

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 97/04

Date of award: 15 December 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**Grace Sun (Cambodia) Garment**

(Employer party)

**AND**

**FTUWKC**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:** 1- Mr. Sun Jian Jun, Company Director  
2- Ms. Xiao Shao Ping, Vice-Company Director  
3- Mr. Cheat Khemra, Representative from GMAC  
4- Mr. Eang Pokvoun, Factory public relations staff member  
5- Mr. Chea Dara, Translator

**Address:** # 1223, Street 2, Chak Angré Leu quarter, Mean Chey district, Phnom-Penh.

**Tel:** 011 870 590, 023 720 428 Fax: 023 425 479

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Miss. Sam Srey Mom, Vice-president of FTUWKC  
2- Mr. Heng Sothy, Local union President and worker delegate  
3- Mr. Sao Sota, Vice President of local union and worker delegate  
4- Mr. Sa Phalla, Worker representative and worker delegate  
5- Mr. Chheng Sarith, worker delegate  
6- Mr. Srey Vannak, worker delegate  
7- Mr. Mao Boran, Secretary of local union

**Address:** # 345, Kropouha village, Takhmao commune, Takhmao district, Kandal province.

**Tel:** 012-212-812, 011-650-556 Fax: NA

## **ISSUES IN DISPUTE:**

(In non-conciliation report)

The worker and company representatives agreed to combine the two non-conciliation points into one in view of the fact that these two points related to employment contracts. The worker representatives demand the factory recognize their employment seniority ([employees employed pursuant to] undetermined duration contracts) when signing a new employment contract and accused the employer of making a false fixed duration contract. During the conciliation, the employee party changed its demand that if their undetermined duration contracts were terminated and changed to fixed duration contracts, the company must pay them severance pay. With regard to this demand, the company maintained that it still maintains the seniority of all employees. The company will cancel all fixed duration contracts and implement the undetermined duration contracts instead. All fixed duration contracts will be void and annulled. Relating to the severance pay claimed by the employees, the company cannot meet the demand because the company did not terminate all the workers' contracts (as the factory is still operating). If the factory is closed or the employment contracts were terminated, the company will pay the severance pay according to the Labour Law (in relation to undetermined duration contracts).

### **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 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 three issues, with two unsuccessful issues. The non-conciliation report dated 16 November 2004 was submitted to the Secretariat of the Arbitration Council on 18 November 2004.

### **COMPOSITION OF THE ARBITRATION PANEL :**

Arbitrator chosen by the employer party:	Mr. Kao Thach
Arbitrator chosen by the worker party:	Mr. Huon Chundy
Chair arbitrator (chosen by the two arbitrators):	Mr. Koy Neam

## **HEARING AND EVIDENCE:**

**Date and place of hearing:** 3 December 2004 at 9:00 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- Certificate of commercial registration of Grace Sun no.1953 dated 21 July 1998.
- 2- List of the current 701 workers employed by the company.
- 3- A copy of a one year fixed duration contract dated 29 December 2000, for the period 1 January 2001 to 31December 2001.
- 4- A copy of a one year fixed duration contract dated 29 December 2002, for the period 1 January 2003 to 31December 2003.
- 5- A copy of a two year fixed duration contract dated 29 December 2000, for the period 1 January 2004 to 31 December 2005.
- 6- A letter from Grace Sun Company sent to the Arbitration Council dated 9 December 2004.

### **Provided by the employee party:**

- 1 - Letter no. 2495 dated 27 September 2004 signed by the head of the Labour Inspection Department informing the local union at Grace Sun about the recognition of trade union leaders for the third mandate.

### **Received from MoLVT:**

- 1- Minutes of the collective labour dispute conciliation dated 15 November 2004.
- 2- Report of non-conciliation dated 16 November 2004 written by the Labour Inspection Department.

## **CASE SUMMARY:**

Grace Sun (Cambodia) Garment is located at building No.1223, National Road No.2, Sangkat Chakanréleu, Meanchey district, Phnom Penh. Grace Sun employs a total of 662 workers. On 8 November 2004 the Labour Inspection Office of Meanchey received a complaint from employees of Grace Sun accusing their employer of violating the Labour Law. Upon receiving the complaint, on 10 November 2004 the labour dispute conciliation officials went to the factory in order to solve the problem. By 15 November 2004 two of the four points were conciliated. The two non-conciliated points were mentioned above. Representatives from the employee party and the company demanded the submission of the two non-

conciliation points to the Arbitration Council to resolve. The non-conciliated points reached the Arbitration Council Secretariat on 18 November 2004. After receiving the case, the two parties in dispute were summoned to attend the Arbitration Council hearing at 8:00 a.m. on December 3, 2004.

During the hearing, the Arbitration Panel encouraged the two parties to continue the negotiation in order to solve the dispute by conciliating pursuant to a win-win concept.

**FINDING OF FACT:**

- Having examined the minute of collective labour dispute
- Having listened to the company and the employees as described above in the minutes of the hearing;
- Having checked all the above documents

***We find that:***

- 1- The company has been operating from 1998 until present;
- 2- The company did not have prepared employment contracts for the period 1998 until 2001;
- 3- The company made fixed duration contracts with the employees with a duration of one year (from 1 January 2001 to 1 December 2001) and there was no demand from the employees that the company pay their severance pay to terminate their undetermined duration contracts. In 2002 the company did not prepare employment contracts for the employees. In 2003 the company completed fixed duration contracts again with the employees with a duration of one year, from 1 January 2003 to 1 December 2003 and there was no demand from the employees that the company pay them severance pay to terminate their undetermined duration contracts. Because there was no prior notice to terminate the previous contract, the company made another fixed duration contract with a duration of two years, from 1 January 2004 to 31 December 2005. This contract has the date and signature or thumbprint of 27 December 2003; however the date signed by the employees was 23 September 2004. The fixed duration contracts made in 2001, 2003 and 2004 were signed by some workers and other workers did not sign.
- 4- The company affirms that the reason why the company asks the workers to sign onto fixed duration contracts is because the company wants to show the buyers and meet the wishes of the buyers. In addition, the company does not want to change the labour conditions for workers.

- 5- At the end of each contract, the company did not inform [the workers] that it must terminate the contract. The company continued to employ the workers without termination.
- 6- The company still continues to employ the workers without an intention to dismiss any workers.
- 7- The company agreed to write a new undetermined duration contract for the workers who have been employed for over two years. Otherwise, even though it is not necessary to write a new contract, the company recognizes the seniority of the workers since they have worked [for a long period] and those workers are [implicitly] employed pursuant to an undetermined duration contract if they have worked over two years.
- 8- The workers did not object to the fixed duration contracts made in 2001 and 2003. But the workers objected to the fixed duration contracts that lasted two years, from 1 January 2004 to 31 December 2005 and required the company to pay severance pay to terminate the undetermined duration contracts before they signed new fixed duration contracts.
- 9- The workers considered that the previous contracts were undetermined duration contracts and that these contracts have been terminated and severance pay [should be paid] to the workers in advance and then enter into fixed duration contracts starting from 2005 onward.

**REASONS FOR DECISION:**

Article 74 of the Labour Law 1997 states that "The labour contracts of undetermined duration can be terminated at will by one of the contacting parties. This termination shall be subjected to the prior notice made in writing by the party who intends to terminate the contract to the other party. However, no layoff can be taken without a valid reason relating to the worker's aptitude or behavior, based on the requirement of the operation of the enterprises, establishment of group."

The Arbitration Council finds that the Grace Sun Company cannot terminate the undetermined duration contracts unless the termination of the contract follows Article 74. But in 2001, 2003 and 2004 the company did not terminate the undetermined duration contracts made since 1998 by giving written prior notice or a valid reason as mentioned in Article 74 of the Labour Law; however the company instead made fixed duration contracts that lasted one or two year(s). In addition, the company did not provide other benefits resulting from the termination of the undetermined duration contract to the workers in accordance with Articles 166, 75, 89, 167, and 91 of the Labour Law. In addition, the fixed duration contract made in

2004, for the duration of 1 January 2004 to 31 December 2005 was signed with a wrong date of 27 September 2004 (this was an argument from the employee side and was recognized by the employer) is not regular and [is il]legal. Therefore, the Arbitration Council finds that the change from the undetermined duration contract to the fixed duration contract in 2001, 2003 and 2004 is not legal and [should] be voided. So, the fixed duration contract made in 2001, 2003 and 2004 should not apply. The Arbitration Council finds that the company must continue to apply the undetermined duration contracts made since 1998 and the undetermined duration contracts in consecutive years.

Because the undetermined duration contracts could not be terminated by the company, the Arbitration Council finds that the workers could not demand severance pay from the company as a result of the termination of the undetermined duration contract.

Based on the facts, legal principles, evidence and the above reasons, the Arbitration Council decides to issue its arbitral award as follows:

**DECIDES :**

- 1- Reject the workers' demand that the Grace Sun Company pay severance pay.
- 2- Void the fixed duration contracts made in 2001 and 2003 and signed on 27 December 2003 that have a duration of two years. However the workers have a right to continue working under the criteria of the undetermined duration contract as stated by the Labour Law.

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

**Arbitrator chosen by the employer party:**

Name: Mr. Kao Thach

Signed: .....

**Arbitrator chosen by the worker party:**

Name: Mr. Huon Chundy

Signed: .....

**Chair of arbitration panel:**

Name: Koy Neam

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.