



THE ARBITRATION COUNCIL
No: _____ SAC.

Phnom Penh: 10 August 2003

THE ARBITRATION COUNCIL DIGEST
#1 OF 2003

Introduction

The Arbitration Council is an independent statutory body with the power to decide on collective labor disputes. Arbitration offers a peaceful way of labor dispute resolution which workers and Employers must try before engaging in industrial action. From its opening on 1 May 2003 until 31 July 2003 the Arbitration Council heard 10 collective disputes involving enterprises employing more than 13,000 workers. Of these cases 5 required the issuing of arbitral awards while the other 5 were settled between the parties prior to an award being issued.

Number of cases submitted to arbitration	10
Number of cases in which an award was issued	5
Number of cases settled without award	5
Number of cases where awards implemented	4
Number of enterprise days lost to strikes during the arbitration process	0

Fig. 1 Summary of Activity during the Period 01/05/03 - 31/07/03

Copies of arbitral awards in Khmer and English as well as detailed information regarding the law and procedures governing the Arbitration Council are available from the Secretariat of the Arbitration Council on the internet at <http://www.arbitrationcouncil.org/>

Major Cases

Case #04/03

Parties: Lida Garment v. Cambodian Union Federation
Sector: Garment
Workers in Factory: 600
Result: Binding Award

Workers were on strike when this case was received by the Arbitration Council. As it is unlawful to engage in strike action during the arbitration period, the Arbitration Panel requested the parties to attend a pre-hearing meeting. The parties attended and were able to agree on conditions for the workers to return to work pending an award of the Arbitration Council. At the request of both parties, this decision to return to work was incorporated in an interim order of the Arbitration Council.

In its award the Arbitration Council found the company accountant had often made mistakes in the calculation of wages and that this had been a substantial cause of the strike. However, the Council found that the workers' claim to have the accountant dismissed was unjustified. The Council also found that the that workers had failed to comply with the legal procedures for a strike by:

1. conducting a strike before trying to resolve the dispute through conciliation; and
2. failing to give seven working days notice for their strike.

Not having followed the legal procedure for calling a strike, the Council found that workers were not entitled to receive their \$5 attendance bonuses for the months when they were on strike. During the strike, however, the employer had continued production by transferring materials to another factory. In the circumstances, the Council found that it was equitable for the workers to receive partial payment during the time they were on strike. The parties agreed to submit to binding arbitration.

Major Cases (cont.)

<i>Case #10/03</i>	
Parties:	Jacqsintex Garment v. Coalition of Cambodian Apparel Workers D.U.
Sector:	Garment
Workers in Factory:	525
Result:	Award

This case raised three major issues:

- (1) The conversion of fixed duration contracts to contracts of undetermined duration,
- (2) Bonuses for overtime work,
- (3) Dismissal of workers (two workers recognized as good workers had their contract terminated at expiration of the fixed term and the reason suggested for this termination was discrimination on the basis of union activity).

Considering issues 1 and 3 above the Arbitration Council found that two workers were terminated when their contracts expired. The duration of the employment relationship for one worker was three years; his original 6 month contract was renewed 5 times. The duration of the employment relationship for the other worker was two years; his original 6 month contract was renewed 3 times. According to Article 67-2, the Arbitration Council decided that a fixed duration contract can be renewed one or many times and still retain its original fixed duration only if the total duration of employment relationship does not exceed 2 years. Where the total duration of the employment relationship exceeds two years fixed duration contracts become undetermined duration contracts.

Though conceding that the workers in question were good workers, the employer did not provide evidence of the reasons for which he did not renew the employment contracts of the workers. For this reason the Council decided to accept the evidence of the employees that they were terminated for reasons relating to their activities as union organizers. The Arbitration Council therefore ordered that the employees in question be reappointed on contracts of undetermined duration.

For the second issue, Workers insisted on getting the bonus without reaching the quantity target policy set by the Employer. The AC found that the Employer has the right to set targets for the achievement of a performance bonus and that adjusting the target depending on production was a part of the normal work system at the factory. However, the Council also found that the method used to calculate the bonus must be clear and that this method must be applied fairly to all workers.

Summary of Jurisprudence

When deciding on rights disputes the Arbitration Council is required to decide how the law should be interpreted and applied. (Labor Law Art. 312) The following summary of the Council's jurisprudence during its first three months of operation is provided for the purposes of information only.

Contracts and working conditions

AA = Arbitral Award (No.)

An agreement cannot be contrary to the law:

AA 02/03

- A provision of an agreement between employer and worker(s) is not enforceable if it is less favourable to workers than the law.

Workers cannot claim for dismissal of another worker: AA 04/03

- Workers cannot generally claim for the termination of another worker's Labor contract (example: workers cannot generally claim for the dismissal of a manager).
- There is no general obligation for an employer to terminate an employee even if they commit an act of serious misconduct.

Employer must pay for the pre-employment medical check AA 02/03

Contracts and working conditions (cont.)

Hospital room: AA 04/03

- Employer who must provide a hospital room under the law must also divide the room so as to provide for the privacy of men and women.

Working Conditions

Full-time workers and part-time workers: AA 03/03

- A part-time worker is entitled to the same benefits (wages; leave bonus etc) as a full-time worker, in proportion to the percentage of time worked compared with full-time work.

Extension of fixed duration contracts: AA 10/03

- The total duration of a first fixed duration contract and of all its renewals cannot exceed two years.
- If the total duration of the working relationship exceeds two years, then the worker's fixed duration contract is automatically transformed into an unfixed duration contract.

Termination of fixed duration contract: AA 10/03

- Employer who intends not to renew an employment contract of fixed duration must give workers 10 days notice prior to the expiry of the contract if the total duration of the contractual relationship is over 6 months. But:
- Employer must give workers 15 days notice if the total duration of the contractual relationship is over 1 year.

Unions

Deduction of union fee from worker's wage: AA 03/03; AA 05/03

- Employer must deduct union fees from wages of workers who make a written request for such deductions.
- Employer cannot deduct union fees from wages of workers who do not agree to such deductions.

Non-discrimination against unions: AA 03/03; AA 10/03

- Employer prohibited from taking into account a worker's union membership or participation in union activities when:
 - allocating overtime;
 - dismissing a worker; or
 - making a decision about the renewal of a worker's contract.

Strikes

Cooling-off period:

AA 04/03

- Arbitration and conciliation are peaceful means of dispute resolution which must be attempted before workers can take strike action.
- Workers cannot strike without informing employer 7 working days in advance.
- Arbitration Council may make an order to return to work and refuse to hear a case until parties cease industrial action.

Strikes (cont.)

Replacement of strikers/ sub-contracting:

AA 04/03

- Strikers are not generally entitled to payment of salary or of other benefits.
- Strikers will be entitled to pay during the strike if employer hires new workers to replace strikers.
- Sub-contracting work to another factory may be deemed to have the same effect as hiring new workers to replace strikers.

Strike not in compliance with the law:

AA 04/03

- Strikers cannot expect to benefit from full protection of the law if the strike is not in compliance with the law.

Attendance bonus during strike:

AA 04/03

- To deduct from a worker's wage the whole attendance bonus on the basis that that worker was involved in a strike conducted in accordance with the law would be a sanction prohibited by Art. 333 of the Labor Law. In such cases, however, a pro-rata deduction may be made.
- An employer may deduct from a worker's wage the whole attendance bonus if that worker was involved in a strike not conducted in accordance with the law.

Other Issues

Evidence:

AA 03/03; 10/03

- If a party is given notice of a hearing and does not attend it, then the Arbitration Council may base its findings on the unchallenged evidence of the other party.
- If a party refuses to provide evidence on a point or refuses to provide a document requested by the Arbitration Council, then the Council may accept the evidence of the other party with regard to the point in dispute.

Statutory Interpretation:

AA 03/03; 10/03

- Where the Labor Law is unclear the Arbitration Council may use methods such as the following to aid in the interpretation of the law:
 - A contextual approach (reference to other articles of the law);
 - The Cambodian Constitution (1993);
 - International Labor Standards; and/or
 - The French language draft of the law.

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