



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 69/07- M&V 3

Date of Award: 14 July 2007

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: **SIN KIM SEAN**

Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **M & V International Manufacturing Ltd.**

Address: National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 023 425 010/425 041, 016 70 70 46

Fax: 023 425 001

Representative:

1. Mr. Yin Nak Vice-head of administration
2. Mr. Long Heang Legal Coordination Officer of GMAC

Worker party:

Name: **Cambodia Independent Workers Union at MV Garment Factory**

Address: #1607, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 012 884 057, 012 856 289 Fax: N/A

Representative:

1. Ms. Hol Mom General Secretary of Cambodia Federation of Independent Trade Union
2. Mr. Kong Samnang Head of Independent Workers Union at MV 3 Factory
3. Mr. Lon Sitha Vice-head of Independent Workers Union at MV 3 Factory

4. Mr. Chhay Ravuth Committee Member of Independent Workers Union at
MV 3 Factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

The workers demand that the company increase the piece-rate for all PN (model of clothes) to not less than US\$ 2.2 per 8 hours. In cases where it is less than this, the company should increase the piece rate as has been the practice over the last few years. The company, on the other hand, alleges that it cannot increase as demanded because the rate is already high but where the average piece rate is less than US\$ 2.2, the company will increase it to US\$ 2.2.

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 No700 K.B/AK/VK, dated 23 July 2007 was submitted to the Secretariat of the Arbitration Council on 24 July 2007.

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: 01 August 2007 (From 2:00 p.m. to 4:00 p.m.)

Procedural issues:

On 19 July 2007 the Department of Labour Dispute received a complaint by phone from the employer of MV 3 Garment Company regarding the workers' demand for the company to increase the piece rate. After receiving the complaint, the Department of Labour Dispute assigned its officer to conciliate this dispute and the last conciliation was held on 19 July 2007; but one issue was not able to be successfully conciliated. This non-conciliation point was referred to the Secretariat of the Arbitration Council on 24 July 2007.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party at the factory to the hearing and conciliation on the one

non-conciliated issue on 01 August 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day the Arbitration Council attempted to resolve the one non-conciliation issue mentioned in the non-conciliation report by the Department of Labour Dispute but did not achieve a successful conciliation result. Therefore, in this case, the Arbitration Council will consider this non-conciliated issue based on evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter by the director of the company to authorize Mr. Long Heang and Mr. Yin Nak, dated 13 July 2007.
- Statement prepared by the company to defend its case, dated 02 August 2007
- Certificate of commercial registration, dated 11 July 1995
- Minutes of dispute resolution, dated 30 July 2007
- Minutes of dispute resolution, dated 07 July 2007
- Minutes of dispute resolution, dated 23 July 2007
- List of workers' wage payments in overlock section, 2nd and 3rd floor from 06 July to 20 July 2007
- PN type demanded by the workers
- Contract related to determination of piece rate

Provided by the worker party:

- Clarification about the demand for increase of piece rate, dated 06 August 2007
- List of wage payments and salary slips of some workers
- Certificate of union registration, dated 05 July 2001

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

- Report of collective labour dispute resolution at M&V 3 Company by the Department of Labour Dispute, dated 23 July 2007
- Minutes of collective labour dispute resolution, dated 19 July 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 305 K.B/AK/VK/LKA dated 26 July 2007 to invite the worker party to attend the hearing.
- Invitation letter No. 304 K.B/AK/VK/LKA dated 26 July 2007 to invite the employer party to attend the hearing.

FACTS

- Having examined documents submitted to the Arbitration Council
- Having reviewed the minutes of the collective labour dispute conciliation
- Having listened to the statements by the workers and the employer parties

The Arbitration Council finds that:

- M&V 3 Company employs approximately 2,876 workers.
- Based on the minutes of collective labour dispute conciliation dated 19 July 2007, there are 200 of 2,876 workers who are directly involved in this dispute.
- There are 4 unions in this factory: Cambodia Independent Union, Cambodian Industrial Union, C.CAWDU and Khmer Youth Trade Union.
- Based on the claim of the representatives of the workers and the union, the Cambodian Independent Union has approximately 1,250 members. Workers who are directly involved in this dispute are those in the overlocking sections E, C and D which have approximately 137 workers.
- The Cambodia Independent Union does not have a certificate of most representative status.

Issue 1: The workers demand that the company increase the piece rate for all PN (model of clothes) to US\$ 2.2 per day for workers in overlocking sections E, C and D

- The employer claims that in the factory the overlocking sections have approximately 232 workers, including 95 workers in the collar overlocking section and 137 workers in overlocking sections E, C and D. The workers do not object to this.

- The workers demand that the company increase the piece rate for all PN models to US\$ 2.2 per day to ensure that an average number of workers receive a daily wage of at least US\$ 2.2. The workers allege that most of the workers in overlocking sections E, C and D do not receive a wage of US\$ 2.2, as agreed between the workers and the employer. The workers party alleges that the employer agreed to a piece rate for all PN models that would ensure most workers (on average) would receive a daily wage (8 hours per day) of at least US\$ 2.2 per day. The workers did not provide this agreement in writing to the Arbitration Council to prove their claim.

- The employer does not agree to increase the piece rate for all PN models to ensure an average number of workers in overlocking sections E, C and D receive a daily wage of US\$ 2.2; but agrees to increase the piece rate for all PN models to ensure an average number of workers in all overlocking sections (E, C, and D and collar overlocking) receive an average wage of not less than US\$ 2.2 per day for every half a month as was the practice from July 2007 onwards. The employer party alleged in the hearing that among all workers in the overlocking sections, more than 50% of workers received an average wage of US\$ 2.2

per day in the last 11 days. For those workers who did not receive this, the company increased the amount to US\$ 2.2 when they received their wage once every half a month. The worker party does not object to the claim that 50% of all workers in the overlocking section receive an average wage of US\$ 2.2 and the workers agree that if any worker does not receive US\$ 2.2, the company will increase the amount to US\$ 2.2 when they receive their wage once every half a month. However, the workers want the company to calculate it to ensure workers in overlocking sections E, C and D receive US\$ 2.2 and they do not want the employer to wait until mid month to increase it but they demand the company increase it to US\$ 2.2 for workers who are unable to make US\$ 2.2 per day.

- The worker party and the employer mention that in May 2007, both parties verbally agreed to set the piece rate at US\$ 2.2 per day (8 hours) for piece rate workers in the overlocking sections. However, there was no agreement in writing.

REASONS FOR DECISION

Issue in Dispute: The workers demand that the company increase the piece rate for all PN (model of clothes) to US\$ 2.2 per day for workers in overlocking sections E, C and D

Based on the above mentioned facts, in this case the workers demand that the company increase the piece rate for all PN models to ensure that an average number of workers in overlocking sections E, C and D receive a daily wage of at least US\$ 2.2.

Article 108 of the Labour Law states, *“For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.”*

Article 137 of the Labour Law 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.”*

Clause 1 and 2 of Notification 745 of 2006 states, *“The minimum wage for garment textile workers and shoes sewing workers is set at US\$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US\$ 50 per month.”*

In previous Arbitral Awards the Arbitration Council determined that *“the employer has the right to determine or change the piece rate but the piece rate should be determined in a manner that allows a worker of average ability working a normal number of hours to receive the minimum wage.”* (See 03/05-Flying Dragon, Issue 6; 41/05-Violet, Issue 8; 44/06-Goldfame, Issue 1).

In this case the Arbitration Council agrees with the Arbitration Panel in previous cases. In this specific case, for work in the garment textile sector, the Arbitration Council determines that the [piece rate] should allow a worker of average ability working not more than 8 hours per day or 48 hours per week to earn a wage of at least US\$ 50 per month after the workers become regular.

In this case, the workers do not claim that the employer does not provide the minimum wage to the workers, nor do they provide any evidence to prove that their wage is less than the minimum wage. Therefore, the Arbitration Council concludes that the employer does not fail to meet its obligation to provide at least the minimum wage to its workers.

However, in this case the workers allege that most of the workers in overlocking sections E, C and D do not receive a wage of US\$ 2.2 per day and so they demand that the company increase the piece rate for all PN models to US\$ 2.2 per day so that most workers can earn the rate of US\$ 2.2 per day. The employer does not agree because to calculate the average amount earned by a worker, the employer looked at all overlocking workers not only workers in sections E, C and D. Therefore, the Arbitration Council will determine this case as follows:

Based on the above mentioned facts, the worker party and the employer party allege that in May 2007 both parties verbally agreed to set the piece rate at US\$ 2.2 per day for workers in the overlocking section.

In relation to the claim about the parties' agreement, the Arbitration Council considers that the agreement does not state whether the wage should be calculated daily or based on the section that workers are working in. The worker party does not provide any evidence to show that the wage should be calculated based on the specific section that they work in. Therefore, the Arbitration Council considers that the determination of the piece rate in the rate of US\$ 2.2 per day for piece rate workers has to apply to all workers in the overlocking section regardless of the section they are working in because both parties agreed on this as the method of calculation. Therefore, the workers' claim that the piece rate should be set at US\$ 2.2 per day based on separate sections does not have a clear basis.

In addition, the Arbitration Council found that most of the workers in the overlocking section receive US\$ 2.2 as agreed. Neither party alleges that the agreement to receive a piece rate of US\$2.2 per day specifically requires the employer to determine the piece rate based on an average worker in overlocking sections E, C and D. In comparison to the minimum wage provided by the Law, the Arbitration Council considers that the employer provides a higher rate than the [minimum] wage of US\$ 1.92 or US\$ 50 per month stated in Notification 745 of 2006 and it already follows the agreement of May 2007.

Therefore, the Arbitration Council considers that the employer party has complied with the agreement when it increases the workers' wage to US\$ 2.2 at the time of each wage

payment. In conclusion, the employer does not have an obligation to determine the piece rate in the rate of US\$2.2 per day based on an average number of workers in overlocking sections E, C and D only.

Furthermore, in this case the worker party also demands the employer pay a rate of at least US\$ 2.2 per day. In this sense, the worker party demands that if workers earn less than US\$ 2.2 per day the company should increase it for them and if the next day the workers receive more than US\$ 2.2 per day the company should retain that for them. This means that the company should not average the piece rate over a number of days in order to determine the monthly wage. The employer calculates the wage of workers in the overlocking section once every half a month by taking the base wage of US\$ 2.2 per day and multiplying this by the number of days worked within half a month to determine the main wage. This means that the company determines the average piece rate twice a month to determine the monthly average wage. In relation to this, the Arbitration Council considers that the workers' demand for the company not to average the piece rate over a number of days to determine the monthly average wage is not correct because the right to calculate wages is the right of the employer to manage as stated in Article 2 of the Labour Law which states, *"Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer."* (See Arbitral Award 41/05-Violet, Issue 8).

[Based on] legal principle and the right to manage, the Arbitration Council considers that the employer has the right to determine [a way] to calculate whether it is monthly or daily as long as the calculation does not mean the workers receive less than the minimum wage required by the Law.

Moreover, in this case the Arbitration Council considers that increasing the piece rate to US\$2.2 every half a month instead of per day is better than provision of only US\$ 1.92 per day (the rate of US\$ 50 per month divided by 26 days) as stated in Notification 745 of 2006.

In conclusion, the Arbitration Council considers that the employer has fulfilled its obligation according to the Law. Therefore, the Arbitration Council decides to reject the workers' demand for the company to increase piece rate in all PN models to US\$ 2.2 per day for workers in overlocking sections E, C and D.

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

DECISION

- Rejects the workers' demand for the company to increase piece rate for all PN models to US\$ 2.2 per day for workers in overlocking sections E, C and D.

Type of Award: Non binding

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: **SIN KIM SEAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: