



**The Arbitration Council Digest
Volume 10 (1 January to 30 June 2008)**

Introduction

Number of cases filed	81
Number of cases settled without an arbitral award	24
Number of cases in which an arbitral award was issued	57
Number of cases in which the parties chose a binding arbitral award	5
Number of cases where strikes were involved	11
Number of cases where a return to work order was issued	9

Figure 1 represents statistics on cases registered with the Secretariat of the Arbitration Council during the period from 1 January to 31 June 2008.

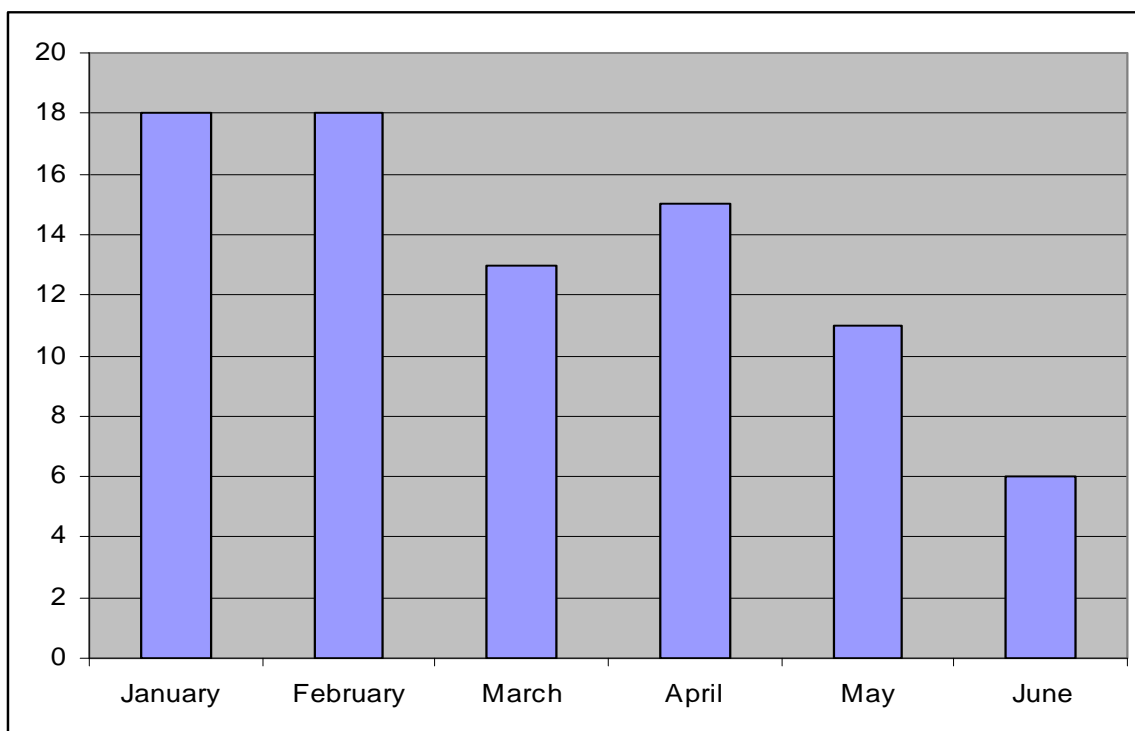


Figure 2 represents the number of cases registered with the Secretariat of the Arbitration Council each month during the period from 1 January to 31 June 2008.

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 or on the internet at <http://www.arbitrationcouncil.org/>.

Case Summary:

The following summary concerns arbitral awards issued by the Arbitration Council in respect of cases registered with the Secretariat of the Arbitration Council from 1 January to 30 June 2008. This summary is provided for informational purposes only and should not be considered legal advice. This is a summary only and may not represent a complete summary of all legal points considered by the Arbitration Council.

AA = Arbitral Award number

Arbitration Council jurisdiction and procedure

The Arbitration Council can decide to discontinue the arbitration process if parties do not stop industrial action during the arbitral process.

AA 02/08; 04/08; 39/08; 63/08

Where a party in dispute fails to appear at a hearing in front of the AC without providing a good reason and despite being duly invited, then the AC can proceed with the arbitral hearing in the absence of such party, and issue an arbitral award based on the facts presented at the hearing.

AA 06/08; 62/08

The Arbitration Council has the power to consider issues not in the non-conciliation report when the following 2 conditions are fulfilled: (1) the issue arose subsequent to the date on which the non-conciliation report was made; and (2) the issue is a direct consequence of the original dispute, i.e., the underlying facts from which the new issue arises are a direct consequence of the underlying facts of the issues in the non-conciliation report.

AA 06/08

The Arbitration Council has the power to weigh and determine the admissibility of evidence, including determining whether evidence submitted by a party is sufficiently comprehensible.

AA 10/08

The claimant party is generally required to provide sufficient evidence to support his/her claim, otherwise the Arbitration Council can reject the claim for lack of evidence.

AA 11/08; 44/08; 75/08

Failure of a party to provide evidence as directed by the Arbitration Council may result in an adverse inference against such party.

AA 11/08

In order for a dispute to be a collective dispute, it must fulfill three conditions: (a) the dispute is between one or more employers and a certain number of their staff; (b) dispute is related to working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers; and (c) the dispute could jeopardise the effective operations of the enterprise or social peace.

AA 13/08

When a dispute only involves a single worker, without any other workers or any local union involved in the claim, then the AC can determine such dispute is not a collective dispute.

AA 13/08

The legal principle of *res judicata* provides that the same issue between the same parties will not, generally, be reconsidered once it has been decided on the merits; the public policy basis for this principle is to prevent inconsistent results, and to promote finality by bringing an end to a dispute.

AA 14/08; 43/08; 49/08

Generally, the Arbitration Council can decline to consider any interests dispute brought by a union that does not have the most representative status in the enterprise because the union does not have the requisite legal standing.

AA 14/08; 19/08 & 20/08; 25/08; 31/08; 37/08; 51/08; 52/08; 73/08

The Arbitration Council was established to resolve extant labour disputes, not to resolve disputes that have not yet occurred; therefore the Arbitration Council will generally decline to consider future disputes.

AA 17/08; 27/08; 53/08; 55/08 & 57/08; 77/08

A collection of unions with a majority of members can bring an interests dispute before the Arbitration Council for resolution.

AA 19/08; 20/08

In order to represent workers, a union must have a certificate of union registration or a written authorization letter from employees.

AA 30/08; 31/08

Where a complainant, who has been duly notified of the hearing date, fails to appear without providing a reason, the Arbitration Council may decide to close the case.

AA 33/08; 34/08; 75/08

Workers who do not have union representation at a hearing, can be represented by other workers provided they have a written letter authorising the workers to represent them.

AA 48/08

When a claimant decides not to pursue their demand which is the subject of the claim, the claim is considered to be withdrawn.

AA 54/08; 56/08

Workers who are claimants in a case should provide sufficient information or evidence to support their demand. However, an employer also has an obligation to provide relevant evidence to the Arbitration Council for consideration.

AA 73/08

Discipline and termination

A worker may be entitled to reinstatement if his/her termination, including a decision not to renew his/her fixed duration contract, was due to union discrimination.

AA 01/08; 60/08

If a worker fails to report to work without notifying his/her employer, he/she may be considered to have abandoned his/her employment.

AA 30/08

The law prohibits employers making decisions about recruitment, discipline or termination of workers on the basis of union membership.

AA 30/08

If a worker commits misconduct, the company should take action to resolve the problem in accordance with the Company's Internal Work Rules and according to the type of mistake.

AA 45/08

Disciplinary action must be proportional to the misconduct: the use of improper language by a worker will not necessarily constitute serious misconduct sufficient to warrant termination.

AA 45/08

If an employer terminates a worker for serious misconduct, it should be able to show evidence of the worker's misconduct.

AA 48/08

An employee is entitled to be reinstated if an employer fails to provide the employee with valid reasons for his/her dismissal related to the employee's aptitude, behaviour or operation of the enterprise or establishment and to comply with the procedures set out in its Internal Work Rules.

AA 51/08

If a worker on an undetermined duration contract is unlawfully dismissed, termination payments include: (1) prior notice, (2) indemnity for dismissal, (3) damages and (4) unused annual leave.

AA 51/08

Assault against other workers may be considered serious misconduct, even where the company's internal work rules do not specify that fighting amounts to serious misconduct.

AA 53/08

The Arbitration Council will decline to consider a dispute if company is waiting for a response from the Labour Inspector as to whether it can dismiss a worker entitled to special protection and the matter is still within the jurisdiction of the Labour Inspector.

AA 55/08 & 57/08

Generally, the Arbitration Council will not order an employer to dismiss an employee, unless for example that worker is endangering the health and safety of other employees.

AA 64/08

An employer must notify and receive approval from the Labour Inspector before terminating a worker entitled to special protections regarding dismissal; if the Labour Inspector does not respond within one month, it means that the request for termination is rejected.

AA 74/08; 78/08

Employment status

A casual employee becomes a regular worker if s/he works for at least 21 days a month for more than two consecutive months.

AA 10/08

Casual workers are entitled to the same benefits as regular workers.

AA 10/08

In considering whether an employer can transfer workers from one place to another the following will be considered: 1) whether there has been any reduction in wages 2) how far away they new location is 3) whether there was any change in worker's work shifts i.e. from day to night or from night to day and 4) whether the new position requires a substantially different skill set.

AA 22/08

If an employer moves workers and equipment in two sections of a factory to a new building, this may be considered to be a change in location.

AA 22/08

A worker's resignation will be considered null and void if the agreement to resign was due to pressure from the company and was not the genuine intent of the workers.

AA 71/08

General working conditions

Payslips should be in Khmer so that workers are able to understand what wages they receive.

AA 23/08

If an employer can establish that its production line will be jeopardized if it allows workers to take a day off on Sundays, it can arrange a rotating schedule whereby staff take alternate Sundays off. This is subject to prior approval from the Ministry of Labour.

AA 29/08

An employer should take appropriate action to prevent inappropriate behaviour and improper language in the workplace.

AA 29/08

An employer will be in breach of its Internal Work Rules if it only allows workers to take a 45 minute meal break and its Internal Work Rules provide that workers are entitled to a 1 hour meal break.

AA 37/08

An employer's right to manage and supervise the enterprise includes the ability to issue workers with new ID cards that list their contract expiration date, provided this does not affect workers' seniority.

AA 40/08

An employer's right to manage and supervise the enterprise includes determining which gate shall be open provided it is reasonable and does not cause any harm to the health of workers.

AA 47/08

An employer has the right to set or increase the production target provided there are appropriate reasons for doing so and it does not adversely affect workers' wages.

AA 49/08

An employer should ensure that it conducts annual wage evaluations for its workers according to and consistent with its Internal Work Rules.

AA 53/08

An employer has an obligation to notify workers in a precise and easily comprehensible manner when there is a change to their wages, which includes changes to wages as a result of setting a new piece rate.

AA 71/08

A payslip should clearly inform workers about their wages, bonuses and other perquisites, so as to eliminate any doubt on the part of workers and avoid problems occurring.

AA 73/08

An employer has the right to determine sewing targets as long as the method for setting the target is clear and reasonable.

AA 79/08

An employer has the right and authority to manage human resources in the company so long as the management is lawful and reasonable.

AA 81/08

Labour and other contracts

Generally, when a fixed duration contract expires, then the obligations between the employer and worker arising from such contract end; and one party cannot force the other party to continue a contract that has terminated.

AA 01/08

Fixed duration contracts must be in writing, otherwise they become undetermined duration contracts.

AA 11/08

The right to severance pay arises when the fixed duration contract expires and the employment relationship ends; when a fixed duration contract is renewed then the employment relationship continues and severance pay is not required to be paid until the end of the employment relationship.

AA 14/08

Only parties to the contract can terminate or modify the contract.

AA 45/08; 64/08

The non-renewal of a fixed duration contract by reason of union membership of the worker is contrary to the Labour Law.

AA 55/08 & 57/08; 71/08

The Arbitration Council has a duty to consider whether the agreements provided by the worker party are valid and binding.

AA 71/08

Labour rights of women

Overtime payments, which according to the law are part of the wage, should be included in the calculation of maternity leave payments for female workers during maternity leave.

AA 06/08

Maternity leave payments are calculated by taking the wage the worker earned in the twelve months prior to taking leave, divided by twelve to find the average wage per month; then dividing that sum by two to find 50% of the wage; then multiplied by three (three months), which is the duration of the maternity leave.

AA 06/08; 25/08; 55/08 & 57/08

Female workers have the right to receive their maternity leave payment prior to taking such leave.

AA 08/08; 25/08; 55/08 & 57/08

Female workers are only entitled to paid maternity leave after they have been working at the company for at least 1 year.

AA 19/08 & 20/08

The Labour Law does not entitle female workers to paid leave of one day per month for a medical check and vaccination

AA 19/08 & 20/08

The period of 90 days for maternity leave refers to calendar days inclusive of Sundays and holidays.

AA 23/08; 25/08

An employer's obligation is to provide a nursing room; employers do not have an obligation to provide formula milk or payment in lieu of a nursing room.

AA 37/08

If an employer is not able to build a daycare center for children aged 18 months or over the employer should pay for female workers to place their children in external care. The cost should be based on actual receipts.

AA 37/08; 77/08

Female workers have the right to receive maternity leave payment at least one day prior to taking such leave.

AA 37/08

An employer is obligated to provide daycare services to worker's children until the children reach an age where they can go to kindergarten and do not need to stay in daycare anymore.

AA 44/08

The Royal Government of Cambodia social policy is to encourage breastfeeding over milk formula and a demand for two cans of milk formula is considered to be an interests dispute.

AA 55/07 & 57/08

Employers who employ at least 100 women have an obligation to build a daycare center in order to allow close contact between mother and child, to provide loving care to the child and to feed the child with breast milk, not formula milk, during the first six months.

AA 77/08

Leave

Workers who take leave with proper permission from the employer have a right to receive their attendance bonus in proportion to the number of days they attend at work per month.

AA 23/08; 71/08

The calculation of wages during annual leave should be based on the total wages earned by the worker in the twelve months prior to leave; divided by twelve to find the average wage per month and then divided by 26 to find the average wage per day.

AA 25/08

To prohibit an employee from taking their annual leave and pay in lieu is unlawful.

AA 31/08; 62/08; 72/08

Workers are entitled to use their annual leave to attend to personal commitments, provided they inform their employer in advance.

AA 31/08

Workers who take sick leave with permission from the employer are entitled to a regular bonus in proportion to the number of days the workers performed their work.

AA 31/08

An employer can deduct a worker's seniority bonus in proportion to the number of days a worker is absent from work, with or without permission. This should be calculated by dividing the seniority bonus by 26 and multiplying by the number of days the worker was absent.

AA 67/08

Occupational safety and health

An employer has an obligation to pay for a worker's medical check fee regardless as to whether the medical check was conducted prior to or after the commencement of work.

AA 23/08

An employer has an obligation to reimburse medical check fees to workers who paid the fee themselves.

AA 40/08; 52/08

If an employer employs more than 50 workers, it has an obligation to establish a permanent infirmary within the enterprise, in accordance with Joint Prakas 330 SKBY, dated 06 December 2000.

AA 62/08

An employer should recognize a medical certificate from a "qualified doctor". The term "qualified doctor" refers to a doctor who trained in a medical school recognized by the Ministry of Health and has a proper certificate from the Ministry of Health permitting them to practice their profession.

AA 72/08

Workers who claim reimbursement of their medical check fee should provide the names of workers who have had a medical check and the date of the medical check.

AA 77/08

Strike

An employer is not required to pay wages to workers on the days that they are on strike.

AA 25/08

The deduction of an attendance bonus from striking workers will not be considered unlawful if the strike was not conducted in accordance with proper procedures.

AA 65/08

During a strike, an employer is not required to provide a seniority bonus to workers.

AA 70/08

An employer is not obliged to pay wages and attendance bonus to workers on the days that they are on strike, whether the strike is conducted in accordance with proper procedures or not.

AA 81/08

Unions and worker delegates

The worker party bears the burden of proof when making a claim of union discrimination; this means that for a specific case there must be enough evidence to support the workers' claim that there is union discrimination.

AA 01/08; 60/08

The Arbitration Council will review the entirety of the evidence submitted in a case to determine whether a claim of union discrimination can be sustained.

AA 06/08

The Arbitration Council can order reinstatement of workers whose termination by the employer constitutes union discrimination; the law prohibits employers from using union membership or participation in union activities as a basis for decisions regarding employment, sanctions, or termination of an employment contract.

AA 06/08; 60/08

Pursuant to labour regulations, an employer is obliged to provide two hours per week for worker delegates to perform their duties; an employer is not required to provide two hours per week to union leaders.

AA 14/08

In order to receive special protection against dismissal, the employee must satisfy three conditions: (1) the worker is the type of worker entitled to special protection; (2) the dismissal falls within the period of special protection and (3) the union has notified the employer of the identity of the worker entitled to special protection by all reliable means.

AA 30/08; 74/08

An employer has an obligation to deduct union contribution fees from workers wages if workers request this deduction in writing and provide 15 days notice and the union is properly registered.

AA 43/08; 61/08

Union leaders who are representing workers in a labour dispute resolution and attend a hearing at the Arbitration Council at the direction of the Council, should not have their wages and bonuses deducted.

AA 43/08

Pursuant to the law and the constitution, security staff have the right to join a union of their choice. However, when they do not perform their duties and fail to meet their responsibility towards the employer, they should be disciplined according to the law like any other worker.

AA 71/08

A worker alleging that the non-renewal of his/her contract was due to union discrimination must provide sufficient evidence to support the claim; it is not sufficient to simply say that he/she was a member of a union.

AA 71/08

Candidates for election as union leaders and members who join at the union registration stage are entitled to special protection from termination after the employer has been notified of their candidacy and membership.

AA 74/08

A union is not entitled to use working hours to undertake union work except if permitted by law, in an urgent case or emergency situation related to the health and safety of workers.

AA 78/08

Wages and bonuses

The statute of limitations to submit a claim for reimbursement of attendance bonus is 3 years.

AA 10/08

In order to calculate the average daily wage of piece rate workers, divide the total wages earned by the worker in one month by the number of days they attend at work, excluding paid days off.

AA 23/08

Workers who make a demand in relation to the incorrect calculation of wages should provide details of the incorrect calculation to support their claim.

AA 23/08

If a company's Internal Work Rules provide for annual wage increases based on a worker's performance, ability and work results, the employer should establish a clear and transparent policy for evaluating whether workers are entitled to a wage increase.

AA 58/08

In the event of a dispute over the payment of wages, an employer has a duty to prove that it has made the payment.

AA 62/08

When an employment contract is terminated or ends, the employer is required to pay any outstanding wages and benefits owed to workers within a period of not more than 48 hours.

AA 67/08

The equal work for equal pay requirement under the law only applies when workers are working under the same conditions and exercise the same level of professional skill and output.

AA 73/08

After the 5th year of service, workers are not entitled to an increase in their seniority bonus of US\$1 per year for each of service.

AA 73/08

When calculating overtime for workers, an employer should include a worker's skill bonus or function bonus in the calculation, if the skill or function bonus is considered part of the regular package of benefits workers receive.

AA 74/08

Work suspension

It is important that an employer receives clear approval from the Labour Inspector before suspending workers' employment contracts, as suspension can seriously affect the national economy and a worker's economic status and benefits.

AA 05/08; 28/08

Where an employment contract is suspended in accordance with the Labour Law, the employer is not obliged to provide wages to workers' for the period of the lawful suspension; however if such suspension is unlawful, the employer has to provide full wages to workers.

AA 05/08; 49/08; 53/08; 80/08

Agreements which provide only half wages to workers during periods of suspension are considered null and void under the Labour Law.

AA 05/08; 49/08; 53/08

An employer whose practice is to pay half wages to workers during a period of work suspension should stop this practice and ensure that any future suspension is conducted in accordance with the Labour Law.

AA 49/08