

**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 95/04

Date of award: 21 December 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**A.S.D Co., Ltd.**

(Employer party)

**AND**

**Cambodian Garment Textile Industry Union**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:** 1- Mr. Y.D Kim Director of the company  
2- Mr. Long Heang Representative of the Garment  
Manufacturers Association in Cambodia  
(GMAC)  
3- Mr. Lay Phallong General Manager

**Address:** National Road No.4, Ang Keo Village, Kantok Commune, An Snoul  
District, Kandal Province.

**Tel:** (855-23) 219 652 Fax: (855-23) 219 651

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Ms. Sok Sokunthea Vice-President of Cambodian Garment  
Textile Industry Union  
2- Ms. Chuos Pisey Secretary of Cambodian Garment Textile  
Industry Union  
3- Ms. Chheng Chenda Financial Official of Cambodian Garment  
Textile Industry Union  
4- Mr. Hart Chetra Adviser of Cambodian Garment Textile  
Industry Union  
5- Ms. Suon Sokunthea Shop-steward at A.S.D factory  
6- Mr. Nuon Maradi Shop-steward at A.S.D factory  
7- Mr. Dok Sopheak Shop-steward at A.S.D factory

	8- Ms. Chen Sreychan	Shop-steward at A.S.D factory
	9- Mr. Huot Bunly	Deputy Secretary General of National Independent Federation Textile Union of Cambodia
	10- Mr. Tol Phanumeung	Official of National Independent Federation Textile Union of Cambodia
	11- Ms. Morm Ngem	President of National Independent Federation Textile Union of Cambodia
<b>Address:</b>	# 120AE0, Street 432, Sangkat Tuol Tompong 2, Khan Chamkar Morn, Phnom Penh.	
<b>Tel:</b>	012 824 640	Fax: N/A
<b>Email:</b>	NIFTUC@ hotmail.com	

### **ISSUES IN DISPUTE:**

(In non-conciliation report)

#### **1- First Issue:**

- a. The employees demanded the company pay 100 percent of wages when the workers have worked a half day for the company already. The company can provide only 75 percent.
- b. The employees demanded the company pay 50 percent of wages including other benefits when the company has no work for them to do more for than one day. The company disagreed with this demand and asked to follow the Labour Law.

#### **2- Second Issue:**

The employees demanded the company reinstate all the workers that the company had suspended and pay them 100 percent of wages and other benefits. The company disagreed with this demand and asked to follow the law.

#### **3- Third Issue:**

The workers accused the company of discrimination against the union in work suspension. The employer said the company had never discriminated against any union or any worker and the reason for work suspension was that the company had faced a serious economic crisis and could not provide work to all workers.

### **JURISDICTION OF THE ARBITRATION COUNCIL:**

The Arbitration Council derives its power to make this Award from Section IIB (from the Article 309 to the Article 317) 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 and 265/04.

An attempt to conciliate the collective dispute that 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 No. 247 MoLVT 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. Ouk Ry
Arbitrator chosen by the worker party:	Mr. An Nan
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

**HEARING AND EVIDENCE:**

**Date and place of hearing:**

- First hearing on 16 November 2004 at 3:00 p.m. at the Secretariat of the Arbitration Council.
- Second hearing on 13 December 2004 at 2:00 p.m. at the Secretariat of the Arbitration Council.

**Witnesses and experts:** None

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

**Provided by the employer party:**

- 1- The letter of the Labour Department of Kandal province No. 231 dated 18 October 2004 to A.S.D company
- 2- The letter requesting work suspension of A.S.D Director No. ASD-05/04 dated 16 October 2004
- 3- The permission letter to suspend work to the Labour Department of Kandal province No. 252 dated 28 October 2004
- 4- The permission letter to suspend work to the Labour Department of Kandal province No. 220 dated October 2004

- 5- The letter requesting work suspension of A.S.D Director No. ASPC-01/10/04 dated 1 October 2004
- 6- The letter requesting work suspension of A.S.D Director No. ASD-07/04 dated 28 October 2004
- 7- The permission letter to suspend work to the Labour department of Kandal province No. 230 dated 7 October 2004
- 8- The letter requesting work suspension of A.S.D Director No. ASD-04/04 dated 4 October 2004
- 9- The letter of A.S.D Director to National Independent Federation Textile Union of Cambodia dated 29 October 2004
- 10- The certificate of the registration in trade and company list No. 1525
- 11- The minutes of the conciliation of the collective dispute dated 28 September 2004
- 12- The minutes of the conciliation of the collective dispute dated 11 November 2004
- 13- The delegation letter of A.S.D company to Mr. Long Heang dated 12 November 2004
- 14- The letter of A.S.D company requesting the Arbitration Council to issue a Return to Work Order dated 12 November 2004
- 15- The Order of the Arbitration Council dated 15 November 2004
- 16- The minutes of taking leave by the employees

**Provided by the employee party:**

- 1- The objection letter of National Independent Federation Textile Union of Cambodia to the decision of the Labour Department of Kandal province No. 71 dated 26 October 2004
- 2- The strike notification letter of National Independent Federation Textile Union of Cambodia dated 28 October 2004
- 3- The minutes of the conciliation of the collective dispute of the Labour Inspection Department dated 13 October 2003
- 4- The certificate of the registration of Cambodian Garment Industry Union Duson dated 26 September 2002
- 5- The minutes of the conciliation of the collective dispute dated 11 November 2004
- 6- The minutes of the conciliation of the collective dispute dated 13 October 2003

**Received from the Ministry of Labour and Vocational Training:**

- 1- The non-conciliation report of the Labour Department of Kandal province dated 15 November 2004
- 2- The minutes of the conciliation of the collective dispute dated 11 November 2004

**CASE SUMMARY:**

A.S.D Cambodia company located at Ang Keo village, Kantok Commune, Ang Snoul District, Kandal Province, employs a total of 794 workers. On 11 November 2004, the Labour and Vocational Training department of Kandal province received a complaint composed of nine issues from NIFTUC. After the conciliation on 11 November 2004, both parties reached agreement on five issues and there were four unsuccessful issues. The non-conciliation report was submitted to the Arbitration Council and its Secretariat summoned both parties to the hearings on 16 November 2004 and on 13 December 2004 at the Secretariat of the Arbitration Council.

**FINDINGS OF FACT:**

- Having examined the non-conciliation report
- Having listened to the representatives of both employer and employee sides
- Having reviewed the above documents

**We find that:****THE FIRST ISSUE (A AND B):**

- In the previous practices in the A.S.D company, when the workers work a half day, the company provided only 75 percent of basic wages and the employer did not suspend the workers when there was no work to do.
- When the company did not have work for the workers to do, the company submitted a request to the labour provincial department to suspend the employment contract of the workers. During the suspension period, the company offered only US\$5 per month for the house's rental fee.
- In the minutes of the conciliation of the collective dispute dated 13 October 2003, point 19 states that in case the company does not have enough work for all workers to do for a short time, the company will provide minimum wages and keep other benefits as mentioned in the Notification 17/00. In particular, if the company does not have work for the workers to do for a long time more than one month but less than two months, the company offers 50 percent of the minimum wage. In the minutes of that conciliation, there are signatures of conciliators, the president of NIFTU and the president of the local union, the representative of the employer of Douson Company, and the interpreter.
- The minutes No. ASD 0003/04 dated 11 September 2004 states, "In 2004, month of August at 10:00 a.m., there was a meeting at A.S.D Cambodia Co., Ltd...." The minutes also included the attendance list of the participants dated 2 September 2004. The important meaning in the minutes is that after detailed discussion, the whole meeting agreed unanimously that in case any line production has no work to do from

two to seven days, the company will allow the workers in that line production to take leave with 50 percent of wages.

- In the minutes, the union leaders did not agree and did not sign apart from two worker representatives named Suon Kunthea and Sok Sothy.
- The company asked the team leaders to sign on one by one.

#### **THE SECOND ISSUE:**

The company suspended the employment contracts consecutively by submitting the request for approval to the Labour Department.

##### **First suspension**

- On 1 October 2004, the company made a request to the Labour Department of Kandal province to suspend work of 17 workers in the back cutting section because no purchase orders were coming in. This suspension lasted one month from 4 October 2004 to 4 November 2004.
- In October 2004, the Labour Department of Kandal province issued a letter (without a date) to approve the suspension of these 17 workers and ordered the company to apply properly with the substance of Article 72 of Section 2 of Chapter 4 of the Labour Law.

##### **Second suspension**

- On 4 October 2004, the company submitted a request to the Labour and Vocational Training department of Kandal province to suspend work of 79 workers in the ironing section for the reason that there was no order. This suspension lasted one month from 20 October 2004 to 20 November 2004.
- On 7 October 2004, the Labour and Vocational Training department of Kandal province approved the suspension of those 79 workers and ordered the company to comply properly with the substance of Article 72 of Section 2 of Chapter 4 of the Labour Law.

##### **Third suspension**

- On 16 October 2004, the company submitted a request to the Labour Department of Kandal province to suspend work of 25 workers in the finishing section for the reason that there were no purchase orders coming in. This suspension lasted one month from 25 October 2004 to 25 November 2004.
- On 18 October 2004, the Labour Department of Kandal province approved the suspension of those 25 workers and ordered the company to apply properly with the substance of Article 72 of Section 2 of Chapter 4 of the Labour Law.

#### **Fourth suspension**

- On 28 October 2004, the company submitted a request to the Labour Department of Kandal province to suspend work of 17 workers in the back cutting section because no orders were coming in. This suspension lasted two months from 4 November 2004 to 4 January 2005. These 17 workers were suspended for three consecutive months.
- On 28 October 2004, the Labour Department of Kandal province approved the suspension of those 17 workers and ordered the company to comply properly with the substance of Article 72 of Section 2 of Chapter 4 of the Labour Law.
- On 26 October 2004, the Cambodian Garment Textile Industry Federation submitted a letter to the Ministry of Labour to object to the decision of the Labour Department of the Kandal province. The reason for opposition was that the provincial department violated point 19 of the minutes of the conciliation of collective dispute dated 13 October 2003 in approving the suspension of those 17 workers.

The A.S.D Cambodia company used to be called Douson Cambodia Co., Ltd. In this case, the employer side argued that the Director of A.S.D Cambodia bought this factory from the Director of Douson Cambodia Co., Ltd. and asked to change its name from Douson Cambodia to A.S.D.

The workers said that most of the administrators and managers were still the same, except the Director and the name of the company.

#### **THE THIRD ISSUE**

At the hearing, both parties agreed to drop this issue because this issue. The Arbitration Council will not issue an award on this point.

#### **REASON FOR DECISION:**

##### **JURISDICTION OF THE ARBITRATION COUNCIL**

Firstly, the Arbitration Council considers that it does have jurisdiction on this dispute. Here, the Department of Labour of Kandal province agreed with the request of the company to suspend the workers. Article 71(11) of the Labour Law states, "When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector." Therefore, it is correct that the company must request to the Labour Inspector to control its suspension. The Labour Inspector has the duty to control this suspension. Thus, the Department of Labour of Kandal province issued a letter of its agreement at the company's request.

However, the workers disagreed with this decision and argued that this suspension has no valid reason. Consequently, this case was referred to the Arbitration Council.

None of the Labour Law Articles state expressly that the Arbitration Council has no power to decide on any case relating to the Labour Inspector's decision. On the other hand, the sentence of the control by the Labour Inspector is an extra protection for the workers, and should not be interpreted as excluding the jurisdiction of the Arbitration Council. If, for example, there was a collective dispute about a suspension done under the company's internal rules as mentioned in the Article 71(7) of the Labour Law, then the Arbitration Council would clearly have jurisdiction. It is similar to a collective dispute about the suspension of employment contracts in compliance with Article 71(11) of the Labour Law.

Therefore, the Arbitration Council has full power to consider this case to review whether this suspension is in accordance with the law and has a valid reason. In doing so, the Arbitration Council is not seeking to review the decision of the Labour Inspector, but just to resolve the collective dispute by applying its procedures.

#### **REASONS FOR THE FIRST ISSUE:**

In general, the implementation of an employment contract is the obligation of both parties. It means the workers must try their best to perform their work under the agreed working hours, and the employer has an obligation to pay wages to the workers under the employment contract of the Labour Law or a Collective Bargaining Agreement. This obligation is mentioned in Article 117 of Chapter 6 of the Labour Law. Both parties are required to fulfill these obligations, except where there is an official suspension in accordance with the Chapter 4, Section 2 of the Labour Law. Therefore, when there is no legal suspension, the employer has an obligation to pay wages and other benefits to the workers under the law. However, if the employer legally suspends the employment contract under the Labour Law, the employer has an obligation to provide only accommodations unless there is a Collective Bargaining Agreement or any other agreement providing better benefits. Thus, if there is no legal suspension of the employment contract, the company must pay full wages to the employees for the period that it has no work to do.

#### **REASON FOR THE 2ND ISSUE:**

There were four occurrences of employment contract suspensions in this factory. First, the company suspended 17 workers for one month that terminated on 4 November 2004. Second, it suspended 79 workers for one month that terminated on 20 November 2004. Third, it suspended 25 workers for one month that terminated in November 2004. Finally, it continued to suspend 17 workers who were suspended at the first time for two months from 4 November 2004 to 4 January 2005.

## **SECOND AND THIRD SUSPENSIONS:**

Because the workers, who were suspended the second and third time, were reinstated according to the limited date, the workers' demand to be reinstated does not cause a problem. The problem is whether the employer must pay them full wages during the suspension period. At the hearing, the Arbitration Council attempted to ask the employees to come up with the arguments that the suspension of their employment contract had no valid reason, but the employees had no reason except saying that the suspensions do not conform to the minutes of the conciliation of the collective dispute dated 13 October 2003. Point 19 of the minutes states that in case the company does not have enough work for workers to do for a short time less than one month, the company will provide 50 percent of wages and other benefits as mentioned in the Notification 17/00 of the Ministry of Labour. In case the company does not have work for the workers to do for a long time more than one month but less than two months, the company offers 50 percent of the minimum wage.

Therefore, the remaining issue is whether the agreement on 13 October 2003 could be legally binding on the parties to this dispute. At the hearing, the employer said that the agreement was made by Douson company; so the new company (A.S.D) did not recognize what was agreed by the former employer. However, the Arbitration Council finds that according to the evidence shown at the hearing, the employees continued to work at the same place with the same management team and keep their work seniority as well. Since the Arbitration Council has never issued an award concerning the validity of the agreement minutes after the change of the company's Director, the Arbitration Council now will consider the Labour Law in order to find out if the agreement between the former Director and the employees is still valid for the new Director.

Article 87 of the Labour Law states that the change of the company's ownership will not affect the employment contract of the workers that continue to work in the company. The first paragraph of the Article 87 states, "If a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of fund to form a company, all labour contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise." However, this Article does not mention clearly that the agreement is still binding after the change of legal status of the employer.

Article 307 of the Labour Law states, "A conciliatory agreement, signed by the parties and visaed by the conciliator, has the same force and effect of a collective agreement between the parties and the persons they represent. However, when the party representing workers is not a trade union, the agreement is neither binding on such union nor on the workers it represents."

In conclusion, the Arbitration Council finds that the Labour Law provides strong support to a collective bargaining agreement having the same or more force and effect than the employment contract. In particular, Article 65 and the first paragraph of Article 96 state that a collective bargaining agreement and the employment contract have the same purpose to determine the work relationship between the employees and the company. Moreover, Article 13 and the first paragraph of Article 98 state that the collective bargaining agreement or the employment contract can be more favorable towards workers than those of the Labour Law. The second paragraph of Article 98 states, "Any provisions of the labour contract between employers and workers, already covered by a collective agreement, that are less favorable than the provisions provided for in this collective labour agreement shall be nullified and must be replaced automatically by the relevant provisions of the collective agreement."

After consulting the Labour Law, we find that the Collective Bargaining Agreement has the same force and effect or more than the employment contract. In this case, the company changed the owner and the name from Douson to A.S.D. According to Article 87, we find that all employment contracts in effect on the day of the change of the owner of the company remain binding between the new employer and the workers of the former enterprise. As mentioned above the collective bargaining agreement has the same force and effect or more than the employment contract, and the Arbitration Council sees that if there is a change of the owners, all collective agreements in effect on the day of the change remain binding between the new owner and the former workers who continue to work for the new company.

According to Article 307, the Arbitration Council finds that the minutes of the agreement have the same force and effect as the Collective Bargaining Agreement. Consequently, the Arbitration Council decides that the minutes of the agreement dated 13 October 2003 is still in effect although there is a change of owners from Douson to A.S.D., and the new owner has an obligation to carry out the agreement between the former employer and the employees.

#### **FIRST AND FOURTH SUSPENSIONS :**

The company suspended 17 workers continuously two times that lasted for three months from 4 September 2004 to 4 January 2005. At the hearing, the workers argued that these suspensions were discriminating against the union because most of workers in this section were union leaders and members. But the employer said that there were also union leaders in the back cutting section and there was no discrimination in the suspensions because the workers in the back cutting section now are only skillful in cutting; as for the workers in the front section, they are skillful in both drawing and cutting. Therefore, the Arbitration Council does not have enough reason to say there is discrimination in the

suspensions. However, Article 71(11) of the Labour Law does not allow for a suspension of more than two months.

The Arbitration Council finds that the suspensions are not in conformity with the Labour Law. Moreover, the agreement on 13 October 2003 states that in case the company does not have enough work for all workers to do for a short time, the company will provide the minimum wage and maintain the other benefits as mentioned in the Notification 17/00. In particular, if the company does not have work for the workers to do for a period of more than one month but less than two months, the company offers 50 percent of the minimum wage. This agreement does not mention the case that the company has no work for the employees for more than two months.

In conclusion, the Arbitration Council finds that the employer needs to pay 50 percent of the wages to these 17 workers for the first two months of suspension and full wages from 4 December 2004 until the day of their reinstatements.

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

#### **DECISION**

- 1- When the worker has worked for half days and there is no legal suspension of the employment contract, the employer must pay full wages for that day.
- 2- When there is a legal suspension of the employment contract, the employer must pay wages and other benefits under the agreement on 13 October 2003.
- 3- For the 79 workers suspended from 20 October 2004 to 20 November 2004 (second suspension) and the 25 workers suspended from 25 October 2004 to 25 November 2004 (third suspension), the employer must pay them 50 percent of basic wages for the suspension period. The company must provide them this wage on the day of the first payment after this award comes into effect.
- 4- The company must immediately reinstate the 17 workers in the back cutting section (first and fourth suspensions) after the award comes into effect. The company must provide them 50 percent of basic wages for the suspension period from 4 October 2004 to 4 December 2004 and full wages for the suspension period from 5 December 2004 to the end date of the suspension.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

**Arbitrator chosen by the employer party:**

Name: Ouk Ry

Signed: .....

**Arbitrator chosen by the worker party:**

Name: An Nan

Signed: .....

**Chair of arbitration panel:**

Name: Ang Eng Thong

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.