

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: *88/06-Cambodia Apparel*

Date of Award: *24 November 2006*

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Vong Vanna**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **Cambodia Apparel Industry Ltd.**

Address: National Road 4, Chambok Village, Vor Sor Commune, Samrong Torng District,
Kampong Speu Province

Telephone: 016 866 089/ 011/012 545 558 Fax: 025 987 342

Representative:

- | | |
|-----------------|---------------------------------------|
| 1. Mr. Chea Key | Company assistant |
| 2. Ms. Un Heang | Head of the Administration Department |

Worker party:

Name: **KYFTU and the local Khmer Youth Trade Union of Apparel Company**

Address: Chamkardong Village, Vor Sor Commune, Samrong Torng District, Kampong Speu
Province

Telephone: 092 902 569 Fax: N/A

Representative:

- | | |
|---------------------|---|
| 1. Mr. Nao Titha | KYFTU Officer |
| 2. Mr. Ou Phoeun | KYFTU Officer |
| 3. Mr. Oun Dara | KYFTU Officer |
| 4. Mr. Hem Bunroeun | KYFTU Officer |
| 5. Ms. Oun Many | President of the local KYTU at Cambodia Apparel Company |

- | | |
|----------------------|--|
| 6. Ms. Chin Channa | Vice President of local KYTU at Cambodia Apparel Company |
| 7. Ms. Theang Soknyu | Secretary of the local KYTU at Cambodia Apparel Company |
| 8. Ms. Kao Thea | Cambodia Apparel Company worker |

ISSUES IN DISPUTE

(In the non-conciliation report)

- 1- The workers demand that the company let pregnant workers leave their work 15 minutes early.
- 2- The workers demand that the company build a daycare centre and nursing room in the company. If the company will not do this, the workers demand three 1½-kg cans of milk and US\$20 per month.
- 3- The workers demand that the company abide by the law in regards to the Administration Officer, Un Heang, who collected US\$20 from workers in exchange for recruitment.
- 4- The workers demand that the company pay wages and other benefits to casual workers in the same amount as permanent workers.
- 5- The workers demand that the company build a canteen.
- 6- The workers demand that the company have sufficient medicine [on site].
- 8- The workers demand that the company keep the toilets clean and [provide enough] soap for hand washing.
- 9- The workers demand that the company convert the 2-month probationary workers to permanent worker status.
- 10- The workers demand that the company take full responsibility for work accidents.
- 11- The workers demand that the company retain wages and bonuses while workers take sick leave with permission and a letter certified by a hospital.
- 12- The workers demand that the company reimburse the medical-check fee of 10,100 riel which the company deducted.

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 dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing was

unsuccessful, and the non-conciliation report No. 389 dated 31 August 2006 was submitted to the Secretariat of the Arbitration Council on 1 October 2006.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd. Sangkat Tonle Bassac, Khan Chamkarmorn, Phnom Penh

Date of hearing:

- Pre-hearing meeting: 17 October 2006 (8:00 a.m. – 10:00 a.m.)
- Hearing: 24 October 2006 (2:00 p.m. – 5:00 p.m.)

Procedural issues:

On 22 August 2006, the Department of Labour Disputes in Kampong Speu Province received a petition in relation to 12 issues from the KYFTU and workers. Following the receipt of the petition, the Department of Labour Disputes in Kampong Speu Province issued a letter inviting the employer party, the union and the workers to come for a conciliation on 29 August 2006 at the Department of Labour and Vocational Training in Kampong Speu Province. The conciliation was unsuccessful. The 12 non-conciliated issues were sent to the Arbitration Council on 1 October 2006.

Following receipt of the case, the Arbitration Council invited the employer party, the union and the worker federation to a conciliation and hearing of the 12 non-conciliated issues on 17 October 2006 at 8.00 a.m. and on 24 October 2006 at 2:00 p.m. Both parties attended as invited. On the first hearing day, 17 October 2006, both parties agreed to return to the factory to continue to negotiate the issues at the factory. [This further negotiation] was not successful.

On the second hearing, 24 October 2006, the Arbitration Council tried to further conciliate the matter, during which 10 issues were conciliated: issue 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11. Therefore, in this award the Arbitration Council will only consider the those issues which could not be successfully conciliated, issue 3 and issue 12, on the basis of the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- List of names of the workers who participated in the election committee of local KYTU in Cambodia Apparel Company (dated 26 October 2006).

- Letter dated 27 October 2006 by the Director of Cambodia Apparel Company to the Arbitration Council to clarify the identity of the 17 workers who came to work on 17 October 2006.
- Summary statement of the case of Cambodia Apparel company dated 13 October 2006.
- Letter dated 26 September 2006 by the Director of the Cambodia Apparel Company to the head of the Department of Labour and Vocational Training in Kampong Speu Province regarding permission to let three workers resign (1. Khut Saluot, 2. Sin Saren, 3. Toch Sreymao).
- Resignation letter of Khut Saluot, Sin Saren and Toch Sreymao.
- Letter dated 30 August 2006 by the director of Cambodia Apparel Company to the head of the Department of Labour and Vocational Training in Kampong Speu Province stating that the Department of Labour and Vocational Training in Kampong Speu Province could not resolve the labour dispute of the Khmer Youth Trade Union.
- Letter of invitation No. 284 KKBV dated 28 August 2006 by the Department of Labour and Vocational Training in Kampong Speu Province to the Director of Cambodia Apparel Company to settle the labour dispute.
- Certificate of registration of local Khmer Youth Trade Union in Cambodia Apparel Company No. 785 KKBV/AK dated 14 July 2005 which mentions Ms. Vang Vanna as the President, Mr. Khut Saluot as Vice President and Ms. Hun Nao as Secretary.
- Certificate of registration of local Khmer Union of Apparel Company No. 970 KKBV/AK dated 18 July 2006 which mentions Mr. Khut Saluot as the President, Mr. Sin Sarem as Vice President and Ms. Toch Sreymao as Secretary.
- Certificate of registration in the list of commerce No. 2561 PN NTK dated 28 October 1998.
- Letter dated 17 October 2006 by the Director of Cambodia Apparel company to authorize Mr. Chea Key and Ms. Un Heang.
- Letter dated 24 October 2006 by the Director of Cambodia Apparel company to authorize Mr. Chea Key and Ms. Un Heang.

Provided by the worker party:

- Letter No. 296 dated 23 October 2006 by the local KYTU at Apparel Company to the Minister of Labour and Vocational Training regarding the request to change committee members of the local KYTU at Apparel Company.
- Minute of the election of committee of the local KYTU at Apparel Company dated 23 October 2006.
- Statute of the local KYTU at Apparel Company dated 23 October 2006.
- List of workers who participated in the election of the committee of the local KYTU at Apparel Company.

- Certificate of registration of local Khmer Youth Trade Union in Cambodia Apparel Company No. 785 KKBV/AK dated 14 July 2005 which mentions Ms. Vang Vanna as the President, Mr. Khut Saluot as Vice President and Ms. Hun Nao as Secretary.
- Resignation letter from the position of Secretary of the local KYTU by Hun Nao, dated 18 October 2006.
- Agreement to take leave between Ms. Oun Many and Cambodia Apparel Company dated 23 October 2006.
- Letter dated 21 October 2006 by workers in Cambodia Apparel Company to authorize Mr. Mai Vattana, Mr. Nao Titha, Ms. Oun Many, Ms. Chin Channa, Ms. Chhang Sokny to settle the dispute in respect of the 12 issues relating to work conditions.
- Letter No. 761 SSYK dated 21 October 2006 by KYFTU regarding notification about the election of the committee and change of candidacy of leaders of the local KYTU at Apparel Company.

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report on the resolution of the collective dispute at Cambodia Apparel Company No. 389 KBV/KSp dated 31 August 2006.
2. Minute on the resolution of the collective dispute dated 29 September 2006.

Provided by the Secretariat of the Arbitration Council:

- 1- Letter of invitation to the worker party to attend the hearing No. 418 LKA dated 11 October 2006.
- 2- Letter of invitation to the employer party to attend the hearing No. 419 LKA dated 11 October 2006.

FINDINGS OF FACT

- Having examined the report of the collective dispute conciliation
- Having listened to statements of the employer and the worker parties
- Having reviewed additional documents

The Arbitration Council finds that:

- Cambodia Apparel Company is located along National Road 4, Chambak Village, Vor Sor Commune, Samrong Torng District, Kampong Speu Province. The company employs approximately 643 workers.

Legal Status of the Khmer Youth Trade Union:

- The company has two unions: Khmer Union and Khmer Youth Trade Union. Khmer Youth Trade Union is the party in dispute in this case. The President and Vice President of the union resigned from their positions at the company and stopped their roles in the

union before the first hearing of this case. The Secretary of the union named Hun Nao presented on the first hearing day on 17 October 2006 but she provided a resignation letter on 18 October 2006 with an affirmation from the head of the Labour Disputes Department of Kandal Province on 19 October 2006.

- Letter No. 761 issued on 21 October 2006 about a change in the [office bearer's] component of the union signed by Mr. Yon Rithy and sent to the Director of the company, states that Khmer Youth Federation Union had arranged for an election on 17 October 2006. The letter mentioned that Ms. Oun Many was selected the President of the union, Ms. Chin Channa the Vice President and Ms. Chhang Soknythe Secretary.
- A minute dated 23 October 2006 about the union election union signed by Mr. Yon Rithy mentions that there was an election on 17 October 2006 at 10 a.m. participated in by 60 workers who were members of the union. It mentions that Ms. Oun Many was selected President of the union by 30 votes, Ms. Chin Channa was selected the Vice President by 17 votes and Ms. Chhang Sokny was selected the Secretary by 13 votes.
- The employer raised questions about the legal status of the union because the election was held before the former Secretary of the union resigned and the election was doubtful. The employer provided a list of names in order to check the names of the 60 workers who participated in the election on 17 October 2006 at 10 a.m. That document shows that some workers among the 60 that were listed were working in the factory [at the time of the election].
- The worker party and the Youth Union Federation did not reply to this point but leaves it to the Arbitration Council for consideration. The union did not reject the list of 60 worker names to be considered for checking as provided by the employer.
- Ms. Oun Many who was selected the President of the union by 30 votes on 17 October 2006 was also present at the first hearing on 17 October 2006 from 8:00 a.m. to 10:00 a.m.
- At the hearing day on 24 October 2006, the Federation had not yet applied to the Ministry of Labour for recognition of the new office bearers.
- Article 12 of the statute of the Khmer Youth Trade Union of Cambodian Apparel dated 23 October 2006 states, *"...the election for the union committee must involve the participation of more than 100 members in cases where there are two thirds of the members, more than the specified number, the committee has a two-year mandate. In necessary cases, there will be an extraordinary convention."*
- Article 13 of the union statute dated 23 October 2006 states, *"...Committee of the Khmer Youth Trade Union includes: President, Vice President, Secretary, Advisor, Treasurer and Cashier who are elected by the convention."*

- 40 workers delegated their rights to the federation and the new leaders of the union as evidenced by a list of thumbprints.

Issue 3:

- The workers accused Ms. Un Heang of taking US\$20 from each worker during their apprenticeship training. They demanded that the company fire her from work and demanded that she pay back the amount. The workers did not show any evidence to support this accusation.
- The workers confirmed that Un Many paid US\$20 in 2002, Chhang Sokny and Chin Channa paid US\$20 each in 1999.
- Ms. Un Heang said that she did not take the money. She demanded that the workers show evidence. The union stated that it could not show any evidence of the misconduct.
- Ms. Un Heang started work in 1999 as a Cashier was then promoted to the position of Head of the Administration Department in 2004.

Issue 12:

- The workers demand that the company reimburse the medical check fee amount of 10,100 riel to all workers. The workers argue that this is an obligation of the employer as stated in Prakas 09 and Article 247 of the Labour Law.
- The company does not agree because the medical check is a [pre-employment] condition for recruiting staff.
- Among the 40 demanding workers, some of them went to have a medical check after passing the [pre-employment] test and they paid 10,100 riel by themselves. Some other workers had a medical check at the company and the company deducted 10,100 riel from their wages. For example, of the four workers who were present at the hearing, two of them went to have a medical check by themselves and the other two had a medical check at the factory.
- Workers Oun Many and Kao Thea paid 10,100 riel by themselves when they went to have a medical check at the Labour Hospital in 2002.
- Worker Chin Channa and Chhang Sokny had a medical check in 1999 and the company deducted 10,100 riel from their wages.

REASONS FOR DECISION

The Legal Status of the Union

In the hearing the employer rejected the legal status of the new union leaders to represent workers in this case.

Article 268 of the Labour Law states, “In order for their professional organization to enjoy the rights and benefits recognized by this law, the founders of those professional organizations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of labour for registration ...

The filing will be renewed whenever there are changes in the statutes or management.”

In this case, the union fulfilled the conditions described above.

Article 5 of Prakas 305, paragraph 1 states: “Any union established at the enterprise or establishment class level in accordance with Article 268 of the Labour Law, shall have the right to represent the interests of its members under the conditions specified in the Labour Law.”

The Arbitration Council considers that Khmer Youth Trade Union in the factory has registered with the MoLVT in accordance with Article 268 of the Labour Law and Article 5 of Prakas 305/01 and therefore has the rights and benefits recognized by the Labour Law. However, the employer party also questioned whether the union leadership had the right to manage the union's affairs and lawfully represent the union's interests.

The Arbitration Council considers that union leaders have the right to act on the union's behalf. Article 268 and 269 of the Labour Law, referring to union leadership, makes mention of the responsibility for the administration and management of professional organisations. The Arbitration Council therefore considers that union leaders alone have these administrative and management responsibilities [in the union]. Article 13 of the union statute dated 23 October 2006 sets out that “*The Committee of the Khmer Youth Trade Union includes: President, Vice President, Secretary, Advisor who are elected by the convention.*” The Arbitration Council finds that this committee has the authority to represent the union and is responsible for the union's administration and management if this committee was elected in accordance with the statute of the local Khmer Youth Trade Union of Cambodia Apparel company.

Therefore, in this case, the Arbitration Council will consider whether the newly elected leaders were elected in accordance with the union statute. The Arbitration Council considers that the election was doubtful because 1) on the Election Day there were some workers in the list of names of the 60 participants in the election, who were actually at work. The worker party did not reject the list provided by the employer. 2) The election was not in accordance with Article 12 of the statute of the Khmer Youth Trade Union at the Cambodia Apparel Factory which requires 100 members to participate. 3) The election was held before the former Secretary resigned (the election was held on 17 October 2006 but the former Secretary resigned on 18 October 2006. 4) The time of election and the end of the hearing at the Arbitration Council were almost identical, that is, at 10 a.m. To travel from Phnom Penh to Kampong Speu, it takes at least one hour and the workers who were candidates for the election were present at the hearing of the Arbitration Council on that day.

Because of the above mentioned problems, the Arbitration Council considers that the committee of the union was not elected properly in accordance with the statute of the Khmer Youth Union of Cambodia Apparel Factory. Therefore, the newly elected union committee cannot represent the union and its members. However, it does have the right to represent the 40 workers who delegated the right of representation to them. Therefore, this Arbitral Award concerns these 40 workers only.

Issue 3:

In this case the workers demand that the company dismiss Ms. Oun Heang from work and demands that she pays back the money [which she took from workers]. The Arbitration Council considers this case as follows:

1. The demand that the company dismiss Ms. Oun Heang from work:

Article 65 of the Labour Law (1997) states, “A labour contract establishes working relations between the worker and the employer. **It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.**” Because labour contracts are subject to ordinary law, Decree 38 on contracts is also applicable to labour contracts. Article 22 of Decree 38 on Contract and Responsibilities outside the Contract (1988) states, “**A contract is considered law of the parties. A contract can only be changed when there is agreement from the parties. A contract is effective only to the parties.**”

In this sense, only the parties to the labour contract have the right to terminate this labour contract. Therefore, this clearly means that the employment or termination of any worker in the company is the exclusive right of the employer who is a party to the contract.

Hence, the decision of the Arbitration Council will not differ from comparable previous awards. In Arbitral Award 73/04-Genuine, the Arbitration Council stated, “*As a rule, the Arbitration Council finds that employees do not have the right to demand that the employer dismiss any employee unless the employees can prove that the employee is a dangerous person who cannot be allowed in the company or factory, and that keeping that person in the workplace could cause harm to the workplace (see 04/03 - Lida, 14/03 - Chou Sing, 17/03 and 18/03- Ho Hing, 6/04- Chou Sing, 15/04 - Lucky Zone, 16/04 – Yada Printing, 32/04 - Ecent, 34/04 - Full Value, and 52/04 - Sin Kam).*”

In this case, the worker party did not show any concrete evidence that Ms. Oun Heang is a dangerous person who can cause harm in the workplace, apart from the accusation alone that she took money during the workers’ apprenticeship training.

In conclusion, the Arbitration Council considers that the demand of the workers does not have a proper legal basis. The Arbitration Council, therefore, decides to reject the demand.

2. Demand that Ms. Oun Heang pay back US\$20:

In the hearing, the workers did not provide any concrete evidence to prove that Ms. Oun Heang took money from the workers. Therefore, the Arbitration Council also rejects this demand.

Issue 12:

Regarding the issue of the 10,100 riel medical check fee, the Arbitration Council concurs with the interpretation of Arbitrators in previous cases; that Article 247(c) of the Labour Law provides enough legal basis to conclude that the employer is obliged to pay for the medical check for workers (see Arbitral Awards 63/04-Shine Well, 64/06-Mercury, 78/04-AIA, 98/04-Great Union, 106/04-Suit Way, and 107/04-Jaquusintex).

Based on the previous decisions regarding the medical check fee, the Arbitration Council has found that the employer must pay the expenses and pay back [monies spent by workers] to workers as decided in the previous awards: 02/03-Chou Sing, 21/03-Loyal Cambodia, 19/04-Kabal Kah II, 53/04-Kong Hong, 60/04-United Art, 60/04-Shine Well and 05/06 – W&D.

Therefore, in this case, the Arbitration Council also decides that the employer must pay back the medical check fee amount of 10,100 riel to the workers. However, in this case there are two workers who had a medical check in 1999 and two workers who had a medical check in 2002. Some workers paid the fee themselves while for others the company deducted this amount from their wages. Therefore, the Arbitration Council will consider if the company has to pay back the medical check fee to all workers.

Article 120 of the Labour Law states: “The statute of limitation for a lawsuit for the payment of wages is three years from the date the wage was due. Claims subject to the statute of limitation of a lawsuit include the actual wage, perquisites and all other claims of the workers resulting from the labour contract, as well as the indemnity in the event of dismissal.”

In Arbitral Award 68/04-City New, the Arbitration Council stated, *“Article 120 of the Labour Law sets the limitation for the employees’ lawsuit related to the wage—3 years counting from the day [of the monetary transaction]. In this regard, the employees have a right to complain, demanding the wage the employer deducted for medical checks within three years, counting from the day of the [deduction]. If the employees do not demand within the three years as mentioned here, the employees lose their right to demand the amount of the wage deduction by the employer.”*

In Arbitral Award 66/06-Gold Lida, the Arbitration Council stated, *“Based on the meaning of this Article, workers have the right to pursue a lawsuit to demand back from the employer the amount paid for medical check fees within three years counting from the date the money was paid. Fail to demand within three years causes the right to demand for back payment to expire.”*

In Arbitral Award 05/06 – W&D, the Arbitration Council stated *“in respect of workers who paid 10,100 riel for the medical check themselves in order to get a medical certificate to apply for work, the time limitation on the claim starts from the day the contract is signed because the work relationship starts at that time, though paragraph 2 of Article 120 of the Labour Law does not clearly mention that. This means that the time limitation of the claim for reimbursement for the medical check [fee] in this case is three years from the date the labour contract was signed or from the date of the commencement of the job.”* The time limitation for workers in this category is three years, counted from the day the labour contract was made because the labour relationship began at that time. This means that the time limitation for the payment of the medical check fee in this case is three years from the date the labour contract was made or from the day the workers started work.

In that same award, the Arbitration Council emphasized that for those workers whose wage was deducted for the purposes of paying the medical check fee, *“the time limitation is effective for workers in this category starting from the day the medical check fee is deducted from their food allowance.”*

Therefore, in this case, the Arbitration Council finds that the right to demand that the employer pay back the medical check fee is valid only within three years. The three-year period is counted from 22 August 2003 for workers who had a medical check and had to pay the fee by themselves and for workers who had a medical check and their wage was deducted by the company from 22 August 2003.

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

DECISION

- Reject the demand of the workers to have the company dismiss Ms. Oun Heang and pay back US\$20.
- Order the employer to pay back the medical check fee amount of 10,100 riel to workers from the date this award becomes enforceable.

Type of Award: Non- Binding

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallak**

Signature: