

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

**THE ARBITRATION COUNCIL**

Case: 71/04

Date of award: 13 September 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**Eternity Apparel (Cambodia)**

(Employer party)

**And**

**National Union of Cambodian Garment Industry**

(Employee party)

**Detailed information of employer party:**

**Address:** Street Trong Maen, Sangkat Tek Thala, Khan Rousey keo, Phnom  
Penh

**Tel:** 012 726 826

**Fax:** N/A

**Representative:** 1- Mr. Sar Samnang, Lawyer and representative  
2- Mr. Douth Sulkipliy, Company Administrator

**Detailed information of employee party:**

**Address:** N/A

**Tel:** 012 824 640

**Fax:** N/A

**Representatives:** 1- Mr. Ros Kan, Vice President of National Union of Cambodia Garment  
Industry;  
2- Mr. Huot Bunny, Secretary of Union;

**ISSUES IN DISPUTE:**

(Non-conciliation report)

1-The employee party demands to receive a US\$5 attendance bonus for July 26, 2004 despite the one hour the workers went on strike. The company responds it will not pay the US\$5

attendance bonus, because the workers did not follow the procedures as defined by Labour Law for a strike.

2- The workers demand the company terminate a Chinese staff member (the 'red hair sister') for threatening the workers. The company will not terminate the Chinese staff member (the 'red hair sister') but the company will advise her on treating workers appropriately.

3- The workers demand the company pay annual leave by adding it to their basic wage. The company contends it cannot provide the workers the annual leave pay by adding it to their basic wage because the workers receive more than the basic wage.

## **JURISDICTION<sup>1</sup> OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Section II B, Chapter 12 of the Labour Law (1997); the Prakas on the Arbitration Council 99/04, the Prakas on Nomination of Arbitration Council Members 103/04 and 265/04, and the Arbitration Council Procedural Rules.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. That conciliation hearing was not conciliated. The non-conciliated report, dated May 6, 2004, was sent to the Secretariat of the Arbitration Council on 6 May 2004.

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

Arbitrator chosen by the employer party:	<b>Mr. Kao Thach</b>
Arbitrator chosen by the worker party:	<b>Mr. An Nan</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Ang Eng Thong</b>

## **HEARING AND EVIDENCE**

**Date and place of hearing:** 10 September 2004 at 2:00 PM at the Secretariat of the Arbitration Council.

**Witnesses and experts:** N/A

## **EVIDENCE CONSIDERED BY THE ARBITRATION PANEL IS AS BLOW:**

### **A. *Obtained from the employer party:***

- 1-Letter of the Ministry of Commerce to the company, dated 24 July 2003
- 2- Letter of the Cambodian Development Council, dated 14 July 2003.
- 3- Internal Work Rule dated on 11 January 2001

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

- 4- Authorized letter to Mr. Sar Samnang, Lawyer, company representative to attend the hearing, dated 29 August 2004
- 5-The certified letter of the shop steward, dated 16 January 2001
- 6- Announcement dated 10 August 2004

**B. *Obtained from the employee party:***

- a. Certificate of registration of the National Union of Cambodian Garment Industry, dated 8 August 2004
- b. Letter certifying the registration of the National Union of Cambodian Garment Industry, dated on 8 August 2004.

**C. *Obtained from the Ministry of Social Affair, Labor, Vocation and Youth***

1. Non-conciliated report, dated 17 August 2004 of MoLVT
2. Minutes from the Labour dispute conciliation, dated 11 August 2004
3. Appointment letter, dated on 11 August 2004

**D. *Evidences and testimony by the employee during hearing: N/A***

**E. *The award is not promptly bound.***

## **CASE SUMMARY**

The Eternity Apparel (Cambodia) Co. Ltd. has 628 workers. On 11 August 2004, the Labour Inspector of the Russey Keo District received a complaint by phone from the workers of the company about a one-hour strike. The strike took place on 26 July 2004 and the employees claimed for the right to maintain the same US\$5 attendance bonus.. After receiving the complaint, the Labour Inspector of the Russey Keo District went to conciliate at the factory on 11 July 2004. The parties did not conciliate three issues. The three non-conciliated points were sent to the Secretariat of Arbitration Council on 1 September 2004. The Arbitration Council invited all the parties of the dispute to the hearing at 2:00 p.m.

At the hearing, the Arbitration Council asked further information and tried to conciliate the three issues. The parties reached an agreement on issue two. The company will issue a written warning to the Chinese employee (the 'red hair sister'). Both parties agreed not to raise issue three. Therefore, the Arbitration Council will not issue an award regarding issues two and three.

### **Fact Finding:**

- After reviewing the minutes from the collective labour dispute conciliation
- After listening to the above testimony of the employee party and minutes of the hearing
- After reviewing the documents as stated above

**We find out that**

- 1- Eternity Apparel (Cambodia) Company terminated a probationary worker which caused the workers in groups 1, 2 and the finishing section to go on strike for one hour (from 8:00-9:00 a.m.) on 26 July 2004.
- 2- On 11 August 2004, the employees at groups 1, 2 and the finishing section went on strike claiming the company must maintain the \$5 attendance bonus during a one hour strike on 26 July 2004.
- 3- In neither of the strikes, did the employee notify the Ministry of Labour.

**Reason for decision:****Issue 1:**

According to Notification 017/00 of the Ministry of Labour, the US\$5 attendance bonus is a part of the minimum wage, which must be paid to the workers who come to work regularly.

Under Article 332 of the Labour Law (1997), a labour contract shall be suspended during a strike. During a strike, allowance for work is not provided and wages are offered. The Arbitration Council determined that the strike of employees was not lawful, and thus, the employees did not perform the job for one hour on 26 July and 11 August 2004. The employees went on strike with no prior notice to the employer and the Ministry of Labour and did not respect other procedures. Therefore, the attendance bonus shall not be offered. The rejection of the employer in providing this bonus is appropriate. (Please see 04/03 - Linda Garment, 08/04 - Wash Concept, 15/04 - Lucky Zone, 16/04 - Yada Printing, and 25/04 - Standard Garment).

[Under the facts, law, evidence, equity and arguments, the AC issues the order and decides as follows]

**Decision**

- 1- Reject workers' demand to maintain the US\$5 attendance bonus with reference to 26 July 2004 when workers went on strike for one hour.

**Type of Award: non binding awards**

- 1- *Non-binding award*

*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.*

The Award is bound to comply with a collective bargaining agreement dated [date and validity] stipulating that no opposition to the Award may be lodged.

**Signatures of Members of the Arbitration Panel:**

Arbitrator chosen by the employer party:

Name: **Kao Tach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair of arbitration panel:

Name: **Ang Eng Thong**

Signature: .....