

**KINGDOM OF CAMBODIA**  
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**THE ARBITRATION COUNCIL**

**Case number and name: 79/05 Evergreen Apparel**

**Date of Award: 2 February 2006**

**ARBITRAL AWARD**

Issued under Article 313 of the Labour Law

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ms. You Suonty**  
Arbitrator chosen by the worker party: **Mr. Tuon Siphon**  
Chair arbitrator (chosen by the two arbitrators): **Mr. Koy Neam**

**DISPUTING PARTIES**

**Employer party:**

Name: Evergreen Apparel Co. Ltd.

Address: Russia Federation Blvd., Sangkat Toeuk Thla, Khan Rusey Keo, Phnom Penh

Telephone: 855-12-266-474

Representative:

Mr. But Rithy                      Chief of Human Resource and Administration Department

**Worker party:**

Name: Khmer Youth Federation of Trade Union (KYFTU)

Address: No. 34D, Street No. 265, Sangkat Toeuk Laak 3, Khan Tuol Kork, Phnom Penh

Telephone: 855-11-622 963

Representatives:

- |    |                   |                                                  |
|----|-------------------|--------------------------------------------------|
| 1. | Mr. Mey Vathana   | Officer of Khmer Youth Federation of Trade Union |
| 2. | Mr. Hang Sorya    | Officer of Khmer Youth Federation of Trade Union |
| 3. | Mr. Chhun Phearum | Vice President of Khmer Youth Trade Union        |
| 4. | Mr. Nguon Channa  | Shop Steward                                     |
| 5. | Mr. Sin Pring     | Shop Steward                                     |

## **ISSUES IN DISPUTE**

The workers demand that the employer reimburse the amount the employer overcharged for employment books. The employer claimed that the overcharged amount is to pay for services provided by the Ministry of Labour and Vocational Training officials in connection with the application for the employment book by the employer on the workers' behalf.

## **JURISDICTION OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); 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 Appointment of Arbitrators 513/05 (Third Term).

An attempt was made to conciliate the collective dispute which is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. But the conciliation hearing which took place on 16 December 16 2005 was unsuccessful, and the Non-conciliation Report No. 797 AABV/AK/VK was submitted to the Secretariat of the Arbitration Council on 26 December 2005.

## **HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL**

**Place of hearing:** The Arbitration Council, Phnom Penh Center Building "A", Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

**Date of hearing:** 6 January 2006 (from 8:00 to 11:00 a.m.)

### **Procedural issues:**

On 16 December 2005, the Labour Dispute Resolution Department in Resey Keo convened a meeting to conciliate the dispute between the workers of the Evergreen Apparel Co., Ltd and Evergreen Apparel Co., Ltd (Evergreen Apparel). The workers demanded the employer reimburse them the amount which the employer overcharged them when applying for the employment book on their behalf. The conciliating official attempted to conciliate this issue, but the parties failed to reach a settlement. As such, the non-conciliated dispute was referred to the Arbitration Council on 26 December 2005. After receiving this dispute, both parties were summoned to a hearing to be conducted on 6 January 2006.

Both parties were present on the day of the hearing. The Arbitration Council attempted to conciliate the dispute, but failed to reach a settlement. As a consequence, the hearing was conducted on 6 January 2006 at 9:00 a.m. to find out additional facts and

evidence. The Arbitration Council also ordered both parties to provide additional evidence to support their claims.

The Arbitration Council wrote to the employer requesting s/he provide a receipt for the employment books which the employer had argued that civil servants from the Ministry in charge of Labour demanded in excess of the employment fee as determined by the law, by 26 January 2006.

The Arbitration Council will consider this non-conciliation issue based on evidence and findings of fact as below:

### **EVIDENCE**

**Witnesses and experts:** None

### **DOCUMENTS, EXHIBITS AND OTHER EVIDENCE CONSIDERED BY THE ARBITRATION COUNCIL**

**Provided by the employer party:** None

1. Certificate of registration of Khmer Youth Union at Evergreen Apparel Co. Ltd., which was registered on 24 October 2005;
2. Letter no. 773/MOSALVY dated 1 December 2005 of Khmer Youth Union sent to the boss of the company of Evergreen Apparel requesting for negotiation and settlement of labour dispute of Evergreen Apparel;
3. Letter dated 29 November 2005 of the workers of Evergreen Apparel sent to the President of Khmer Youth Federation Trade Union on the request for help of intervention and settlement of some working conditions.

**Provided by the worker party:** None

**Provided by the Ministry of Labour and Vocational Training:**

1. Letter No. 2933/MoLVT dated 27 December 2005 from H.E. Nhep Bunchin, Minister for Labour and Vocational Training on labour collective dispute at Evergreen Apparel;
2. The Non-conciliation Report No. 797 AABV/AK/VK of Mr. Koy Tepdaravuth, Chief of Labour Dispute Department dated 20 December 2005 provided by the Ministry of Labour and Vocational Training;
3. Minute of non-conciliation report on collective labour dispute dated 16 December 2005.

**Provided by the Secretariat of the Arbitration Council:**

1. Letter No. 415 dated 28 December 2005 inviting the worker party to the hearing;
2. Letter No. 414 dated 28 December 2005 inviting the employer party to the hearing;
3. Minute of the selection of the Arbitrator by lot dated 28 December 2005;
4. Letter No. 013/SAC dated 19 January 2006 of the Secretariat of the Arbitration Council to Evergreen Apparel requesting additional documents.

**FACTS**

- Having examined the minute of the non-conciliation report on the conciliation of the dispute;
- Having listened to the employer and the union's testimony;
- Having reviewed other relevant documents.

**The Arbitration Council finds that**

- According to the Prakas 013/97, the official fee for applying for an employment book is 2,500 riel (about US\$0.625);
- The employer claimed that the Ministry of Labour and Vocational Training charged him/her US\$3.00 for each employment book. Thus the employer added US\$0.50 to supplement the employment [book] fee for each of the workers;
- The employer's purpose for deducting the workers' wage was to coordinate the workers' task of obtaining their employment books. The employer reasoned that in addition to the official fee set out in Notification 013/97 and Joint Prakas 147/01, if the workers had applied for the employment book by themselves, they would have borne transportation costs and the time for at least two round trips from the factory premises to the Department where employment books are issued. This includes traveling to buy the application form, submission, medical checks and obtaining the employment book from the Department of Employment and Manpower; the employer estimated that all these expenses would amount to more than US\$3.00, let alone the official fee and the pay each worker would have lost for taking time off work to obtain their employment book. Further, it would have interrupted the factory production process. Based on these reasons and to save both [parties'] benefits, the amount of money which was deducted by the employer was only for the officials from the Ministry of Labour and Vocational Training who had arranged for the workers to make their employment books en mass.

- The employer argued that s/he told the workers that the civil servants from the Ministry in charge of Labour took too much money, but the workers did not respond whether or not they would allow the payment of the token fee to the Ministry. After waiting for an answer and not receiving any answer, the employer decided willingly/unilaterally to pay the token fee of the Ministry.
- The employer informed the workers of all this, but failed to consult and ask for approval from the workers to deduct the amount of US\$2.50 from each worker in July 2005 for payment of the employment books.
- The employer organized for the first batch of workers to obtain the employment books in September 2005 and the second batch in December 2005.

### **REASONS FOR DECISION**

Article 32 of the Labour Law requires that every person of Cambodian nationality working for an employer must possess an employment book. It also prohibits an employer from employing an employee or worker who does not comply with the requirement set forth in Article 32.

In light of this Article, the obligation to obtain an employment book rests solely with the workers. There is, however, no provision in the Labour Law requiring the employer to obtain the employment book on behalf of the employees. Instead, the employer is merely required by Notification 013/97 and Joint Prakas 147/01 to “facilitate” their workers’ application for employment books. There is no definition of “facilitate.” In practice, some employers allow their workers to take time off during working hours to apply for the employment book; whereas others arrange for the Ministry of Labour and Vocational Training official in charge of issuing the employment books to attend their factory premises so that workers can apply for the employment book. This helps expedite the process and saves time for both workers and employers.

Article 36 of the Labour Law provides that the issuance of the employment book will be subject to a fee that will be collected and remitted to the national budget. The Ministries in charge of Finance and Labour are required to issue a Joint Prakas setting this fee.

According to Notification 013/97 and Joint Prakas 147/01, the fee charged for the employment book is 2,500 riel. This fee includes 1,500 riel for the application form and 1,000

riel for stamp duty. It is understood that workers will have to bear this fee if they apply for the employment book.

However, there are no provisions in the Labour Law which require a person wishing to apply for an employment book to pay for a fee in excess of that set forth by Notification 013/97 and Joint Prakas 147/01. As such, any unilateral decision to require a worker to pay for any amount that is in excess of the official fee set forth in Notification 013/97 and Joint Prakas 147/01 is not in compliance with the Labour Law. See also Arbitral Awards 21/03-Loyal Cambodia; 05/04-Thai Dou and 106/04-Suit Way.

In this case the Arbitration Council gave many opportunities to the employer to provide evidence which showed that s/he paid in excess of the official fee for the workers' employment book. But the employer did not provide such evidence as requested by the Arbitration Council as scheduled on 26 January 2006. The Arbitration Council has found in previous cases that if a party fails to provide evidence to support assertions made by that party in the hearing, an adverse inference can be drawn. See Arbitral Awards 10/03-Jacqsintex Garment; 25/03-Advanced Industries; 22/04 -Raffles Le Royal and 91/04-Honey Wear.

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

### **DECISION**

Order the employer pay back the workers the amount in excess of the official fee determined by Notification No. 013/97 and Joint Prakas No. 147/01 for making an employment book, within at least three weeks after this award comes into effect.

### **Type of Award: Non binding awards**

*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.*

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

Arbitrator chosen by the employer party:

Name: **Ms. You Suonty**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Mr. Tuon Siphann**

Signature: .....

Chair of arbitration panel:

Name: **Mr. Koy Neam**

Signature: .....