide the wage US\$45 per month (including attendance bonus of US\$5) for the following months

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Sambona**

Signed:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signed:

Chair of arbitration panel:

Name: **Kong Phallack**

Signed:

This Award will become binding after 8 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 parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

AGREEMENT

Between

**COMMON WAY COMPANY AND
KHMER YOUTH UNION IN COMMON WAY COMPANY AND KHMER YOUTH UNION
FEDERATION**

During the process of the Arbitration Council, both parties reached an agreement as follow:

A- Medical check-up fee

- The company will reimburse the workers the medical check-up fee for 15,000 riels on 10 October 2004.

B- Employment card fee

- The company will reimburse the workers the employment card fee for 9,500 riels (12,000 riels – 2,500 riels = 9,500 riels)

We have read and agreed to sign this agreement.

Phnom Penh, 8 September 2004

The representative of the employer

The representative of the employees

Signature

Signature

TAN ALLAN

MAY VATHANA