

KINGDOM OF CAMBODIA
NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 96/04

Date of award: 13 December 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Sport Tex Garment Industry

(Employer party)

AND

Free Trade of Union Workers at Sport Tex

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives: 1- Mr. Mark Lo General Manager
2- Ms. Kem Vanly Administration Manager
Address: National Road No. 5, Sangkat Kilometer No. 6, Khan Reussey Keo,
Phnom Penh.
Tel: 023 430 159 Fax: 023 430 149

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives: 1- Ms. Sam Srey Mom Vice-President of Cambodian
Worker Free Trade Union
2- Ms. Neb Vicheka President of Free Trade of Union
Workers at Sportex
3- Ms. Vong Srey Peo Union Representative
4- Mr. Pen Saran Union General Secretary
5- Mr. Khem Saron Vice-President of Union
6- Mr. Van Phally Union Representative
7- Mr. Bun Vuthy Union Representative
Address: # 28B, Street 222, Sangkat Boeung Rang, Khan Daun Penh, Phnom
Penh.
Tel: 012 212 812 Fax: N/A

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The employees demanded the company provide them incentive bonuses for overtime work cooperation in the amount of US\$5 for October 2004. The company agreed to provide US\$3 because the workers did not work overtime for three days.
- 2- The employees demanded the company provide incentive bonuses for overtime work cooperation and bonuses for daily productivity according to the agreement dated 23 December 2003. The company applies incentive bonuses for overtime work cooperation and daily productivity bonuses as follows:
 - Overtime cooperation bonus: If the worker is absent from overtime two hours per month, the company provides US\$4.50. If the worker does not work overtime four hours per month, the company will not provide an overtime bonus.
 - Daily productivity bonus: If the worker is absent from overtime two hours per month, the company pays 50 percent; if the worker does not work overtime [four hours per month, the company will not provide this bonus.
- 3- The employees demanded to work four hours per day on Saturday and the basic salary equal to US\$65 per month. The company disagreed with this demand and agreed to follow Notification No. 017 of the Ministry of Labor and the Labor Law.

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 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 that is the subject of this Award was made on 10 November 2004, as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was successful in one of four issues, with three unsuccessful issues. The non-conciliation report dated 15 November 2004 was submitted to the Secretariat of the Arbitration Council on 17 November 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Mr. Kao Thach
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: 23 November 2004 at 8:00 a.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 Internal Working Rules of Sport Tex Industry Company;
- 2- The certificate of commercial registration dated 16 March 1998;
- 3- The status of the company;
- 4- The minutes of the conciliation of the collective dispute dated 23 December 2003.

Provided by the employee party:

- 1- The minutes of the conciliation of the collective dispute dated 23 December 2003;
- 2- The certification of registration of Free Trade Union of Workers at Sport Tex dated 6 June 2002;
- 3- The letter of the Labor Inspection Department recognizing the union leaders in a second mandate dated 21 September 2004;
- 4- The agreement on some work conditions dated 19 February 2003;
- 5- The letter of the Free Trade Union of Workers on a strike notification dated 3 November 2004.

Received from the Ministry of Labor and Vocational Training:

- 1- The minutes of the conciliation of the collective dispute dated 10 November 2004;
- 2- The non-conciliation report of the Labor Inspection Department dated 15 November 2004;

CASE SUMMARY:

Sport Tex Industry Company, located at National Road No 5, Sangkat Kilometer No. 6, Khan Reussey Keo, employs a total of 1200 workers. On 5 November 2004, the Labor Inspectorate of Khan Reussey Keo received a complaint by phone from the workers demanding the company apply the agreement dated 23 December 2003. After receiving the complaint, the Labor Inspector went to conciliate the problems in the factory. During the conciliation, both parties reached agreement on one of four issues, and there were three unsuccessful issues.

On 23 November 2004, the Secretariat of the Arbitration Council summoned both parties to a hearing at the Secretariat of the Arbitration Council. In the hearing, the Arbitration Panel encouraged both parties to try their best to conciliate and resolve the problems by applying a win-win policy. **Both parties decided in the hearing that this award is not binding.**

During the process of the Arbitration Council on 7 December 2004, both parties sent the minutes of their agreement dated 2 December 2004. In the minutes, the parties reached agreement on the first issue. Therefore, the Arbitration Council will not reconsider the first issue.

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 second issue:

- 1- In the agreement dated 19 February 2003, point 11 states that the number of hours [that are required] in order to receive the overtime cooperation bonus will be applied as the previous months. The company will take into consideration if it is less than 24 hours (between 20 hours and 24 hours).
- 2- In the minutes of the conciliation dated 23 December 2003, point 9(3) states that overtime is voluntary. If the workers work for two hours overtime per day, the company will give them the overtime cooperation bonus equal to US\$5 per month. If the workers are busy and cannot work overtime two hours per month, the company still keeps the same bonus of US\$5. If the workers work eight hours per day without overtime, the company still provides their daily productivity bonus.
- 3- The company requests that if the workers have not worked overtime two hours per month, the company will provide them the daily bonus equal to 50 percent of that day. In addition, if they fail in the same month to work overtime two hours on another day, the company will not provide the daily bonus.
- 4- The workers said that in the past when they worked overtime less than 22 days per month, they still received the overtime cooperation bonus.
- 5- The company explained that in the past when the workers did not work overtime one day, the company provided a bonus of US\$4.50. However, if the workers did not work overtime more than two days, the company did not provide a bonus. The workers raised a problem that there were some workers who worked overtime only about ten days per month, but still received their cooperative bonus for

overtime of US\$5. The company explained that this was the case, but only for those groups or those months that the company did not have sufficient work for overtime. For example, the company has work that requires Group A to work overtime for a whole month from Monday to Friday (22 days per month), and if any worker does not work overtime more than two days then that worker will not receive the overtime cooperation bonus for overtime. However, if the company has work that requires Group A to work overtime for only ten days per month, the company still provides them the cooperative bonus for overtime in the amount of US\$5 because the workers come to work overtime regularly in compliance with the company's order.

The third issue:

- 1- There is a total of 1200 workers in this factory, with 646 workers who are members of the Free Trade Union of Workers. The union representative said that it had already submitted the letter to the Ministry of Labor and Vocational Training requesting the most representative status in this factory. So far, this union has not received the most representative status in the factory.
- 2- The workers alleged that the company changed the production system to a "water-flow" system, but the workers did not want to work under the new system because they had to work hard without slowing down. At that time, there was a promise from the buyer who asked the workers to follow this [new] system and the employer would increase wages for the workers. Nevertheless, so far, the employer has not yet increased the basic wage of US\$45. Therefore, there was a request from most of the workers to increase their wages.
- 3- The employer said that he had already increased the wages of workers and paid them the bonuses like the overtime cooperation bonus and daily productivity bonus. In response to the workers' demand, the company stated that when there is a regulation amendment concerning the wage of the workers, the company will follow it immediately.

REASON FOR DECISION:

The second issue:

According to the agreement dated 23 December 2003 between the company Sport Tex and the union, point 19(3) states that overtime is voluntary. If the workers work for two hours overtime per day, the company will give them the cooperative bonus equal to US\$5 per month. If the workers are busy and cannot work overtime for two hours per month, the company still keeps the same bonus of US\$5. If the workers work eight hours per day without overtime, the company still provides their daily productivity bonus. The employer

alleged that when the agreement was made, he did not clearly understand the meaning of the agreement. However, the Arbitration Council finds that the agreement contains the translator's signature and the statement that his translation is proper (see the minutes of the conciliation of the collective dispute dated 23 December 2004 in which the page 5 says that if any party needs the translation service, the translator has to sign the minutes of the conciliation and state that his translation is proper). Accordingly, the Arbitration Council finds that the agreement is still valid for implementation by the two parties and the translator is the translator of the company regardless of his/her skill level for translations; therefore, the company must be responsible for its translator.

Regarding the daily productivity bonus, the company imposed the condition of overtime work. The Arbitration Council finds that this appears to put indirect pressure on the employees to work overtime and is inconsistent with the agreement dated 23 December 2003. Thus, the company must correct the way to provide the conditional daily productivity bonus [].

Therefore, the Arbitration Council decides that the employer must implement what is stated in the agreement.

The third issue:

The employees demanded their wages be increased to US\$65 per month and their working hours be decreased to 44 hours per week, which is the right of the employees to demand. Even though there was a promise to increase their wages from the buyers, the promise was not made by the employer. So, the company is not responsible for that promise. The Arbitration Council finds that the workers in this factory receive many more benefits than other factories.

Regarding the demand to increase the basic wage to US\$65 per month, the 1997 Labor Law and Notification No. 017 never mention this. But Notification No. 017 states that the minimum wage of the employees is US\$45 per month. The employer already implemented this requirement. Accordingly, the Arbitration Council finds that the demand is above the employer's obligations. Thus, it is a demand above the law. The Arbitration Council finds that this demand is an interest dispute.

Article 43 of Prakas 99/04 states, "An arbitral award which settles an interest dispute, and therefore takes the place of a collective bargaining agreement, 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 Free Trade Union of Workers at Sport Tex does not have the most representative status. So if the Arbitration Council issues an award on this point, it would become a collective bargaining agreement which is applied to all workers in the factory and makes other workers who are not involved in this dispute lose their rights to

conduct a strike on the interest dispute in the future; it also would be unfair for other workers (See 04/03 - Lida, 06/04 - Chou Sing, 24/03 - Top One, 61/04 - Best Honor, and 62/04 - Ecent). In addition, the Arbitration Council also concluded that a union without the most representative status does not have right to bring an interest dispute to the Arbitration Council to resolve (see 31/03 - Hong Wa, 60/04 - United Arts, and 99/04 - AIA). Moreover, the Arbitration Council finds that the employees do not have enough reasons and evidence to support their demands to increase their wages to US\$65 per month.

Regarding the workers' demand to decrease their working hours by four hours on Saturday, the Arbitration Council considers that it this is a right of the workers to demand. Meanwhile, the company has the right to set up a schedule of working hours which should not be contrary to the Labor Law and other relevant regulations. In this case, the Arbitration Council finds that the company set up proper working hours in accordance with the Labor Law. That is, the company sets up 48 working hours per week. Moreover, the employees do not have enough reasons and evidence to support their demand.

Accordingly, the Arbitration Council rejects the workers' demand on the third issue.

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

DECISION

- 1- The employer must offer the incentive bonus for overtime work cooperation in the amount of US\$5 per month to the employees who work overtime, except for any worker who fails to work overtime for at least two hours.
- 2- The employer must not provide the employees a daily productivity bonus that is conditioned on working overtime.
- 3- Reject the workers' demand on the third issue demanding an increase of wages and decrease of working hours.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:

Name: **Kao Thach**

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.