

KINGDOM OF CAMBODIA

NATION RELIGION KING



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THE ARBITRATION COUNCIL

Case number and name : 97/06 – New Max
Date of Award : 8 November 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party: **YOU SUONTY**
Arbitrator chosen by the worker party: **AN NAN**
Chair Arbitrator (chosen by the two Arbitrators): **PEN BUNCHHEA**

DISPUTING PARTIES

1- Employer Party

Name : **New Max Garment Co., Ltd.**
Address : **Vatanac Park, Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh**
Telephone : **023 995 255, 012 844 409** Fax: **023 995 259**

Employer Representatives:

- 1. Mr. Chen Chea Leang Director;
- 2. Mr. Daing Lot Administration Manager.

2- Worker party

Name : **Cambodian Apparel Worker Democratic Union (CAWDU) in New Max Company**
Address : **No. 6C, Sangkat Tuol Tum Pung, Khan Chamkarmon, Phnom Penh**
Telephone : **023 210 481, 012 396 069** Fax: **N/A**

Worker Representatives:

- 1. Mr. Ek Sopheakdey Second Vice-President of C.CAWDU;
- 2. Mr. Eang Sin President of CAWDU in New Max Factory;

- | | |
|---------------------|---|
| 3. Mr. Som Sam Ath | Vice-President of CAWDU in New Max Factory; |
| 4. Mr. Seav Kimsuor | Secretary General of CAWDU in New Max
Factory; |
| 5. Mr. Kong Run | Treasurer of CAWDU in New Max Factory. |

ISSUES IN DISPUTE

(In the non-conciliation report)

The workers demanded that the company provide wages prior to the three-month maternity leave because the workers need it to cover other expenses. The employer party did not agree to the demand of the workers because it is difficult for the company to calculate the wages and the company claimed to practice in conformance with the Labour Law.

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 labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report 1523, dated 17 October 2006 was submitted to the Secretariat of the Arbitration Council on 17 October 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:

Place of Hearing : **The Arbitration Council**, Phnom Penh Centre, Building A,
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh.

Date of the Hearing : 1 November 2006 (from 08:30 a.m. to 10:00 a.m.)

Procedural Issues:

On 11 September 2006, the Department of Labour Disputes received a complaint from the workers demanding that the company implement working conditions in accordance with the Labour Law. Having received the complaint, the Department of Labour Disputes designated its expert official to settle the labour disputes; three of the four issues were conciliated in the last conciliation session held on 2 October 2006.

On 17 October 2006, the Arbitration Council received the case and the non-conciliation report No. 1523, dated 17 October 2006 issued by Mr. Koy Tepdaravuth, Director

of the Department of Labour Disputes. Having received the case, the Arbitration Council summoned both the worker party and the employer party to attend a hearing and to conciliate the remaining issue in dispute on 1 October 2006 at 8:30 a.m. Both parties were present at the Arbitration Council hearing. On the hearing day, the Arbitration Council made a further attempt to conciliate the non-conciliated issue, but the issue remained unresolved. Therefore, the Arbitration Council considers the non-conciliated issue based on the evidence and the findings of fact as follows:

EVIDENCE

Witness and experts besides the parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 - 1- Minute of the collective labour dispute conciliation, dated 2 October 2006;
 - 2- Internal Work Rules of New Max Company;
 - 3- Business Registration License No. 1983, dated 26 August 2005;
 - 4- Statute of New Max Company in both Khmer and English.
- b. Provided by the worker party: N/A
- c. Provided by the Ministry of Labour and Vocational Training:
 - 1- Report No. 1523, dated 17 October 2006 on the collective labour dispute at New Max Company issued by Mr. Koy Tepdaravuth, Director of the Department of Labour Disputes;
 - 2- Minute of the collective labour dispute, dated 2 October 2006.
- d. Provided by the Secretariat of the Arbitration Council:
 - 1- Invitation No. 445, dated 19 October 2006 to the worker party to attend the hearing;
 - 2- Invitation No. 444, dated 19 October 2006 to the employer party to attend the hearing.

FINDING OF FACTS

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- New Max Company employs approximately 1,050 workers and there is one union in the factory, CAWDU which has 480 members;

- The workers demanded that the company provide wages prior to the three-month maternity leave because the workers need it to cover other expenses. The employer party did not agree to the demand of the workers because it is difficult for the company to calculate the wages and the company wishes to follow the requirements in the Labour Law;
- Both parties admitted that in previous practice, the company provided 50 percent of the regular wage every month to any female worker who is on maternity leave. Female workers who are on maternity leave have the right to authorize their relatives to act as proxy [and collect their wages];
- The company stressed that only 1 percent of all workers are on maternity leave each month;
- The worker party claimed that the demand for the company to provide the wages prior to the maternity leave was based on the following reasons:
 - 1– Female workers have to spend a lot of money in order to come and get paid the 50 percent of their wages every month because their home is far from the factory;
 - 2– Some female workers do not have enough money to cover expenses such as medical fees;
 - 3– Based on Article 116 of the Labour Law, wages shall be paid twice a month for workers and once a month for employees;
 - 4– Based on Article 115(3) of the Labour Law, payment shall not be made on a day where the worker takes leave. If the pay day falls on holiday, it shall be made a day earlier.
- The employer party rejected the demand and giving the following reasons:
 - 1– This difficulty is not confined to only workers in New Max and the long distant travel does not happen only to workers in New Max;
 - 2– Regarding Article 115(3) the company considers that the Article refers only to holidays which require the payment to be made a day earlier;
 - 3– Regarding Article 116 the company considered that this Article empowers the employer to pay once a month.

REASONS FOR DECISION

Article 182(1) of the Labour Law provides, *“In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”*

Article 183(1) of the Labour Law provides, *“During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer” (see Arbitral Award 49/04 – Hoo Hing and 68/04 – City New).*

Article 115(3) of the Labour Law provides, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

Based on the above Articles, the Arbitration Council considers that wage payments cannot be made on days when the worker is on leave. Given that maternity leave, which lasts 90 days, is a legal right provided to each female worker, the employer cannot pay them during this leave.

Furthermore, Article 115(3) does not refer only to holidays but also to the days that the worker has the right to be on leave. In case 57/06 – Evergreen, the Arbitration Council decided that the workers are entitled to receive their wages prior to the maternity leave and this decision was based on Article 115 of the Labour Law.

In this case, the company claimed that other companies do not practice what the workers have demanded. The Arbitration Council considers that industrial practice may not violate the law. Only in cases where the law is not clear, will the Arbitration Council consider the principle of equity and general industrial practice.

Therefore, the Arbitration Council determines that the employer shall pay 50 percent of the wage for the 90 days [of maternity leave] to any female workers who are on maternity leave at least a day before the leave begins.

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

DECISION AND ORDER

Order the employer to pay 50 percent of the wages for 90 days to any female workers who are on maternity leave. The employer shall pay at least a day before the maternity leave begins.

TYPE OF AWARD: BINDING AWARD

This Award shall be implemented after the date of its notification.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **YOU SUONTY**

Signature:

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature: