

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 86/04

Date of award: 10 November 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

Ho Hing Garment Factory

(Employer party)

AND

Khmer Free Worker Union

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives:

- 1- Mr. Im Sophon, Administrator
- 2- Mr. Vann Kunthul, Administrator
- 3- Mr. Cheat Khemera, GMAC representative
- 4- Mr. In Meng, GMAC representative

Address: #266 Street 271, Tek Tla quarter, Russey Keo district, Phnom Penh.

Tel: 011 653 457

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

- 1- Mr. Khin Sokhorn, Official of Cambodian Worker Federation
- 2- Mr. Chay Sophea, Official of Cambodian Worker Federation
- 3- Mr. Mom Piseth, President of Khmer Free Worker Union
- 4- Mr. Ham Heng, Vice-President of Khmer Free Worker Union
- 5- Mr. Sun Sam Ath, Secretary of the Union.

Address: # 788, Street 4774, Boeung Trabek quarter, Chamkarmorn district, Phnom Penh.

Tel: 012 670 237

ISSUES IN DISPUTE:

(In non-conciliation report)

1. The workers demand that the company apply the same cutting section piece work rate to the ironing section and the cutting section.
2. The workers demand that the company provide the same sewing section daily bonus to workers in the finishing section.

JURISDICTION OF THE ARBITRATION COUNCIL :

The Arbitration Council derives its power to make this Award from Section II B of Chapter 12 of the Labour Law (1997); the Prakas on the establishment of the Arbitration Council 338/02; 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 Nomination of Arbitrators 103/04.

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. That conciliation hearing was unsuccessful. The non-conciliation report 247 dated 26 October 2004 was submitted to the Secretariat of the Arbitration Council on 27 October 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Kao Thach
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Sok Mathoeun

HEARING AND EVIDENCE:

Date and place of hearing: 22 October 2004, at 8:00 a.m., at the Secretariat of the Arbitration Council

-Second hearing: 6 November 2004, at 8:30 a.m., at the Secretariat of the Arbitration Council

Witnesses and experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:

Provided by the employer party:

- 1- The company's Internal Work Rules
- 2- The Announcement to Shop Stewards dated 3 September 2004

- 3- The Company's payroll ledger for June, July, August and September 2004
- 4- The Company's statute
- 5- The company's opening declaration
- 6- Registration Certificate
- 7- The procedure providing a bonus to the workers in the finishing section
- 8- Certificate of the most representative status of the Free Worker Union of the Ho ing Company no. 380 dated 8 August 2003

Provided by the employee party:

- 1- Registration letter recognizing the Khmer Free Worker Union at the Ministry of Labour and Vocational Training dated 27 October 2003
- 2- Minutes on the collective dispute conciliation

Received from MoLVT:

- 1- Non-conciliation report on the collective dispute of the Ministry of Labour and Vocational Training dated 6 October 2004
- 2- Minutes on the collective dispute conciliation

Presentation by employers and employees in the hearing.

The two parties decided in the hearing that: THIS AWARD IS NOT IMMEDIATELY BINDING.

CASE SUMMARY:

Ho Hing Company employs 470 workers. The workers filed a complaint with the Labour Inspectors of Russey Keo District on 31 August 2004 to demand that the company apply the working conditions in accordance with the law. Upon receiving the complaint on 2 September 2004 inspectors of the district went to the factory and conciliated the dispute. The last conciliation was 21 September 2004, with one of three disputes conciliated. The other two issues were submitted to the Arbitration Council on 15 October 2004, and the Arbitration Council summoned both parties to the hearing on 22 October 2004 at 8:00 a.m.

During the hearing, the Arbitration Council encouraged both parties to continue negotiating based on the win-win theory.

FINDING OF FACT:

- Having examined the minute on collective conciliation
- Having listened to the presentation of the two parties and minutes in the hearing
- Having checked the above mentioned documents

We find that:

First issue:

In the company, there are two unions, the Free Worker Union and the Khmer Free Worker Union. The Khmer Free Worker Union is composed of around 450 members. This union was formed and registered on 27 October 2003. This union asked for the most representative status from the Ministry of Labour but was refused since the Free Worker Union was already labeled as the most representative in the factory by the Ministry. Nowadays, the latter union is composed of only a few members because most of its members go to the Khmer Free Worker Union.

The workers demanded that the company apply the piece work rate to seven workers in the ironing section like the ones in the sewing and other sections.

1. The workers in the ironing section demand to be paid based on piece work. Following the payroll ledgers for the last four months, the Arbitration Council finds that generally, piece workers work less than 26 days a month but get paid more than the workers in the ironing section who get paid only the minimum wage of US\$45 for 26 or 27 days of work a month.
2. The company could not allow the workers in the ironing section to be paid based on the piece work. The company gives the reasons that sometimes there are a lot of tissues to be ironed, sometimes there are few, and sometimes there is nothing for them to iron.
3. So far the workers in the ironing section receive the wage of US\$45 or higher a month.

Second Issue:

1. The company set the method to give bonuses to the workers in the finishing section which are different from the bonuses in the sewing section. This method takes effect on 24 July 2004.
2. The company does not give the daily bonus to the workers in the finishing section like the workers in the sewing section.
3. The company gives bonuses to the sewing section based on the amount of clothes achieved a day. This amount is set by the company. The company set the target such that if a team reaches the amount set (400 to 600 units) in two days maximum, the employer will pay each worker 1000 riels.

4. Following the documents about the bonus procedure for the finishing section, effective from 24 July 2004, the Arbitration Council finds that a worker has to achieve the following in a week (6 days) in order to receive the bonus:

No	Bonus received		Amount of Units in a week	Average as unit	
	worker	leader		Per day (8H)	Per minute
1	1 000 riels	US\$ 1	25.000	4.167	8.7
2	2 000 riels	US\$ 2	28.000	4.667	9.7
3	3 000 riels	US\$ 3	32.000	5.333	11
4	4 000 riels	US\$ 4	35.000	5.833	12

5. The workers in this section receive the minimum wage as set by law every month.

REASONS FOR DECISION:

Article 43 of Prakas 99/04 states that the arbitral award resolving the issue concerning the interest dispute will become the collective bargaining agreement for the period of one year from the date when the arbitral award becomes final unless the parties negotiate and reach another collective bargaining agreement to replace this arbitral award.

Based on the finding, seven workers in the ironing section receive the minimum wage in accordance with the Labour Law, but the bonus demanded is not set either in the Labour Law 1997 or Announcement 017/00. Therefore, the Arbitration Council finds that the dispute in the first issue is an interest dispute. It is the same for the workers in the finishing section. They all receive the minimum wage based on the Labour Law but the bonus demanded is not stated either in the Labour Law or in Notification 17/00. Hence, the Arbitration Council finds that the dispute in the second issue is an interest dispute as well.

Since the first and the second issues are interest disputes, the Arbitration Council finds that if the Arbitration Council issues its award for these two points, this award will become a collective bargaining agreement applying to the company and covering all workers and the company for the period of one entire year. This means that both the company and the workers cannot go on strike or lock-out in order to raise the issues relating to the interest to be resettled in this one year (Article 321 of the Labour Law).

On the other hand, the first issue relates to seven workers only and the second issue relates to approximately 150 out of a total of 470 workers. Further, the Khmer Free Workers

Union has not been labeled the most representative union in the Ho Hing Company. The Arbitration Council finds that if the Arbitration Council issues its award, this award will become a collective bargaining agreement applying to all workers in the company. This makes other workers not related to these issues lose their rights to go on strike for any interest dispute in the future, which would be unfair for other workers (see Arbitral Awards 04/03 - Lida, 06/04 - Chou Sing, 24/03 - Top One, 61/04 - Best Novel and 62/04 - Ecent). In addition, the Arbitration Council has concluded [in the past] that the union without the most representative status cannot bring the interest dispute to be settled by the Arbitration Council (see Arbitral Awards 31/03- Hong Var, 60/04 - United Art).

A collective bargaining agreement is a written agreement on all points relating to the working conditions which both parties see as subject to the dispute or potential in the future. The Arbitration Council finds that both parties should take these two conflicts into negotiation in order to reach a collective bargaining agreement based on the consensus principle and to apply a win-win situation in the company.

In order to encourage both parties to reach a collective bargaining agreement covering many points, the Arbitration Council's position is to understand both parties' interests. To help both parties negotiate a collective bargaining agreement, the Arbitration Council refers the parties to 24/03 - Top One, which forms a collective bargaining agreement according to Article 34(e) and 34(g) of the Prakas 99/04. This is the only means to settle a collective dispute, through the provision of a collective bargaining agreement, in order to avoid the same dispute arising relating to rights or interests, which would mean further hearings of the Arbitration Council which are based on a win/lose principle and [may] cause economic and social crises in the company where the dispute has occurred.

According to the certificate of the most representative status, the Free Worker Union is labeled as the most representative union in the Ho Hing Company by the Ministry of Labour.

Based on the clarification in the hearing, the Khmer Free Worker Union says that currently this union is composed of 450 members. Hence this argument seems to meet the conditions provided by Article 277 (1-b) of the Labour Law (1997) to be labeled as the most representative union. Meanwhile, to reach a good solution based on Article 96 (1) of the Labour Law concerning the purpose of the negotiation of a collective bargaining agreement, the Arbitration Council orders all concerned parties in the factory, the employer and the two unions (with or without the most representative certificate), to start immediately negotiating a collective bargaining agreement.

With the reasons above, the Arbitration Council will not issue its award on these interest disputes brought to the Arbitration Council at this time. But the Arbitration Council encourages both parties to negotiate a collective bargaining agreement serving both parties' interests based on the equity principle. Regarding the procedure set for giving bonuses to workers in the finishing section by the employer, the Arbitration Council finds that it is not reasonable because this setting is beyond the capability of a normal worker (see the list on page 5).

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

DECIDES:

Orders the employer and both unions i.e. Free Worker Union and Khmer Free Worker Union to negotiate together before 31 March 2005 a collective bargaining agreement containing an appropriate solution on interest disputes between both parties which include the two interest dispute above. The employer and the two unions have to meet at least an hour a week to negotiate the collective bargaining agreement.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: Kao Thach

Signed:

Arbitrator chosen by the worker party:

Name: Tuon Siphann

Signed:

Chair of arbitration panel:

Name: Sok Mathoeun

Signed:

This Award will become binding after eight 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 the parties have agreed as such in writing before the notification of the Award, or if the parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.