

KINGDOM OF CAMBODIA

NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 94/04-Eternity

Date of award: 7 December 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

Eternity Apparel Company

(Employer party)

AND

Democracy Union of Workers at Eternity Apparel Co., Ltd.

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives: 1- Sor Samnag, Lawyer representing the Eternity company;

2- Mr. Yav Soknna, Administration Manager of the Eternity company

Address: Building 646, National road 2, Chakangrekrum commune, Meanchey district, Phnom Penh.

Tel: 023 425 838.

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives: 1- Ek Sophak, Official of Democracy Federation Union of Workers;

2- Vit Samnang, President of DFUW;

3- Mr. Son Phelot, Advisor of the local union,

Address: # 06, Street 476, Toul Tompong commune, Chamkarmorn district, Phnom Penh.

Tel: 023 210 481.

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The workers demand that the company build five additional toilets because there is a lack of toilets.
- 2- The workers demand to use their annual leave when their seniority lasts for more than one year and three months, and if the worker does not use all their annual leave the company should pay money instead of the annual leave.

- 3- The workers demand wages and other seniority bonuses in advance for 90 days to the women on maternity leave.
- 4- The workers demand that the company deduct union contributions from those who are members of the union.
- 5- The workers demand that the company allow workers to wear skirts during working hours.
- 6- The workers demand that the company play a tape for them to listen to during working hours.
- 7- The workers demand that the company build a roof higher than actual roof and spread water on it because the actual roof is short, the temperature is hot, and there is not enough air.
- 8- The workers demand that the company install chairs for the workers at the ironing, quality control, and trimming sections.
- 9- The workers demand that the company not deduct attendance bonuses when they come [to work] 15 minutes late.
- 10- The workers demand that the company not deduct wages of seven days when they resign from work without giving advance notice to the company.
- 11- The workers demand that the company build a day care center and allow mothers who have a child to take a rest of one hour per day to breastfeed the baby.

JURISDICTION OF THE ARBITRATION COUNCIL :

The Arbitration Council derives its power to make this Award from Section IIB 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 099/04; 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 successful in one of 12 issues, and there were 11 unsuccessful issues. The non-conciliation report dated 11 November 2004 was submitted to the Secretariat of the Arbitration Council on 12 November 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. Run Saray

HEARING AND EVIDENCE:

Date and place of hearing: 18 November 2004 at 8:00 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- Internal Work Rules of the company
- 2- Business license of the company dated 23 December 2004
- 3- Delegating letter to Mr. Sor Samnang dated 17 November 2004

Provided by the employee party:

- 1- Conciliation report on collective labour disputes
- 2- Letter of request for an agreement on union contributions dated 16 February 2004
- 3- Letter of order dated 26 February 2004
- 4- Letter to delay a negotiation dated 26 February 2004
- 5- Certificate of registration dated 29 April 2004
- 6- Letter to request an agreement on union contributions dated 14 June 2004
- 7- Letter to request protection of union committees dated 2 October 2004

Received from MoLVT:

- 1- Conciliation report on collective labour disputes
- 2- Complaint dated 6 September 2004
- 3- Request to extend a time of negotiation dated 18 September 2004
- 4- Request to extend a time of negotiation dated 23 September 2004
- 5- Letter of delegation authority to Mr. Yav Sokna dated 30 September 2004
- 6- Report on non conciliation of collective labour disputes dated 11 November 2004
of the Ministry of Labour

CASE SUMMARY:

Eternity Apparel Company employs a total of 1160 workers, and 650 workers are Democracy Union of Workers (DUW) members. The DUW has not yet registered as most representative status of the company. The workers filed a complaint with the Labour Inspector at Meachey district on 7 September 2004 in order to demand that the company comply properly with 12 working conditions in accordance with the labour law. After receiving the complaint on 10 September 2004 the Labour Inspector at Meanchey district came to coordinate and resolve the issues at the first time and at the second time on 30 September

2004 through the procedure of resolution of collective labour dispute; as a result one issue was successfully settled out of 12 issues. As for the remaining 11 issues they were sent to the Arbitration Council on 12 November 2004. After receiving the case on 18 November 2004 both parties were invited by the Arbitration Council to appear in the hearing at 8:00 a.m.

In the hearing the Arbitration Council encouraged the parties to continue to negotiate for seeking an agreement to settle the dispute together through a conciliation process under a win-win policy.

FINDING OF FACT:

- Having examined the minutes on conciliation of collective labour disputes
- Having listened to the company party and the workers party as described in the minutes of the hearing
- Having checked other relevant documents as described above

We find that:

First issue:

- 1- On the second floor of the factory building there are 800 women workers in one shift.
- 2- On the second floor of the factory building there are six toilets for female workers and two for male workers, but two toilets for men is not a problem.
- 3- There are distribution toilet cards for the employees to use. The company provides two toilet cards to a group of workers to be used when they go to toilet. On the second floor of the building the workers are divided into eight groups, and each group is comprised from 80 to 90 workers.
- 4- The company promised that it would build more toilets. But there is no place to build because of narrow spaces and the company would like to negotiate with the owner but it failed to find a compromise.

Second issue:

- 1- The company provided 18 days of annual leave per year. But the 18 days of annual leave was calculated in cash at the end of each year.
- 2- The exchange from the annual leave into money was agreed upon by the employees and employer.
- 3- Some of the workers would like to use some of their annual leave days when they are busy and the workers asked the company to calculate the remaining days in cash at the end of each year; therefore, the workers demand that the company allow all the seniority workers who have worked more than one year and three months to use their annual leave when they are so busy and the company not deduct their other fringe benefits.

- 4- The company did agree on the above request and asked to apply annual leave like the past that was agreed already between the company and employees.
- 5- The employees requested to re-negotiate this issue with the company.

Third issue

- 1- The company used to give money for a maternity leave of 90 days to women who gave birth to a child. The payment for the maternity leave was paid every month like normal workers.
- 2- The workers asked that the company pay their maternity leave of 90 days in advance because some pregnant workers give birth in their homeland, which is far from the working place.
- 3- The company cannot pay their maternity leave at one time; workers must be paid every month. But the workers can come to get the payment of maternity leave as requested if necessary.

Fourth issue:

Union representatives demand that the company help deduct the union contribution from the each worker, but the employer alleged that it faces difficulty deducting because it involves checking the registration names and advanced accountant techniques. Further, there was a complaint from the employees and a question from buyers, and the buyers did not want the company to deduct from the workers' salary.

Fifth issue:

In the past the company required the workers to wear trousers for safety reasons as it is easier to walk around and work. The employer's representative said that the requirement to wear trousers is to be safe at work and to prevent work-related accidents that may happen during working hours, where the employer is responsible for this accident. The workers demand that the employer allow female workers to wear skirts during working hours because they understand that wearing skirts is the right of the people and alleged that wearing employees can work in either trousers or skirts.

Sixth issue:

The workers made a request for the company to play music while they were working to make them happy and do their best or to follow the news. In the past the company never did, saying that to play music makes the workers feel sleepy and they do not concentrate on their work, which may cause an accident. In addition, the factory is loud and music may cause confusion.

Seventh issue:

The building has a corrugated iron roof which has a height of 10 metres from the ground. The low corrugated iron roof makes the building hot. The factory's representative recognized that it is really hot because of the lower roof and of an incorrect construction technique. The company attempted to get advice from an engineer who alleged that it could not install a water system or put in extra fans.

The company is under reform to make conditions better at the ironing and trimming sections by making the working place larger to reduce the temperature. The factory's representative said that the factory is proceeding with and trying to make a changes.

Eighth issue:

There are 12 workers in the ironing section, 108 in the quality control (QC) section and 60 in the trimming section. Standing for work for a long time can make workers' legs swell. The workers work four hours without a rest. Both parties agreed that some companies allow their workers in these sections to work sitting but workers do not want to sit because they sew at piece rate and it is faster to stand to sew. The workers side wants to have chairs in place, not because they want to sit working but just because they want to get some rest only when necessary. The company did provide chairs before, but the workers would fight each other because some could sit long and others just for a short period of time. Nowadays, the company allows only pregnant women to sit for ironing, controlling and cutting-tuft work. The company understands that technically, sewers cannot work standing while ironers cannot work sitting because it slows down production.

Ninth issue:

In the past if the workers come in late by 15 minutes, the employer stopped their attendance bonus. The employer always stops the attendance bonus as well, if the workers come late more than 5 minutes. The employer understands that the attendance bonus will be offered only to the workers who come regularly and work seriously. The employer confirmed that in the past both parties agreed that if the employees came late 5 minutes with the specified reason, the employer would not stop the attendance bonus. But the employer failed to give this agreement to the Arbitration Council.

Tenth issue:

The workers understand that legally the workers can stop working without having an obligation to give prior notice to the employer. The employer deducts seven days of wage [from the workers' wage] when the workers stop working without giving notice because the employer directly told the workers about this deduction when they were hired. The workers said that the employer did not tell the workers who have been working a long time but it told

only the new workers. The director of the company understands that if the employer dismisses the workers, the employer must give prior notice, thus to be fair if the workers stop working, they must give prior notice as well and if it does, the employer will deduct seven days from their wages because the employer has difficulty finding new workers to replace the old ones.

Eleventh issue:

The company has not yet organized a day care center and also does not allow women workers to breastfeed their children one hour per day. So far, some workers sent their children out or have somebody else care for them and they must pay approximately 60,000 riel per month. There are about 1,000 women workers, with about 20 women having babies a month. The company party agreed that it would allow all women workers who have children to take a rest one hour per day to breastfeed their children and would organize to build a childcare center in the factory because the company has a capability to do it.

REASON FOR DECISION:

First issue:

Clause 1 of Prakas 52/00 states that "Employers of enterprises and establishments as mentioned in Article 1 of the Labour Law shall organize, on the premises of their enterprises and establishments, latrines for appropriate and sanitary use by employees." In the first issue, the Arbitration Council found that in this factory at the second floor there are eight toilets in which there are two toilets for male workers and six for female workers; the men never have problems. But for women there are problems because the six toilets are not enough for 80 women. Clause 5 of Prakas 52/00 states that "The enterprise or establishment that employs one hundred female workers or more must install one high seat toilet for every 50 workers." The Arbitration Council finds that in the factory there are six toilets for 800 female workers and it was not enough. Thus the company must build more toilets to be used peacefully.

Second issue:

Article 166 of the Labour Law states that "All workers are entitled to be paid annual leave to be given by the employer at the rate of one and one-half work days of paid leave per month of continuous service." Article 167 of the Labour Law states that "The right to use paid leave is acquired after one year of service." The Arbitration Council understands that the company must give rights to the employees who have seniority in the factory using their annual leave without any conditions, because the Labour Law requires the employees enjoy this right. If the annual leave was not used all, the company must keep their annual leave for

future years, but cannot keep the remaining annual leave in excess of three years. The Arbitration Council finds that in the past the company and the employees agreed on the calculation of the leave with the money at the end of the first year and the workers can take leave the next year. The workers would like to use their annual leave for the next year when they have worked for more than three months and a number of days that is not used will be calculated into the wages. The employer alleged that the workers do not have the right to take leave at the second year unless they have not worked for the next full year. The Arbitration Council finds that Article 167 of the Labour Law authorizes the workers to take leave at the second year whenever in that year without waiting until the end of the second year. But the number of days is based on the length of actual work period.

Moreover, the Arbitration Council finds that the payment to replace annual leave violates Article 167 of the Labour Law which stipulates "Any collective bargaining agreement providing compensation in lieu of paid leave, as well as any agreement renouncing or waiving the right to annual leave, shall be null and void...." The agreement between the company and the employees who calculated their annual leave with the money is against the Labour Law, but the Arbitration Council does not resolve this issue because both parties do not have conflicts in relation to this issue.

Third issue:

The Arbitration Council finds that the company authorized the employees to take 90 days of leave and pay wages and other severance pay to the workers who are taking the maternity leave in accordance with the Labour Law (Articles 182 and 183 and clause 4 of Prakas 17/00). However the employees demanded the company pay them wages and other severance pay for 90 days in advance if they take their maternity leave. The Arbitration Council finds that the payment of all wages and other severance pay in advance or each month is within the internal management of the factory. The Arbitration Council does not find any legal basis requiring the employer to pay money to maternity workers in advance. The Arbitration Council finds that this demand is above the legal basis of the employer's obligation. Therefore this demand is an interest dispute. The 1997 Labour Law and other regulations relevant to the labour area do not state a time of payment of wage and other severance pay, thus the Arbitration Council finds that the workers' demand which requires the company to pay wages and other severance pay in advance is an interest dispute.

Article 43 of the Prakas 99/04 states that "An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award."

The Arbitration Council finds that the Democracy Union of Workers of the Eternity does not have the most representative status in the factory. Thus, if the Arbitration Council issues its arbitral award involving the third issue, it will become the collective bargaining agreement which may apply to all the workers in the factory and result in other workers who are not involved with the two disputes losing their right to conduct a strike demanding an interest dispute in the future. This is not fair for other workers (see Arbitral Awards 04/03-Lida; 06/04-Chou Sing; 24/03-Top One; 61/04-Best Honor; and 62/04-E-Cent). In addition, in the past the Arbitration Council concludes that the union that does not have the most representative status cannot bring an interest dispute to the Arbitration Council to settle (see Arbitral Award 31/03- Hong Wa and 66/04-United Arts).

The employer and the workers should negotiate with each other to establish a collective bargaining agreement for the purpose of settling their interest dispute appropriately, which could include an interest dispute.

Fourth issue:

The union representative asked that the company deduct union contributions from each worker's salary, but the employer refused. According to Article 129 of the Labour Law, "the workers might authorize to deduct their money for the union contribution from their wage." The Prakas 305/01 of clause 5 states that "when the worker decides to use their rights in accordance with Article 129 of the Labour Law the employer bonds to deduct the union contribution." Further, the employer must provide the Ministry of Labour with the workers' letter which makes a request to deduct union contribution.

Under the content of this Article the Arbitration Council finds that the deduction of a union contribution is the obligation of the employer and must be deducted at the payday as the unions request after receiving the consent letter from the workers saying that they agreed voluntarily to deduct the union contribution. In such case the factory must deduct the union contributions from the workers' wage and give the money which was collected to the union. The amount must be deducted on the next payday and must be deducted only for the workers who accept in writing. The employer must also provide the Ministry of Labour verification from each worker who agreed to have union contributions deducted as required in clause 5 of the Prakas 305/01.

Fifth issue:

The union workers' representative requested the women workers have the right to wear skirts when they are working in the factory by alleging that it is each worker's right. But the factory's representative said that to wear skirts while they are working may cause accidents from a machinery system and by other factors such as running when there is an

emergency or fire. Regarding this issue, the Arbitration Council finds that to wear skirts is a right of each worker but the employer has the obligation and is responsible for the workers' safety while they are working in the factory. So, to be safe when working, the employer could have the right to set up the internal work rules or other rules to prevent the work-related accident.

In accordance with Article 249 of the Labour Law the employer of the enterprise must be responsible for the work-related accident. Article 250 provides that "All heads of business must take all appropriate measures to prevent work-related accidents." Under these Articles the Arbitration Council finds that the employer of the enterprise has the right to set up necessary rules and the right to manage its enterprise to be in a good order to prevent work-related accidents to the workers in the factory.

Sixth issue:

Regarding the demand that the company play music when the employees are working to make them happy, it may eventually cause accidents. To play music is an issue related to an interest among the employees and the owner of the enterprise. Like the third issue, the Arbitration Council could not settle an interest dispute because the union in this issue does not legally have most representative status. Therefore the Arbitration Council finds that the demand shall be left to the Union and the employer to negotiate with each other to serve their interests.

Seventh issue:

The union representative requested the company renovate the roof of the factory higher than its current height, in order to reduce heat and release oxygen. The factory's representative said that the company is working on that by moving some sections to reduce heat and the bad environment.

The Prakas on heat environment at the workplace 14/02, clause 3 states that "in case that the place has heat ... the employer must seek a way to make the workplace cool, such as installing fans, ventilators etc..

In accordance with the meaning of this Prakas, the Arbitration Council finds that the roof is so low and may produce a lot of heat and the heat may cause trouble to the health of the workers. Thus the employer must change or find another solution in order to reduce heat such as making a roof higher or installing a ceiling or putting a water cooling system within two months after this award comes into effect.

Eight issue:

According to the fact the Arbitration Council finds that the company does not want to arrange chairs for the workers at the ironing, quality control and trimming sections to sit

because the company is afraid to lose its production. Further, it must spend [money] on this arrangement as well because there are 180 workers in these three sections and because the workers have been in conflict with each other for the seats. The workers claim that sitting to work does produce fewer products than standing to work, but they would like to have seats because standing for long moments makes their legs swell and they demand to have some seats.

Prakas 53/00 of the MoLVT of clause 1 states that "Employers of enterprises and establishments as mentioned in Article 1 of the Labour Law shall prepare and provide, in each workstation, suitable chairs for the use of employees when their work requires sitting positions and or occasional sitting positions." And clause 2 states that "In any case, even if the work does not require sitting positions, employers shall organize and provide sufficient chairs placed not far from workstations for the use of employees, when necessary."

In accordance with the Prakas and the argument from the workers side above, the employer must organize chairs in proportion to a number of the workers who have to sit to do work in order to avoid harm to the workers' health. The Arbitration Council finds that within one month the company could arrange those chairs.

Ninth issue:

In the past if the workers come late 5 minutes or more, the employer withholds their entire attendance bonus. The workers asked the employer not to withhold this money if the workers come late only five minutes or less. Neither the regulation of the company nor notification 17/00 of MoLVT stipulates about time (minutes) coming late which could lead the employer to stop the attendance bonus and about late time (minutes) the employees still demands the attendance bonus. But clause 2 of the Internal Work Rules of the company states that "All the workers must respect working hours as determined by the employer."

The Arbitration Council finds that the workers must come to work on time and if they are late, they must be fined in accordance with the rule of the company. The employer confirmed that the attendance bonus would be offered only to the workers who come to work regularly. The workers' demand in this case is above the law and exceeds the employer's obligation, which can be an interest dispute. The third issue and the sixth issue owing to the employee's side do not get the approval from the Ministry in relation with the reorganization of the most representative status, and therefore the Arbitration Council decides that it will not issue its arbitral award on this issue. Further, the employer alleged that both parties agreed that if the employees come late five minutes, the employer will not withhold the attendance bonus; however if it is late more than five minutes, the employer will withhold the money. The

Arbitration Council does not consider this argument because the employer does not produce enough evidence.

Tenth issue:

The Arbitration Council finds that the employer deducts seven days of wages when the employees stop working without giving prior notice, because the employer said that he/she does tell the workers when they were hired. However, the employees confirmed that the employer does not tell the workers who have worked a long time, the employer told only the workers who began work. Regarding the undetermined duration contract, any party that would like to terminate the contract must inform the other party first. Article 74 of the Labour Law states that "The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party." Under this Article both the employer and the workers who would like to terminate the labour contract must give prior notice. Moreover Article 91 of the Labour Law stipulates that "the termination of a labour contract without valid reasons, by either party to the contract, entitles the other party to damages". In this case the employer does not raise that the workers termination of the contract without giving prior notice may cause damage, which could be a valid reason to demand damages from the workers. Instead, the employer party just said that it did not inform them about the deduction of seven days of wage directly when they were hired. The Arbitration Council finds that there is no article or regulation allowing the employer to deduct workers' wages when the workers terminate the contract without giving prior notice. Thus, the action of the employer is not consistent with the law and the employer must stop deducting the workers' wage.

Eleventh issue:

The company did not yet organize a day care center and also did not authorize mothers who have babies to take rest one hour to breastfeed the baby. Article 184 of the Labour Law first paragraph 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." There are about 1,000 women workers in the factory. Article 186 of the Labour Law 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 centre)." The company party agreed that it would organize for women who have babies to take a rest one hour a day to breast-feed their children and to build a day care center in this factory because the company has the capacity to do it. Thus the company should commence organization of a day care center in the premises of the factory or nearby for women workers to leave their children. The company must also allow

women workers who have babies to take a rest one hour during working hours to breastfeed their babies.

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

DECIDES :

- 1- Orders the company to build five more toilets on the second floor to be used by the women workers in accordance with the Labour Law and Prakas 52/00.
- 2- Orders the company to offer rights to employees using their remaining annual leave according to a number of days that the workers saved after they have worked for more than one year.
- 3- Rejects consideration of the workers' demand over the third, sixth, and ninth issues because these are interest disputes.
- 4- Orders the employer to deduct union contributions from 1 April 2005 according to the request of the union's representative in which the attached attendance list of union members sent to the employer certified that they voluntary [wish] to have money deducted.
- 5- Rejects the workers' demand that the employer allow women workers to wear skirts during working hours in the factory.
- 6- Orders the employer to renovate the roof or workplace to reduce heat and make the environment proper within two months after the arbitral award comes into effect.
- 7- Orders the employer to organize chairs for the workers at the ironing, quality control and trimming sections for the basic needs of the workers within one month after the arbitral award comes into effect.
- 8- Order the employer to stop deducting seven days of wages when the workers stop working without giving any prior notice after the arbitral award comes into effect.
- 9- Order the employer to establish a day care center for the breast-feeding of children in the factory and to allow the women workers who just gave birth to children to take a rest one hour a day to breast-feed the children.

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: **Run Saray**

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.