

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case No. 85/04

Award issued: 28 October 2004

ARBITRAL AWARD

(Issued on Article 313 of the Labour Law)

Free Trade Union and employees of Kang Ning Co., Ltd.

(The employer party)

And

Kang Ning Co., Ltd.

(The employer party)

DETAIL OF THE EMPLOYER

Employer representative:

- 1- Mr. Chin Wen Chuoang, General Manager
- 2- Mr. Long Heang, GMAC representative
- 3- Mr. Cheang Sophea, Driver

Address: New road, Toulsangkea commune, Russey Keo, Phnom Penh

Telephone: 012 533 899; 012 532 266

DETAIL OF THE EMPLOYEES

Employee representative:

- 1- Ms. Sam Srey Mom, Vice President Workers Free Trade Union Federation
- 2- Mr. Kang Sakhorn, Worker representative in Kang Ning (shop steward)
- 3- Ms. Chhom Sokha, Worker of Kang Ning factory
- 4- Mr. Oung Samoung, Worker of Kang Ning factory
- 5- Mr. Hak Dyna, Worker of Kang Ning factory.

Address: Phnom Penh

Telephone: 012 212 812

ISSUES IN DISPUTE

- 1- Employee party demanded the company convert casual workers to regular worker with seniority from the date they started working.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Section 2B¹, Chapter XII of the Labour Law (1997); the Prakas on the Arbitration Council 99/04; the Prakas on the Appointment of Arbitrators 103/04 and 265/04 and the Arbitration Council Procedural Rules.

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. Non-conciliation report No. 2591 L.V.T/LI of the Ministry of Labour and Vocational Training dated, 6 October 2004 was submitted to the Secretariat of the Arbitration Council on 6 October 2004.

MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:	Mr. Ouk Ry
Arbitrator chosen by the employee party:	Mr. Tuon Siphann
Chairman of the panel:	Mr. Kong Phallak

HEARING AND EVIDENCE:

Hearing Date and Place: 9 October 2004 at the Secretariat of the Arbitration Council at 14:00.

The parties decided at the hearing to have a Non-binding award.

CASE SUMMARY:

Kang Ning Co., Ltd. employs approximately 150 workers (this number is more than in the non-conciliation report of the Ministry of Labour that stated that the company employs only 70 workers). The company produces clothes hangers to export abroad and sell in Cambodia. The company started its business in Cambodia two years ago. On 2 October 2004 the employees filed a complaint to the Labour Inspector in Reuseykeo district. The workers went on strike to demand the company convert casual workers to regular workers. After getting this information the Labour Inspector went to resolve the dispute at the factory location, as a result the parties agreed on nine of ten issues.

FACT FINDING:

- Having reviewed non-conciliation report
- Having heard the employee and the employer party testimony
- Having reviewed relevant documents

¹ Article 309 to 317 of the Labour Law.

We finds as follows:

The company has three working shifts. The 1st shift starts from 6:00 a.m. to 2:00 p.m.; the 2nd start from 2:00 p.m. to 11:00 p.m.; and the 3rd starts from 11:00 p.m. to 6:00 a.m. In each shift there are both regular workers and casual workers working together. In the company there are 15 machines which were controlled by both regular workers and casual workers.

Among approximately 150 workers, there are 50 regular workers; the remaining workers are casual workers, who the employer calls disposable workers. All workers have oral contracts with the employer and none of them has a written employment contract. The employees demanded the employer accept casual workers, who were employed by the employer for at least three months to be regular workers. Approximately 100 casual workers are paid daily, from 6000 riels to 6500 riels per day, and paid at the end of each working shift of the day. These casual workers work four to seven days a week. When the company has a lot work the company always asks casual workers to work on the seventh day of the week, which is the weekly day off and the company pays wages at the same rate as their normal daily wage. Regular workers work only six days a week.

According to the list including names, identification number, sex, and start work date submitted by the employee party to the Arbitration Council and to the employer party at the hearing, the Arbitration Council finds that among those in the list, 48 casual workers have worked for the company for five to nine months. Some of them started working in February and some others started work in April, May or June 2004.

At the hearing the company agreed to accept ten casual workers as regular workers on 1 November 2004. For the remainder of the casual workers the company asked for two to three months to evaluate their behavior and work. If these casual workers are good they will become regular workers. However the employee party did not accept this offer.

REASON FOR DECISION

Under Article 9 of the Labour Law 1997 employees can be regular workers, or casual workers who perform unstable work. Article 9 states that "In accordance with the stability of employment, it is distinguished: - regular workers; casual workers, who are engaged to perform an unstable job. ... Casual workers are those who are contracted[] to perform a specific work that shall normally be completed within a short period of time; perform work temporarily, intermittently and seasonally."

According to the facts the Arbitration Council finds that at least 48 of all casual workers have worked from 5 months to 9 months and worked like regular workers regularly for 8 hours per day and from four to seven days per week. The employer did not accept this evidence but did not provide any contradictory evidence.

According to the facts the Arbitration Council finds that those casual workers are not temporary workers who are covered by Article 9 of the Labour Law. Therefore Article 9 cannot be applied to those workers.

Moreover in Arbitral Award of cases 03/03 – Tonga Garment, 26/04 – Sport Wear and 30/04 – Honey Wear, the Arbitration Council found that casual workers are sometimes called floating workers or temporary workers. In 03/03 - Tong Guar Co., Ltd. the Arbitration Council decided “to order the employer to stop classifying workers as casual worker...Employees who work more than 3 months are classified [as having] fixed duration contract or undetermined duration contract and receive pay and other benefits the same as full time workers. ...”

The Arbitration Council also decided to order the employer to pay damages to workers the benefits which were not previously paid correctly under the law. In the Arbitral Award of 26/04 – Sport Wear, the Arbitration Council found that regularly using casual workers or temporary workers for a long period of time is not in accordance with the law. The Arbitration Council decided in this case that casual workers or temporary workers who work at least 21 days per month for two months would be considered probationary workers or regular workers or full time workers. Furthermore in 30/04 – Honey Wear, the Arbitration Council determined that casual workers enjoy the same rights and wages as regular workers.

Moreover the employer claimed that they need two or three months to evaluate the behavior of those workers before they hire any workers as regular worker. Labour Law 1997 Article 68 and 82 and Notification 06/97 and 017/00 allows the employee party and the employer party to sign probationary contracts which can not exceed three months, in order to evaluate the work and behavior of the parties. In the Arbitral Award case 27/03 the Arbitration Council decided that all garment workers are skilled workers therefore their probationary period shall not exceed two months. In the facts of this Kang Ning case the Arbitration Council finds that at least 48 workers have worked for the company for five to nine months. Thus, the company has had enough time to evaluate their work and behavior and does not need an extra time.

As described above and referring to the above preceding cases of the Arbitration Council the employer can not continue classifying the workers as casual workers or temporary workers anymore. The employer should take those workers to be full time or regular workers if they work 21 days per month and for at least two months continuously.

According to the facts, evidence, law and the above reasoning the Arbitration Council issues decision and orders as follows:

- 1- Orders the employer to accept all casual workers who work for the company at least 21 days per month and longer than two months to be full time or regular workers and

to enjoy other benefits the same as full time or regular workers from the date this award comes into effect.

SIGNATURE OF THE ARBITRAL PANEL MEMBERS :

Arbitrator chosen by the employer party

Name: **Mr. Ouk Ry**

Signature: _____

Arbitrator chosen by the employee party

Name: **Mr. Tuon Siphann**

Signature: _____

Chairman of the panel

Name: **Mr. 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.