

KINGDOM OF CAMBODIA

NATION RELIGION KING



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THE ARBITRATION COUNCIL

Case number and name: 76/06 – South Bay

Date of Award: 18 September 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party:

LY TAYSENG

Arbitrator chosen by the worker party:

TUON SIPHANN

Chair Arbitrator (chosen by the two Arbitrators):

KONG PHALLACK

DISPUTING PARTIES

1- Employer Party

Name : **South Bay Enterprise (Cambodia) Co., Ltd.**

Address : Vatanac Park, Sangkat Chaom Chau, Khan Dangkor, Phnom Penh

Telephone : 012 838 094 Fax: N/A

Employer Representatives:

1. Mr. Li Bin Manager;

2. Mr. Dong Sochea Manager of the Shipping Unit.

2- Worker party

Name : **Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) and Cambodian Apparel Workers' Democratic Union in South Bay**

Address : No. 6C, Street 476, Sangkat Tuol Tumpung I, Khan Chamkarmon, Phnom Penh

Telephone : 012 709 509 Fax: 023 210 481

Worker Representatives:

- | | |
|------------------------|--|
| 1. Mr. Kong Atit | Secretary of C.CAWDU; |
| 2. Ms. Meas Vanny | C.CAWDU Labour Officer; |
| 3. Mr. Bu Bela | Vice-President of C.CAWDU in South Bay Factory; |
| 4. Mr. Chhin Sophon | Secretary General of C.CAWDU at South Bay Factory; |
| 5. Mr. Touch Sok Koung | Worker delegate. |

ISSUE IN DISPUTE

(In the non-conciliation report)

The workers demanded that the company provide them with severance pay of five percent at the termination of each labour contract as stated in Article 73 of the Labour Law, regardless of whether the workers or the company decide to renew the contract.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).

An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report 1231/06 was submitted to the Secretariat of the Arbitration Council on 30 August 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:

Place of Hearing : **The Arbitration Council**, Phnom Penh Centre, Building A,
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh.

Date of the Hearing : 7 September 2006 (from 8:30 a.m. to 10:00 a.m.)

Procedural Issues:

Having received the complaint from the workers on 30 June 2006, in which it was demanded that the company comply with working conditions in accordance with the Labour Law, the Department of Labour Disputes designated its expert official to settle and conciliate the labour dispute, but the issue was not successfully conciliated in the last conciliation session held on 17 August 2006.

The Arbitration Council received the case and the non-conciliation report 1231/06 issued by the Director of the Department of Labour Disputes on 30 August 2006.

Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing to settle the non-conciliated issue on 7 September 2006 at 8:30 a.m. Both parties were present at the Arbitration Council hearing. The Arbitration Council made a further attempt to conciliate the non-conciliated issue, but the issue remained unresolved. Therefore, in this Award the Arbitration Council considers the non-conciliated issue based on the evidence and findings of fact as follows:

EVIDENCE

Witness and experts besides parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 - 1- South Bay Enterprise's Internal Work Rules;
 - 2- Labour contract of Lam Hay Hour;
 - 3- Labour contract of Bim Srey Thun;
 - 4- Labour contract of Kong Bunthoeun;
 - 5- Labour contract of Hun Kakada.
- b. Provided by the worker party:
 - 1- Brief report on the collective labour dispute settlement at South Bay factory, dated 5 September 2006;
 - 2- Letter No. 199 on the application for the recognition of the new union leaders, dated 8 February 2006 ;
 - 3- Statute of C.CAWDU in South Bay Factory.
- c. Provided by the Ministry of Labour and Vocational Training:
 - 1- Report No. 1231 on the collective labour dispute settlement at South Bay Factory, dated 30 August 2006 ;
 - 2- Minute of the collective labour dispute settlement at South Bay Factory.
- d. Provided by the Secretariat of the Arbitration Council:
 - 1- Invitation No. 360 to the worker party to attend the hearing, dated 1 September 2006;
 - 2- Invitation No. 361 to the employer party to attend the hearing, dated 1 September 2006.

FINDINGS OF FACT

- Having examined the report on the collective labour dispute settlement;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- South Bay Factory started its operation in 1998 and its written contracts were available from 2000. The first labour contracts of the factory were two-year fixed duration contracts and were subsequently renewed every year. The labour contracts have [therefore] already been renewed many times;
- The factory has never provided the workers the five percent severance pay when workers have decided not to renew their labour contracts. However, the factory has provided the five percent severance pay when the factory terminates the workers' labour contracts before their expiration. In cases where the workers committed misconduct, the factory would dismiss them without providing them the five percent severance pay;
- The workers demanded that the company provide them with the five percent severance pay at the expiration of each fixed duration contract in accordance with Article 73 of the Labour Law. The factory refused to consider the demand because the company considered that Article 73 of the Labour Law does not provide such terms. The company will provide the five percent severance pay, when the company dismisses the worker; meaning when the contract is not renewed.

REASONS FOR DECISION

In this case the workers demanded that the factory provide them with the five percent severance pay at the expiration of each fixed duration contract. The factory did not agree to provide such pay [at this time] but only in cases where a worker's fixed duration contract is terminated by the company before its expiration.

Article 73(1) of the Labour Law provides, "*A labour contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement on the condition that this agreement is made in form of writing in the presence of a Labour Inspector and signed by the two parties to the contract.*"

Moreover, Article 73(6) of the Labour Law provides, "*At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.*"

In Arbitral Award 60/06 – *New Max Garment*, the Arbitration Council considered "... that the content of this article can be interpreted in many ways. It is not clear what the term "at the expiration of the contract" means as nobody knows whether this term refers to the expiration of the contract of each worker or the termination of a worker's employment

relationship. However, the Arbitration Council considers that the Article refers to “severance pay”. Severance pay can be interpreted as the pay to be provided when an employment relationship is terminated or at the expiration of the employment relationship.”

The Arbitration Council considers that the interpretation of the Arbitrators in the above case was reasonable. Therefore, to be consistent with the previous award, the Arbitration Council considers that the employer is not obligated to provide the five percent severance pay at the expiration of each fixed duration labour contract, if the employment relationship continues to exist. The workers can receive the five percent severance pay at the expiration of each fixed duration labour contract and when the employment relationship is terminated. If a labour contract is renewed at its expiration, the employment relationship would not be considered as terminated because the employment relationship continues to exist and other benefits are still provided when the next labour contract is renewed.

However, in regard to this case, the labour contracts of the workers have already become undetermined duration contracts since they have a total length of more than two years (see *Arbitral Award 10/03 – Jacqsintex, 36/06 – Mondotex and 57/06 – Evergreen*). Therefore, the termination of the workers’ labour contracts must comply with the provisions on the termination of undetermined duration contracts. In regards to this case the workers shall receive severance pay at the termination of their labour contracts and according to the type of labour contracts. The employer shall not apply the provisions relating to the termination of fixed duration contracts in order to terminate undetermined duration contracts.

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

DECISION

Decline to consider the demand of the workers that the employer provide them five percent severance pay at the expiration of each fixed duration contract in cases where the labour contract is renewed.

TYPE OF AWARD: 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 objection with the Secretariat of the Arbitration Council within this time period

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **LY TAYSENG**

Signature:

Arbitrator chosen by the worker party:

Name: **TUON SIPHANN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: