

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 83/04

Date of award: 15 October 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

June Textiles Garment Co., Ltd

(Employer party)

And

Khmer Youth Federation of Trade Union of June Textiles Garment (KYFTUJT)

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Address: Russian Federation Boulevard, Toek Thla Commune, Russey Keo District, Phnom Penh.
Tel: 011 790 990, 012 790 990
Fax: N/A
Representative: 1- Bun Tha, Communications staff; and
2- Cheat Khemra of GMAC.

DETAILED INFORMATION OF EMPLOYEE PARTY:

Address: #85, Street 265, Toek La'ak III Commune, Tuol Kok District, Phnom Penh.
Tel: 011 622 963
Fax: N/A
Representatives: 1- Mr. Mom Saroeun, KYFTU President of June Textile;
2- Mr. Uy Chanthy, KYFTU Vice President of June Textile;
3- Mr. Yeun Bunthoeun, KYFTU Secretary of June Textile;
4- Mr. Nhim Rall, KMr. Nhim Rall, KYFTU cashier of June textile;
5- Mr. Hang Sorya, KYFTU official of June Textile; and
6- Mr. Nang Samnang, KYFTU official of June Textile.

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The workers demand that the company provide milk (three cans, each weighing one kilogram) per month to each mother who has just given birth and pay for a babysitter [to the value of] US\$20 per month.
- 2- The workers request that the company not question workers who have resigned from the union and stop deducting union dues.
- 3- The workers demand that the company take measures in accordance with the Labour Law against the Chinese chief of production department and Ms. Ngoev Lay Im, from the accounting section, who exploited the workers' wages.
- 4- The workers request that the company play tapes for them during working hours.
- 5- The workers demand that the company increase the wages of the chiefs of groups and workers in the hygiene section by \$10 each.
- 6- The workers demand that the company organize a place for apprentice training.
- 7- The workers demand that the company provide some income to the workers as a thirteenth [month] bonus.
- 8- The workers demand that the company organise an election for the new term of workers' representatives.

JURISDICTION¹ OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Section II B² Chapter 12 of the Labour Law (1997); the Prakas on the Arbitration Council (no. 099 of 21 April 2004), the Prakas on the appointment of the Arbitration Council number 103 dated 26 April 2004 and the Prakas number 265 dated 13 July 2004 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. The non-conciliation report number 2437/MoLVT dated 17 September 2004 was submitted to the Secretariat of the Arbitration Council on 20 September 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Ouk Ry
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Men Nimith

¹Jurisdiction means judicial power.

HEARING AND EVIDENCE

Date and place of hearing: On 28 September 2004 at the Arbitration Council Secretariat at 8:00 a.m.

Both parties agreed to choose a non-binding award.

CASE SUMMARY

June Textiles Garment (Methona) employs 4000 workers; most of them are women who have approximately 20 children between them. On 3 September 2004, workers lodged a complaint to Russey Keo District's Department of Labour Inspection through the Khmer Youth Federation of Trade Union of June Textiles Garment (KYFTU), demanding that the company dismiss Ms. Ngoev Lay Im on the ground that she has exploited workers' wages. The Labour Inspector attempted to resolve the dispute from 4 to 7 September 2004. The conciliation was not successful.

The workers demand that the company pay for milk costs for babies of the women workers and for child care service because the company does not have a day care center yet. In regard to the union resignation and union fee deductions, the workers understand that the employer would like to know when the workers resign from the union and ask the employer to deduct union fee based on their requests. After negotiations between the parties and mediation by the Arbitration Council, both parties agreed that when the workers resign from one union and join another union, the workers will send a resignation letter to the company and to the union and the company will not ask any questions.

In regard to the workers demand that the company dismiss the Chinese supervisor, the workers withdrew this issue during the hearing because the workers understand that while the Chinese supervisor did commit mistakes, she just wants to defend Ms. Ngoev Lay Im. However the workers still demand the company terminate Ms. Ngoev Lay Im because the workers have demanded the company fire her once already for the reason that Ms. Ngoev Lay Im exploited the workers' wage. The workers allege that on payday, with the signature of Ms. Ngoev Lay Im, she hid an amount which should have been received by the workers. Afterwards the workers found out that they did not receive the correct amount that they had expected. When the workers claimed for that amount Ms. Ngoev Lay Im pleaded with the workers and said that she agreed to reimburse [the money] and asked them to keep the secret and not let the Chinese supervisor know because she was afraid of dismissal. She

² Articles 309 to 317 of the Labour Law

asked the workers to take into consideration that the money was given to her daughter - and asked that the workers take pity on her. But the workers did not agree to take pity on her.

The company argued that it cannot take any measures against Ms. Ngeov Lay Im because: (1) it cannot find any evidence; (2) the workers receive different amounts of money in accordance with their capability; (3) the cashier said that s/he gave the correct amount but the recipient employees disagreed with this; (4) the company told Ms. Ngeov Lay Im that when you pay wage [to one worker], do not reveal the other workers' amount of wages; but Ms. Ngeov Lay Im, the accountant, did not understand and she hid all information regarding the amount of wage being paid from each worker.

In regard to the playing of tapes during working hours, the company agreed and said that it would organise this for the workers.

After questions from the Arbitration Council in respect of issue 5, the workers replied that they demand that the company increase the wage of the chief of the hygiene section by US\$10. But the workers agreed to withdraw this issue because it is an interests dispute and it may become a collective bargaining agreement, if it is left for the Arbitration Council to make a decision on the issue. Moreover the union party could not establish a collective bargaining agreement because it does not have most representative status.

The workers demand that the company set a separate work section for apprentices because when they are trained on the [regular] production line the apprentices have been blamed frequently by the employer. The employer alleges that the practice of authorizing apprentices to train on the production line is the better way for apprentices to learn quickly. This practice has been used in other factories as well. After listening to the employer's response the workers demand that the employer stop blaming and threatening [the apprentices] and the employer has to show a good attitude towards the apprentices.

The Arbitration Council asked the workers about their demand that the company give thirteen months of salary. This demand is not meant to be the same as the workers' demand mentioned in the minute of the Ministry. The workers said that some companies in the Kingdom of Cambodia give thirteen months of salary to the workers, [for example] companies like Yung Wah Company. However the workers agreed to withdraw this issue because it is an interests dispute.

In relation to the shop steward election the parties agreed to organise an election in October 2004.

FINDINGS OF FACT:

- Having reviewed the non-conciliation report of the labour dispute
- Having heard the presentation of the company and employees as described above and in the hearing record
- Having reviewed documents as described above

We find that:

1st Issue:

The union representative in this factory has demanded that the company build a day care center and nursing room for more than one year but the company still has not started to build the two places yet. Now the workers again demand that the company offer women workers (1)- three kilograms of milk powder each (3 cans) per month and (2)- payment for child care providers of \$20 per month.

The employer said that the nursing room and the day care center had already been built and promised that the two places would be begin operation in three months, starting from the hearing date of 28 September 2004. The workers demand that the employer must fulfill its obligation in respect of the two demands above and implement [such demands] until the nursing room and a day care center are put in operation.

This case involves Article 186 and 187 of the Labour Law, 68/04 and 56/04. Article 186 states that,

"Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care center).

If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer."

Article 187 states that, "A Prakas (ministerial order) of the Ministry of Labour shall determine the conditions for setting up hygienic environment and supervising these nursing rooms and crèches ".

In 68/04, the Arbitration Council found that the cost of caring for children is US\$15 per month at [an external] childcare center. This cost is a general price which must be paid by the employer to the women workers' who send their children, who are aged over 18 months, to an external child care center (milk powder must not be provided [in lieu]). As for 56/04, the employees demanded that the employer pay US\$15 per month for external childcare. The two parties agreed to a payment of US\$15 per month.

2nd Issue: the parties agreed to withdraw this issue during the hearing.

3rd Issue:

Ms. Ngoev Lay Im is responsible for the cutting section and disbursing money to the workers. So far the workers have conducted a strike to demand that the company dismiss Ms. Ngoev Lay Im. They argue that Ms. Ngoev Lay Im took the workers' attendance bonus money. When she disbursed the money to each worker Ms. Ngoev Lay Im hid the amount of money [on the document] that the worker would receive. After the workers found out that they did not receive the correct amount of money which they expected, they made a complaint.

The company did not take measures against Ms. Ngoev Lay Im because it did not have evidence. But at the hearing the company admitted that there was a loss of workers' money of between US\$2 and US\$5 per worker. The company told Ms. Ngoev Lay Im that when she disbursed the money internally she must hide the amount of money of other workers but Ms. Ngoev Lay Im did not understand and she hid all the [amounts of money on the paper]. The company had agreed to reimburse that money to the workers and agreed to transfer Ms. Ngoev Lay Im to work at another place but [the company] asked for two months [to do this so that they could] train a newcomer to replace her. But the workers did not agree. In addition, at the hearing the company agreed to reimburse the money to the workers but the workers would not accept the reimbursement and placed a condition on the company as follows, that if the company dismissed her they would accept it. The company asked [whether they could] take this proposal to inform the Director of the company for his/her consideration.

4th Issue: The employer party agreed to play tapes for the workers during working hours.

5th and 7th:

- 1- The Arbitration Council finds that the employees did receive wages according to the law.
- 2- The demand in respect of wages is not based on a collective bargaining agreement or a labour contract.
- 3- The KYFTU does not have most representative status.
- 4- The CLUF is the union that has most representative status which is registered by the Ministry of Labour Law and Vocational Training.
- 5- The demand for a 13-month salary is not mentioned in the collective bargaining agreement or Internal Work Rules, the workers' demand is based on the practice of another factory.

6th Issue: After asking [the parties] questions on issue number 6, the Arbitration Council finds that:

- 1- When the guilty party was found, the employer blamed the apprentices.
- 2- The apprentices did work well when they were trained at the production line where they got direct instruction from the employer.
- 3- The apprentices trained at the production line had generally practiced in another factory in the Kingdom of Cambodia.
- 4- The apprentices were trained within two months; during this time apprentices must work normally with other workers to get specific experience.

8th Issue: The parties agreed that they would organise an election in late October 2005.

REASONS FOR DECISION

1st Issue:

There are two clear reasons for the Arbitration Council to make its decision [in the following way]: 1- Article 186 of the Labour Law and 2 cases 68/04 and 56/04 of the Arbitration Council. Article 184 states that "For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift".

Article 185 states that "Break for breast-feeding are separate from and shall not be deducted from normal breaks provided for in the Labour law, in internal regulations of the establishment, in collective Labour agreements, or in local custom for which other workers in the same category enjoy them ". Article 186 states that "Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a day care center.

If the company is not able to set up a day care center on its premises for children over eighteen months of age, female workers can place their children in any day care center and the charges shall be paid by the employer".

The above three articles gives the employer two options: (1)- Build a day care center and nursing room or (2)- Pay compensation to women workers who have children over 18 months in order for them to pay for external child care and give one hour during working hours in order to breast feed their children in the nursing room on the premises of the factory. These Articles state clearly what the employer must provide to the workers, but the meaning of these articles is to encourage the women to breast feed their babies which is good for the children's health, rather than give them milk [made from formula]. Thus this law requires time for women to breast- feed their children. Article 186 requires the employer to pay compensation to women who send their children out of the factory to be care for by other people.

According to the facts of this case the employer built a day care center and nursing room but did not put it to use, [arguing that] it must wait for three months to run these two buildings. Thus within three months the employer must provide:

- 1- compensation for the cost child care to women who have children over 18 months; and
- 2- time for women to breast- feed their children.

However, the unclear point is: (1)- what is a payment that the employer shall pay to workers who send their children [to external child care]? (2)- (Because of the non-existing nursing room and in accordance with the legal requirement) how many hours or time shall be given to the workers to breast feed their children? In order to answer the two questions appropriately for both parties, the Arbitration Council will decide based on the facts and prior arbitral awards, as well as will considering the expense which could be acceptable by most women workers in the enterprise.

As stated in the above facts, the Arbitration Council found that case 68/04 provides that the expense of caring for children is US\$15 per month. Most workers found this amount acceptable. Otherwise, the Arbitration Council in the same case also ordered the employer to pay US\$15 per month to women workers who had children over 18 months and sent their children for external child care. In addition, in case 56/04 the workers demanded that the employer pays US\$15 per month for the care of children outside the factory. The employer in that case gave US\$15 per month to the workers.

In consideration of the time for breast-feeding the child, the Arbitration Council considered that the law allows one hour per day to breast-feed the child in the nursing room on the premises of the enterprise as mentioned above. However the law does not mention how many times should be given to women workers who want to breast-feed their child at home. Thus the Arbitration Council must base its decision on the basic needs of women workers who have to travel round trip to breast-feed their child.

According to all the above facts (an interpretation in accordance with the law and prior cases as well as basic needs) the Arbitration Council concludes that the employer must provide two hours for a mother to breast-feed their child, one hour in the morning and one hour in the afternoon or at any time by mutual agreement during working hours. The employer must pay US\$15 per month to women workers who have a child over 18 months and sends that child to another day care center until the company has its own day care center and nursing room with proper conditions and hygiene in accordance with the Ministry of Labour and Vocational Training.

3rd Issue:

The workers accused Ms Ngoev Lay Im of taking their attendance bonus. When she disbursed the money to the workers she hid the amount of money that the workers expected to receive, the company told Ms. Ngeov Lay Im that when she disbursed the money she must hide the amount of the money of other workers but Ms. Ngeov Lay Im did not understand - she hid all the amounts. At the hearing, the company admitted that there was a loss of money and the disbursement was incorrect by between US\$2 to US\$5 per worker. The Labour Law does not allow the employer to manage the workers' wages. Article 114 states that *the employer, however, is prohibited from restricting the worker's freedom to using his wage at his disposal*. In this case the Arbitration Council finds that the employer did not commit that act which can be considered as restricting the workers' wages, but Ms. Ngoev Lay Im played the role of the company's representative. Thus Ms. Ngeov Lay Im's act

can be considered the company's act, for which the company should be responsible. Therefore the company should not escape from its responsibility.

Furthermore, the company has not taken any measures against Ms. Ngoev Lay Im. The company has only reimbursed the money to the workers and agreed to transfer Ms. Ngoev Lay Im to another section. However, the company asked for a two month delay in order to train the newcomer to replace her, but after this the company refused to transfer her and kept her working in the same position because the workers did not agree. The company still agrees to reimburse the money to the workers but the workers put an additional condition on the company, that the company must dismiss Ms Ngoev Lay Im.

According to case 18/03 - Hu Hing Garment and 70/04 - Hana the Arbitration Council finds that it does not have the power to order the employer to dismiss or terminate any manager or accountant. The right to dismiss a manager or accountant or any other worker when they commit light or serious misconduct is the employer's right. The employer is not bound to dismiss employees who commit serious misconducts. Thus, based on these reasons the Arbitration Council does not order the company to dismiss its employees. However the Arbitration council finds that the employer is bound to reimburse the lost money.

5th and 7th Issue:

The 5th and 7th issues relate to interests disputes and do not relate to rights as mentioned in the law. In relation to the demand for salary increase, the fifth issue, the employees have received minimum wages in accordance with the law, thus they will not receive a salary increase according to the labour contract or the collective bargaining agreement. Similarly regarding the seventh issue, in accordance with the Labour Law, labour contract, collective bargaining agreement or other legal documents the employees does not have a legal right to receive thirteen months of salary.

Moreover, the KYFTU at June Textile Co. Ltd. does not have most representative status, however the CLUF at the factory has most representative status registered and acknowledged by the Ministry of Labour on 22 December 2003. According to Article 277 (b) representativeness is determined by the following criteria: *"have more members holding valid membership cards than the others. Any trade union having the largest number of members in the order of the first and the second majority will be considered to be the representative unions within the enterprise. However, any trade union whose number of members is over 51 percent of the total number of workers in the enterprise shall be considered as the most representative union"*.

According to the case 31/03 decided on 4 February 2004, "The Arbitration Council finds that the resolution may lead to the establishment of a collective bargaining agreement". Therefore if the Arbitration Council resolves this dispute the arbitral award issued may replace the collective bargaining agreement in accordance with Article 43 of the Prakas on the Arbitration Council (99/04 of the Ministry of Labour and Vocational Training). Therefore, the Arbitration Council can not issue an arbitral award related to an interests dispute unless the disputing parties has the right to establish a collective bargaining agreement.

The KYFTU at June Textile does not have the legal right to establish a collective bargaining agreement in the name of all workers in the factory. This right belongs to the CLUF at June Textile which has most representative status recognised by the MoLVT (60/04-United Art).

6th Issue:

Article 8 of the Annexure to Prakas 04/00 in respect of apprentices provides for a place to train apprentices and the training shall have both theories and practice. Under this Prakas the employer must prepare a place for apprentices but it does not require the provision of a separate place. The purpose of Prakas 04/00 is to require the employer to train apprentices well at the time of training in the production room through instruction from the employer and [allow the apprentices to] learn from other nearby workers.

In addition, the Arbitration Council finds that the training of apprentices at the production line has generally been done in other factories in the Kingdom of Cambodia. The workers argued that the blame and threats from the employer were not reasonable because when the apprentices did something wrong they were given instructions to correct those mistakes but giving instructions repeatedly was the same blaming the workers. The conclusion of the Arbitration Council is that it does not believe that there were blame or threats from the employer. The instructions or blame by the employer regarding the mistakes of the apprentices is the natural relationship between apprentices and the employer-as-trainer.

The Arbitration Council considers that the factory should realise that training apprentices in the production line during working hours is probably slower than [the work done in] other production lines [by skilled workers]. Hence the factory should not discipline, threaten or use abusive language or blame the apprentices who are in the training process at the production line comparing the work of the skilled workers.

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

DECIDES

1- (A)- Orders the employer to pay US\$15 per month to its women workers who have children over 18 months and use childcare facilities outside [of the factory] to take care of their children until the company builds its own childcare center and nursing room in good condition in accordance with the Prakas of the Ministry of Labour. The payment must be disbursed within three days after this award comes into effect.

(B)- Orders the employer to finish building the nursing room immediately, at least within three months. From the time the award comes into effect, the employer must authorize women workers who have children over 18 months to breast-feed their children one hour during the morning and one hour during the afternoon or at any time during working hours set by agreement between the parties.

2- Orders the employees to provide a letter of resignation from the union members to the employer within 15 days before paid day. The employer must stop asking the employees about their resignation and must deduct the union's contribution at the workers' request.

3- Orders the employer to reimburse the loss of money [to the employees] and deny the workers' demand that the company dismiss Ms. Ngoev Lay Im.

5 and 7- Reject the KYFTU at June textile demands in respect of the 5th and 7^h issues.

6- Reject the workers' demand that the company organize a [specific] place for apprentices.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature:

Arbitrator chosen by the employee party:

Name: **Tuon Siphann**

Signature:

Chair of Arbitration Panel:

Name: **Men Nimith**

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.