

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 76/04

Date of award: 22 September 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**MV Garment International Co., Ltd**

(Employer party)

**And**

**- Union of workers at MS Garment International**

**- National [Independent] Federation Textile Union of Cambodia (NIFTUC)**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Address:** National road No. 5, Tro Pengchecksa village, Kampong Chhnang Commune, Kg Chhnang District, Kg Chhnang Province.

**Representative:** 1- Mr. Tai Ly, Director of the company;  
2- Mr. Yin Nak, Administration manager;  
3- Mr. Chao Ty, Chinese interpreter of the company;  
4- Mr. Long heang, GMAC's representative;  
5- Mr. Mr. En Meng, GMAC officer;  
6- Mr. Yang Sokha, GMAC officer.

**Tel:** 016 707 046 **Fax:** N/A

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Address:** #122, Street 432, Toul Tompong II Commune, Chamcamorn District, Phnom Penh.

**Representatives:** 1- Mr. Kong Sovann, President of the union;  
2- Ms. Vat Senghan, First vice president;  
3- Mr. Chou Sivlor, Second vice president;  
4- Mr. Nou Samnang, First secretary;  
5- Mr. Phat Virakratha, Second secretary;  
6- Ms. Khoun Sreyline, Advisor;  
7- Ms. Phally Thavy, Shop Steward;

8- Mr. Bou Sokeung, Official of NIFTUC;  
9- Ms. Ros kan, Official of NIFTUC;  
10- Mr. Oun Ratha, Official of NIFTUC;  
11- Mr. Hout Bunny, Official of NIFTUC.

**Tel:** 012 824 640                      **Fax:** N/A

**ISSUES IN DISPUTE:  
(In non-conciliation report)**

- 1- The workers demand that the company increase wages to the workers who have positions as chiefs of group onwards; but the company could not provide the increase because the company has permanently increased wages according to their skills in January 2004 and July 2004 to some workers already.
- 2- For the pregnant women who work at a heavy job section (Knitting), the workers demand moving them to a light job section. The company does not agree but the company agreed to provide chairs instead and to allow them first to suspend work over two months without wage and after delivering a child the company will organize a light job for them to do.
- 3- The demand for Mr. Kong Sovann, Mr. Phat Virakratha, Mr. Nou Samnang, and Ms. Khoun Sreyline to return back to work. The company does not accept this demand because the company has submitted request form to the department of Labour Inspection in Kg Chhnang province already.

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

The Arbitration Council derives its power to make this Award from Section II B<sup>2</sup> Chapter 12 of the Labour Law (1997); the Prakas on the Arbitration Council 99/04), the Prakas on the appointment of the Arbitration Council 103/04 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 unsuccessful and non-conciliation report number 2301/MoLVT dated, 31 August 2004 was submitted to the Secretariat of the Arbitration Council on 1 September 2004.

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

<sup>2</sup> From Articles 309 to 317 of the Labour Labour Law

## 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. Kong Phallack</b>

## HEARING AND EVIDENCE

**Date and place of hearing:** On 10 September 2004 at (9:30 a.m. to 1:00 p.m.) at Arbitration Council Secretariat , building A, Sothearos Blvd, Tonlebasak, Phnom Penh.

**Witnesses and experts:** N/A

## Evidence considered by the Arbitration Panel:

### **A- Employer party's witnesses:**

- 1- Noun Changhour, shop steward at M&V factory (Kg Chhnang);
- 2- Chea Ratha, shop steward at M&V factory (Kg Chhnang);
- 3- Heing Sophak, shop steward at M&V factory (Kg Chhnang);
- 4- Noun Ratana, shop steward at M&V factory (Kg Chhnang);
- 5- Deun Sophon, shop steward at M&V factory (Kg Chhnang);
- 6- Prey Sopheap, shop steward at M&V factory (Kg Chhnang);
- 7- Beoung Sarim, worker in the sewing section;
- 8- Pan Sokheala, worker in the weaving section.

### **B- Union's witnesses:**

- 1- Bou Sokeun, worker at M&V (Kg Chhnang);
- 2- Vat Senghon, First secretary of the union.

### **C- Documents provided by the employer:**

- 1- Business license dated, 22 July 1995
- 2- Letter authorization to expand location of Cambodian Development Council number 3699/01/CDC dated, 13 December 2001
- 3- Internal work rules dated, 19 August 2002 and approved by the provincial department of social affairs on 4 December 2002
- 4- Letter to dismiss worker named Kong Sovann, Pat Viraratha, Nou Samnang and Khoun Sreyline dated, 21 August 2004 sent to the provincial department of social affairs at Kg Chhnang
- 5- Letter to suspend worker named Kong Sovann dated, 21 August 2004
- 6- Letter to suspend worker named Pat Viraratha dated, 21 August 2004

- 7- Letter to suspend worker named Noun Samnang dated, 21 August 2004
- 8- Letter to suspend worker named Chou Sivlor dated, 21 August 2004
- 9- Letter to suspend worker named Khoun Seyline dated, 21 August 2004
- 10- Complaint dated, 19 August 2004 accused workers named Kong Sovann, Pat Viraratha, Nou Samnang, Chou Sivlor and Khoun Sreyline of threatening, inciting and making chaos in the factory
- 11- Letter to deny union leader named Kong Sovann, Pat Viraratha, Nou Samnang, Chou Sivlor and Khoun Sreyline, Sethy Phala, Phaly Thavy, Sok Sreymom and Oun Chhi dated, 1 September 2004 sent to the provincial department of social affairs in Kg Chhnang
- 12- Copy of labour contract, job application, employment card, medical check paper, Identification card, and family book of worker named Pat Viraratha
- 13- Copy of labour contract, job application, medical check paper of worker named Chou Sivlor
- 14- Copy of labour contract, job application, employment card, medical check paper, Identification card, election card, and family book of worker named Khoun Sreyline
- 15- Non-conciliation report of collective labour dispute dated, 25 August 2004;
- 16- Document relates to National Union Federation of garment textile industrial in Cambodia
- 17- Document relates to Union Federation of garment textile industrial in Cambodia
- 18- 9 pictures relate to strike environment.

**D- Document provided by the employees party:**

- 1- Notice on resignation of Nen Sinat, president of the union at the factory dated, 24 July 2004
- 2- Letter to dismiss worker named Kong Sovann, Pat Viraratha, Nou Samnang, Chou Sivlor and Khoun Sreyline dated, 21 August 2004 sent to the provincial department of labour and vocational training in Kg Chhnang
- 3- Letter to suspend worker named Kong Sovann dated, 21 August 2004
- 4- Letter to suspend worker named Pat Viraratha dated, 21 August 2004
- 5- Letter to suspend worker named Noun Samnang dated, 21 August 2004
- 6- Letter to suspend worker named Chou Sivlor dated, 21 August 2004
- 7- Letter to suspend worker named Khoun Seyline dated, 21 August 2004
- 8- Letter acknowledged Mr. Nen Sinat, factory union president no. 173/MoSALVY dated, 30 January 2004
- 9- Invitation letter to resolve dispute dated, 27 August 2004

- 10- Certificate on most representative status dated, 18 February 2004
- 11- Letter from the Minister of the Ministry of Social Affairs, labour, vocational training and youth rehabilitation dated, 26 December 2002
- 12- Registration certificate dated, 20 July 2004
- 13- Letter to dismiss union dated, 20 July 2004
- 14- Notice to strike dated, 16 August 2004
- 15- Minute dated, 26 August 2004
- 16- The worker' demand of 16 points at the M&V factory in Kg Chhnang province.

**E- Evidence and witnesses of the employer party and the employees party in the hearing.**

**F- Both parties agreed in the hearing to binding award.**

#### **CASE SUMMARY**

M&V Company international located at National road #5, Tro Pengchecksa village, Kampong Chhnang Commune, Kg Chhnang District, Kg Chhnang Province, employs 4,000 workers. On 23 August 2004 there were 3500 workers conducting a strike demanding that the employer improve 17 working conditions. After learning the information and with the agreement from the Minister of Labour on 25 August 2004 Mr. Kheiv Savuth and Mr. Sok Bora, labour inspectors, went to ask for information at the place of the dispute. After listening to information from all parties, both officials tried to settle and conciliate the disputes on 27 August 2004. As a result, the employer and the employees agreed to 14 issues. The three remaining issues were sent to the Arbitration Council on 1 September 2004. After receiving the case the Arbitration Council invited both parties to join the hearing on 10 September 2004 at 8:00 a.m. In the hearing both parties agreed to the 1<sup>st</sup> and 2<sup>nd</sup> issues (See the agreement on page 12). The Arbitration Council will decide the third issue.

#### **FINDINGS OF FACT:**

- After having reviewed the non-conciliation report of the labour dispute,
- After having listened to the employees' representative,
- After having reviewed documents as described above.

**We find that:**

- 1- The employer submitted a request form to dismiss 5 workers to the labour inspectors in Kampong Chhnang and to inform them of the suspension of work without a time limit until there would be an approval from the labour inspectors because the five workers had committed serious misconduct according to Article 83 of the 1997 Labour Law.
- 2- The five union leaders had incited and led the workers at building 8 and other buildings not to do overtime on 28 August 2004. Leading the refusal to work [overtime] had happened at building 8 and spread to building 4 and building 2 and then building 1.
- 3- There was a strike led by the union leaders of NIFTUC and local union presidents from 23 to 25 August 2004.
- 4- There was a rumor that the union threatened that it would hire gangsters to fight the workers who worked overtime and refused to go home when working hours were over.
- 5- The workers rode bicycles and motorcycles in the premise of the factory, the union acknowledged this, but they stopped riding when the security guards told them to stop riding.

### **REASONS FOR DECISION**

In this case the employer said that he had decided to suspend labour contracts of five workers in accordance with Article 295 of the Labour Law which states that "In the case of serious misconduct, the manager of an enterprise can render the decision to instantly suspend the party in question pending the Labour Inspector's decision. If the Labour Inspector turns down the dismissal, the suspension is annulled and its effects are canceled lawfully."

According to this Article the employer may suspend the labour contracts of the five workers if there was serious misconduct as mentioned in Article 83(B) only. Article 83(B) of the Labour Law states,

"The following are considered to be serious offenses:

1. Stealing, misappropriation, embezzlement.
2. Fraudulent acts committed at the time of signing (presentation of false documentation) or during employment (sabotage, refusal to comply with the terms of the employment contract, divulging professional confidentiality).
3. Serious infractions of disciplinary, safety, and health regulations.
4. Threat, abusive language or assault against the employer or other workers.
5. Inciting other workers to commit serious offenses.
6. Political propaganda, activities or demonstrations in the establishment."

According to the employer's argument at the hearing the five workers had incited and threatened the workers to conduct a strike without giving prior notice to the employer and thus the strike was not in conformity with the law. However the Arbitration Council finds that the strike which was not lawful does not mean that workers had committed serious misconduct. Thus the incitement of causing an illegal strike also was not serious misconduct by the union leaders in the factory. The argument from the witnesses is that the five union leaders had threatened or used an abusive language towards another worker by saying that they would hire gangsters to fight the workers who did not come to join the strike. After the Arbitration Council asked the witnesses, the witnesses replied that, regarding the hiring of gangsters to fight the workers, the witnesses just heard the rumor but did not hear directly from the five union leaders with their ears. However, the threatening and abusive language, witnesses did hear directly through their own ears but declined to give more evidence. Moreover, the five workers denied that they said that. Thus, the Arbitration Council finds that merely hearing words from other people could not be considered the same as truth because this was only a rumor. Therefore, the five workers did not threaten other workers.

Regarding the workers riding bicycles and motorbikes in the premises of the factory, the Arbitration Council finds that it was in violation of the factory's rules, but not serious misconduct of discipline. Thus with respect to the riding of motos in the premises of the factory, the employer may warn the workers who had committed misconducts, however [the employer] could not terminate labour contracts or dismiss [the workers].

In conclusion the Arbitration Council finds that the five workers did not committed serious misconduct according to Article 83(B) of the 1997 Labour Law Law<sup>3</sup>. Thus the suspension of the five workers above according to Article 295 of the Labour Law was not correct and therefore the employer must pay wages to the workers during their suspension period.

The Labour Inspectors are required to decide on the dismissal of the five workers within one month (Article 293); if not it is presumed that the request for dismissal would be declined. Hence, if the Labour Inspectors decided that the dismissal was not legal or did not reply promptly within one month after receiving the request for dismissal the employer must authorize the five workers who were in dispute to return back to work at their previous positions.

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<sup>3</sup> Although the Arbitration Council found that the activities of the five union leaders were not serious misconduct the Labour Inspectors in Kg Chhnang still had discretion power to decide that the employer had right to dismiss those union leaders in accordance with Article 27 and 74 of the Labour Law.

However if the Labour Inspectors decide that the dismissal of the five workers was correct, the employer must pay wages calculated from the date this arbitral award is issued.

Based on the above reasoning, the evidence and the law stated above, the Arbitration Council decides as follows:

**DECISIONS :**

**THE ARBITRATION COUNCIL DECIDES AND ISSUES ITS ARBITRAL AWARD AS FOLLOWS:**

1- The Company must pay full wages to the five workers whose labour contracts were suspended, calculated from 21 August 2004 until they are informed by the Labour Inspector about the five workers.

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

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature: .....

Arbitrator chosen by the employee party:

Name: **An Nan**

Signature: .....

Chair of Arbitration Panel:

Name: **Kong Phallack**

Signature: .....

*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.*