

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**



**ក្រុមប្រឹក្សាពន្ធដំណាច**

**THE ARBITRATION COUNCIL**

**Case number and name: 82/06 – M & V III**

**Date of Award: 20 October 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATOR PANEL**

Arbitrator chosen by the employer party:

**KAO THACH**

Arbitrator chosen by the worker party:

**LIV SOVANNA**

Chair Arbitrator (chosen by the two Arbitrators):

**KONG PHALLACK**

**DISPUTING PARTIES**

**1- Employer Party**

Name : **M & V Garment International, Branch III**

Address : No. 1623, National Road No. 2, Sangkat Chak Angrae Kraom,  
Khan Meanchey, Phnom Penh

Telephone : 023 425 010/425 043/424 135, 016 707 046, 012 827 755

Fax: 023 425 001

Employer Representatives:

1. Mr. Yin Nak

Deputy Administration Manager;

2. Mr. Cheam Sok

Law Enforcement Monitoring Officer.

**2- Worker party**

Name : **Cambodian Federation of Independent Trade Union (CFITU)** in M & V  
Factory;

Address : No. 607, Sangkat Chak Angrae Kraom, Khan Meanchey, Phnom Penh

Telephone : 012 988 530 Fax: N/A

Worker Representatives:

- |                     |  |
|---------------------|--|
| 1. Ms. Hul Mom      | Secretary General of (CFITU);          |
| 2. Mr. Kong Samnang | President of (CFITU) in M & V Factory; |
| 3. Mr. Suon Sam On  | Secretary of (CFITU) in M & V Factory; |
| 4. Mr. Chhay Ravuth | Worker Delegate;                       |
| 5. Mr. Yem Socheat  | Worker Delegate;                       |
| 6. Mr. Sat Kosal    | Worker Delegate.                       |

**ISSUES IN DISPUTE**

(In the non-conciliation report)

1. The workers demanded that the company provide them 100 percent of wages and an extra payment in the case that the factory has no work for a short period of time and the workers come to the factory. If there are products they are to work on, the products have to be delivered to their units. The company did not agree to the demand arguing that during the period that the workers have no work to do, the company will try to find work from other units for them. Should the employer fail to find any work for them, the workers would be allowed to go home with 50 percent of wages paid;
2. The workers considered that the act of recruiting casual workers to work regularly is against Article 9 and 10 of the Labour Law. The company claimed that the recruitment was made in accordance with Article 9 and 10 of the Labour Law;
3. In regard to annual leave, the workers requested that they be allowed to use annual leave throughout the year in cases where the workers have an emergency. The employer party confirmed that the company implemented annual leave according to the result of a meeting held in January 2005;
4. The workers demanded that the company issue the piece rate for each PN when the workers work for a full eight hours per day. The company confirmed that the piece rate will be issued within four days. The worker party asserted that the demand was made because the time to deliver each PN was too short;
5. The workers demanded that the company arrange an appropriate place for them to have their lunch break. The company responded that it could not do as requested;
6. The workers demanded that the company pay for their work on Sunday and other holidays, based on the amount they produced. The company asserted that it could not practice as demanded by the workers; the company wished to adhere to the previous practice;
7. The workers demanded that the company allow them to wear shoes inside the factory. While the company would allow the workers to wear shoes, the company would give the workers a warning if the clothes got dirty.

## **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 No. 1387 dated 29 September 2006, was submitted to the Secretariat of the Arbitration Council on 29 September 2006.*

### **HEARING AND SUMMARY OF PROCEDURE BEFORE THE 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** : 5 October 2006 (from 8:00 a.m. to 11:00 a.m.)

#### **Procedural Issues:**

Having received a complaint from the Cambodian Federation of Independent Trade Union (CFITU) in M & V factory on 1 September 2006 demanding that the company improve nine issues related to working conditions, on 11 September 2006, the Department of Labour Disputes designated its expert official to settle and conciliate the collective labour dispute, which resulted in two out of nine issues being resolved. The seven non-conciliated issues were submitted to the Arbitration Council on 29 September 2006.

Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing of the seven non-conciliated issues on 5 October 2006 at 8:00 a.m. Both parties were present at the hearing arranged by the Arbitration Council. At the hearing, the Arbitration Council made a further attempt at conciliation and five out of the seven issues were resolved; these were issues 2, 3, 4, 5, and 7. Therefore, the Arbitration Council will consider only issue 1 and 6 based on the evidence and the findings of fact as follows:

### **EVIDENCE**

**Witness and experts besides the parties: N/A**

#### **Documents, exhibits and other evidence considered by the Arbitration Council**

- a. Provided by the employer party:
  1. Trade and Company Registration Certificate No. 047/95 dated 5 July 1995;

2. Power of Attorney issued 3 October 2006 by Andy Lam, Director of M & V to Mr. Long Heang and Mr. Yin Nak to settle the labour dispute at the Arbitration Council;
  3. Brief report of the defence statement made by Mr. Yin Nak, the company representative, dated 26 September 2006;
  4. Minute of the meeting between the employer and the workers, dated 21 January 2005;
  5. Company's Notification on annual leave dated 21 January 2005;
  6. Internal Work Rules of M & V Garment International Company (Branch III), registered 2 May 2002;
  7. Minute of the collective labour dispute conciliation in M & V Company Branch III dated 5 December 2002.
- b.** Provided by the worker party:
1. Union Registration Certificate No. 189, issued on 5 July 2001;
  2. Statute No. 847 of Cambodian Federation of Independent Trade Union (CFITU) in M & V factory dated 1 January 2006;
  3. Letter No. 312 dated 3 March 2005 from the Department of Labour Inspection to the President of Cambodian Federation of Independent Trade Union (CFITU) in M & V Garment factory on the request to recognize the new union leaders (Second term).
- c.** Provided by the Ministry of Labour and Vocational Training:
1. Report No. 1387 on the collective labour dispute conciliation at M & V III company issued on 29 September 2006 from Mr. Koy Tepdaravuth, the Director of the Department of Labour Disputes;
  2. Report No. 1388 dated 29 September 2006 from the Department of Labour Dispute to H.E. Minister of Labour and Vocational Training;
  3. Minute of the collective labour dispute conciliation dated 1 September 2006.
- d.** Provided by the Secretariat of the Arbitration Council:
1. Invitation No. 397 dated 2 October 2006 to the worker party to attend the hearing;
  2. Invitation No. 398 dated 2 October 2006 to the employer party to attend the hearing.

## **FINDINGS OF FACT**

- Having examined various documents submitted to the Arbitration Council;
- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

**The Arbitration Council finds that:**

**Issue 1: The workers demanded that the company pay 100 percent wage when the company has no work for a short period of time and to deliver the products to their units.**

The Arbitration Council finds that issue 1 consists of two different demands that the Arbitration Council will consider and analyse separately as follows:

**A. The workers demanded that the company pay 100 percent of the wage when the company has no work for a short period of time.**

- The issue of not having work has often occurred at the M & V III Company this year and [each time] the company has failed to lodge an application for a labour contract suspension with the Labour Inspector of the Ministry of Labour and Vocational Training and put the labour contract suspension under the control of the Labour Inspector.
- An agreement to pay 50 percent when there is no work was made on 5 December 2002 between the company, union, and worker delegates.
- At the hearing, the company confirmed that when the workers arrived at the factory and there was no work, the company used to provide a proper amount of work from another place for them and the workers also used to take that work. In this case, they received 100 percent of their wages. The workers agreed that they did take that work but when there was no work, the company paid only 50 percent of their wages, to which they did not agree. The workers demanded 100 percent wages when they arrived at the factory and there was no work for them. The employer did not agree with this demand;
- The units, in which there was no work include the Embroidery Unit, the Hand Stitching Unit, the Quality Control Unit, the Sewing Unit, the collar unit and the Light box Quality Control Unit. The period of no work lasts between one to two days and often takes place twice a week.

**B. The workers demanded that the company deliver the products to their units**

- When there was no work, the company arranged workers to work in other units different from their usual ones. The workers demanded the company to deliver products to their units since each unit started and left work at a different time, which led to the deduction of bonus and threatening from other team leaders when they moved to work in other units. The employer also used to bring work to their work stations;
- The employer confirmed that the problems raised did happen but at this time, the employer could not bring the products to each worker's unit because they are in different production lines. In regards to the threats and the bonus deduction, the

company pledged not to let this happen again. However, the workers did not agree to this because the company used to bring those products to their units. The employer confirmed that the products could not be brought to the workers' units because they are in different production lines and some units were too narrow to perform the work given by the company.

**Issue 6: The workers demanded that the company calculate the payment for Sundays and holidays according to the amount they produced**

- The present practice is that the company calculates the payment by adding \$1.73 to the piece rate for Sundays and holidays;
- The workers demanded that the company calculate their piece rate for Sundays and holidays by multiplying the piece rate by 200 percent. The company did not agree to the demand and wished to adhere to the previous practice at the company.

**REASONS FOR DECISION**

**Issue 1: The workers demanded that the company pay 100 percent of their wage when there is no work for a short period of time and deliver products to their units**

**A. The workers demanded that the company pay 100 percent of the wage when there is no work for a short period of time**

In this case, the Arbitration Council considers the following:

- Should “**when there is no work for a short time**” be considered a labour contract suspension?
- If this period is considered a labour contract suspension, is it legal?
- Are the workers entitled to 100 percent of their wage?

**1- Should “when there is no work for a short time” be considered a labour contract suspension?**

Article 71 provides, “*The labour contract shall be suspended under the following reasons:*”

1. *The closing of the establishment following the departure of the employer to serve in the military or for a mandatory period of military training.*
2. *The absence of the worker during obligatory periods of military service and military training.*
3. *The absence of the worker for illness certified by a qualified doctor. This absence is limited to six months, but can, however, be extended until there is a replacement.*
4. *The period of disability resulting from a work-related accident or occupational illness.*

5. *The leave granted to a female worker during pregnancy and delivery, as well as for any post-natal illness.*
6. *Absence of the worker authorised by the employer, based on laws, collective agreements, or individual agreements.*
7. *Temporary layoff of a worker for valid reasons in accordance with internal regulations.*
8. *The absence of a worker during paid vacations, including an incidental travel period as well.*
9. *The incarceration of a worker, without a later conviction.*
10. *An act of God that prevents one of the parties from fulfilling his obligations, up to a maximum of three months.*
11. *When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector.”*

In this case, the company often had no work for one to two days due to the late transport of materials to the workers. Based on the above Article, the Arbitration Council finds that this issue should be considered as a *“particularly unusual difficulty”* as defined in Article 71(11) of the Labour Law. Therefore, in cases where the company had no work for the workers for a short period of time should be considered a labour contract suspension issue.

## **2- Is the labour contract suspension legal?**

The Article 71(11) of the Labour Law states that suspensions shall be put under the control of Labour Inspector. However, based on the above facts, the company failed to request permission from the Labour Inspector. Besides, the Internal Work Rules of the company do not consist of any clause concerning labour contract suspension for a short period of time. Therefore, this labour contract suspension is unlawful (see Arbitral Awards 21/03 - Loyal Cambodia, 01/04 - New Point III, 46/04 - M&A Cambodia and 60/04 - United Arts).

## **3- Are the workers entitled to 100 percent of their wage?**

In Award 46/04 – M&A, the Arbitration Council confirmed that *“According to Notification No. 017 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, the employer shall pay the minimum wage of US\$45 to workers every month. However, in cases where the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, the employer is entitled to suspend the labour contract if that suspension is under the control of the Labour Inspector. If the employer does not suspend the labour contract in accordance with the procedures stated in Article 71, point 11, of the Labour Law, the employer is obliged to pay minimum wage to the workers.”* Moreover, in previous

Arbitral Awards, the Arbitration Council has decided that if the suspension is unlawful, the workers are entitled to 100 percent of their wage for the period of the suspension (see Arbitral Awards 21/03 - Worn Rich, 01/04 - New Point III and 60/04 - United Arts).

However, in this case, M & V III factory had an agreement between the company and the workers from 5 December 2002. Point 5 of that Agreement states that *"In a short period of labour contract suspension or a labour contract suspension without any written letter from the Ministry in charge of labour, the company shall pay 50 percent of wages..."*

Nevertheless, Article 13 of the Labour Law provides, *"The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void."*

Based on Article 13 of the Labour Law, the Arbitration Council finds that the content of point 5 of the said agreement gives workers less benefit than the Labour Law because workers are entitled to 100 percent of wages for the period of an unlawful suspension (see Arbitral Awards 21/03 - Worn Rich, 01/04 - New Point III and 60/04 - United Arts). Consequently, the Arbitration Council finds that the content of point 5 of the above agreement cannot be applied unless the employer had properly suspended the contract in accordance with the Article 71 of the Labour Law.

In conclusion, the employer shall pay 100 percent of the workers' wages when there is no work for a short period of time, and where the company has failed to notify the Labour Inspector.

**B. Do the workers have the right to demand that the employer bring products to their units?**

Article 2 of the Labour Law provides, *"... 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."*

In previous Arbitral Awards, the Arbitration Council has ruled that Article 2 of the Labour Law means that the employer has the right and power to control and to manage their workplace as long as those rules are reasonable and in conformity with the Law (see Arbitral Awards 06/06 – M&V I Company, 18/06 - GXG and 62/06 - Quick Sew).

Concerning this issue, the Arbitration Council finds that when there is no work, the company is entitled to arrange work for workers in other units different from their units as long as the arrangement does not affect the safety and health of the workers and that the work being provided is not work that they are not skilled in completing.

In this case, the Arbitration Council finds that the arrangement of the employer did not have any impact because the workers failed to prove that any worker's safety and health was affected or the work provided was work which they were not skilled in completing.

Therefore, the Arbitration Council decides to reject the workers' demand in relation to this issue.

**Issue 6: The workers demanded that the company calculate the payment for Sunday and holidays according to the amount they produce**

Based on the above findings of fact, the present practice of the company is to calculate the payment for Sundays and holidays by adding US\$1.73 to the piece rate. The workers demand that the company multiply the piece rate for Sundays and holidays by 200 percent. Therefore, the Arbitration Council considers the following:

**1- How are workers paid for work on Sunday?**

Article 139 of the Labour Law provides, *"If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of fifty percent higher than normal hours. If the overtime hours are worked at night or during weekly time off, the rate of increase shall be one hundred percent. In this case, the time off is Sundays."*

Article 103 of the Labour Law provides that wage includes actual wage. In previous Arbitral Awards, the Arbitration Council has clarified that "wage" is the actual wage the worker receives (see Award 72/05 - North Gaety).

Based on this Article, the Arbitration Council finds that the employer is obliged to pay the actual wage to workers who work on Sunday. In this case, workers who work on Sunday, are paid according to the amount they produce. Hence, a regular wage is the amount of payment which the workers receive [for work completed] during the over-time work period on Sunday. It is not the minimum wage. Therefore, the workers are entitled to wages based on the amount they produce. This means that the employer shall calculate the payment for Sunday by adding 100 percent of the rate earned on that day to the amount the workers produced. For instance, on Sunday, a piece rate worker receives US\$2. The employer shall add another US\$2 to the initial amount of US\$2 in order to calculate the total payment of that piece rate worker, which equals US\$4.

**2- How are workers paid for the work on holidays?**

Article 163 of the Labour Law provides, *"Workers paid by the hour, the day, or by the amount produced shall be entitled to an indemnity equal to the wage lost as a result of holidays as defined in Article 161. This indemnity shall be paid by the employer."*

According to this Article, the Arbitration Council finds that this Article confirms the wage [that should be paid to] piece rate workers who do not work on public holidays. Even when the piece rate worker does not work on holidays, the employer is obliged to pay them an indemnity equivalent to the wage lost as a result of the holiday(s).

In this case, the workers who made the demand were piece rate workers and they demanded that the employer calculate the payment based on the amount produced during holidays on which the employer requested them to work. The Arbitration Council finds that the basis for this calculation would be clearer, if the workers worked overtime on the holiday, which would be the actual wage they receive for work on the holiday. Therefore, the Arbitration Council decides that the employer shall pay this wage based on the amount produced by the workers during that holiday (see the above calculation method).

In conclusion, the Arbitration Council finds that the workers' demand is in compliance with the Law. Therefore, the employer shall make payment for Sundays and holidays with reference to the amount the workers produced.

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

### **DECISIONS AND ORDERS**

1. A- Order the employer to provide 100 percent wages when there is no work;  
B- Reject the workers' demand that the company deliver the production materials to their units;
2. Order the employer to calculate the payment for Sundays and holidays in accordance with the law.

### **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 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: **KAO THACH**

Signature: .....

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: .....