

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 02/05

Date of award: 27 January 2005

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Bu Min Cambodian Garment

(Employer party)

AND

Cambodian Labor Union Federation (CLUF) and Worker Union of Bu Min (WUBM)

(Employee party)

DETAILED INFORMATION OF THE EMPLOYER PARTY:

Representative: 1- Cha Hyong Hee, Director;
2- Chaut Bopha, General Manager;
3- Saom Mary, Group 5 leader;
4- Nuon Pich, Group 8 leader; and
5- Ouk Channy, QC team leader.

Address: # 1771, National Road 2, Chak Angre Krom commune, Mean Chey district, Phnom Penh.

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DETAILED INFORMATION OF THE EMPLOYEE PARTY:

Representative: 1- Mr. Khin Sakhan, CLUF Official for Dispute Resolution;
2- Mr. Pev Ngim, WUBM President;
3- Mr. Phan Sophal, WUBM Secretary;
4- M. Kim Bohpha, WUBM Vice President;
5- Mr. Hun Thin, worker delegate;
6- Mr. Art Sopheak, worker delegate;
7- Mr. Vong Savuth, worker delegate; and
8- Mr. Nay Samnang, worker delegate.

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ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- Workers demand the company dismiss Chaut Bopha and other three group leaders including Saom Mary, Nuon Pich and Ouk Channy. The company party does not agree to the workers' demand.

JURISDICTION OF THE ARBITRATION COUNCIL :

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labor Law (1997); the Prakas on the establishment of the Arbitration Council (No. 338, Dated December 11, 2002, the Prakas on the Arbitration Council No.099, dated April 21, 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas and the Prakas on the Nomination of Arbitrators No.103, April 26, 2004 and No.265 of July 13, 2004.

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 Labor Law. That conciliation hearing was unsuccessful and the non-conciliation report No. 025 dated 6 January 2005 was submitted to the Secretariat of the Arbitration Council on 6 January 2005.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:	Ms. Seng Vuoch Hun
Arbitrator chosen by the worker party:	Mr. Tuon Siphann
Chair arbitrator (chosen by the two arbitrators):	Mr. Kong Phallack

HEARING AND EVIDENCE:

Date and place of hearing: 10 January 2005 at 8:30AM at the Secretariat of the Arbitration Council.

Witnesses and Experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:

A. Provided by the employer party:

1. Internal Work Rules dated 10 March 2000 and registered on 5 May 2000;
2. Court verdict issued upon the request of Judge Sao Sopheakry, dated 11 January 2005;

3. Agreement dated 21 December 2004;
4. Report from a Labour Inspector dated 27 December 2004;
5. Notification dated 10 January 2004;
6. Complaint dated 6 January 2005 delivered to the Minister of Labour [and Vocational Training] and copies of photos of seven workers, against whom the company lodged the complaint.

B. Provided by the employee party: N/A

C. Received from Ministry of Labour and Vocational Training:

1. Non-conciliation report No. 025 of 6 January 2005 by the Ministry of Labour and Vocational Training [hereinafter called MoLVT];
2. Minute of collective labour dispute conciliation dated 3 January 2005.

D. Order by the Arbitration Council dated 6 January 2005.

E. Presentation and testimony by worker and employer parties at the hearing.

F. Both parties decided during the hearing that: *this award shall be non-binding.*

CASE SUMMARY:

Bu Min Cambodia Garment employs 600 workers.

On January 3, 2005 the employees of Bu Min Cambodia Garment filed a complaint to the Labor Inspectors in Mean Chey district by phone, demanding that the company respect working conditions and dismiss the chief of group; there were five cases in total.

A Labor Inspector in Mean Chey took part in settling these issues after receiving the complaint and the last conciliation hearing succeeded in respect of four issues and there was one unsuccessfully conciliated issue. The MoLVT sent the unsuccessfully conciliated issue to the Arbitration Council for further settlement on 6 January 2005.

The Arbitration Council received the case on the same day of 6 January 2005 at 8:30AM. At the hearing, the employee party demanded that the company dismiss Mr. Chaut Bopha, the General Manager of the company Ms. Saom Mary, Group 5 leader, Ms. Nuon Pich, Group 8 leader, and Ms. Ouk Channy, QC leader.

The workers accused Mr. Chaut Bopha, the company's GM, of committing a couple of instances of misconduct against the workers [and] of failing to serve the interests of her worker counterparts, such as failing to inform workers of the suspension of 200 workers and of a worker's dismissal on 22 December 2004, failing to permit leave at a workers' request and taking bribe on recruitment. As for Ms. Saom Mary, the Group 5 leader, the workers alleged that she had insulted a worker under her supervision and had refused to permit leave at his/her request. For Ms. Nuon Pich, the Group 8 leader, the worker representatives argued that they were just spokespeople for 60 workers who said they were not satisfied with her continuing to work for the company. As for Ms. Ouk Channy, the QC leader, the workers alleged that she was always letting the owner of the company know workers' confidential information and insulting workers.

In the hearing, Ms. Cha Hyong Hee, the company's Director, and the four people mentioned above, whose dismissals were demanded, denied the workers' above-mentioned arguments.

In the hearing, the Arbitration Council encouraged the two parties to resume their negotiations in order to settle this dispute together on the basis of a win-win theoretical approach; however, the parties did not come to an agreement. Accordingly, the Arbitration Council considers and decides as follow:

FINDINGS OF FACT:

- After having examined the minute of collective labor dispute's conciliation;
- After having listened to the company and the employees' sides as described above and listening to a minute of hearing;
- After having checked other relevant documents.

We find that:

1- Issues regarding work suspension in the company

On 22 December 2005, the company submitted an application to the MoLVT for a suspension of 200 workers as there was no purchase order. But the company never got approval for the suspension from the Ministry.

2- Leave procedure of the company

- [Workers] must go first to the group leader (line leader), and then to the supervisor; but the decision whether a worker will be allowed to take leave or not is up to how often (s)he has gone on leave: if (s)he has taken leave many times already, (s)he will

not be given permission unless (s)he has a very urgent matter; and the final say belongs exclusively to the Manager known as Mr. Yeh, from China.

- As far as a request for leave for the reason of an urgent family or personal matter is concerned, the company carries out a relatively strict policy with workers. Every time such leave is requested, the company's Administration always asks for various reasons before deciding whether or not to give permission.
- M. Chaut Bopha just delivers the permission paper to individual workers.

3- Regarding the demand for dismissal of Chaut Bopha, Saom Mary, Nuon Pich and Ouk Channy:

For the workers' claim for the employer to dismiss the four workers including Chaut Bopha, Saom Mary, Nuon Pich, and Ouk Channy, the Arbitration Council finds that the employee party did not possess any evidence that the four people had caused danger to any worker in Bu Min garment factory.

a. Miss. Chaut Bopha

As far as the dismissal demand is concerned, the employee party accused Miss. Chaut Bopha of failing to give notice about the suspension of 200 workers and the dismissal of one worker named Un Chantha on December 22, 2004 without prior notice, which were acts of misconduct against workers' benefits that dissatisfied a majority of workers. In addition, the workers accused her of being corrupt, taking and asking for bribes, and if a worker requested two-days of leave due to an urgent, necessary matter, Chaut Bopha would allow only one day and make the employee put their thumbprint on for another day.

The Arbitration Council discovered that Mr. Chaut Bopha was just the Company's General Manager[; therefore,] she does not have the right to decide alone on notifications about suspension, dismissal [and] permitting leave for workers because all these must, for the purpose of administrative consistency, go through the company Director and other concerned persons in the company. Besides, the Arbitration Council did not receive any evidence about such misconduct in regard to the allegation that Mr. Chaut Bopha had committed corruption; the employee party only provided a verbal allegation.

The Arbitration Council found that the suspension of 200 employees was only planned [not carried out] as the company gave notification to the MoLTV on 22 December 2004, for the reason that the company was in a crisis, being unable to find buyers. However on 31 December 2004, the company found buyers, which enabled the company to have work

available again for the workers. Therefore, the company decided to cancel its plan to suspend the 200 workers, having given this notification to the MoLTV at 12h30PM on the same day of the cancellation of the plan.

The Arbitration Council also found that it was the company who the dismissal of Un Chantha on 24 December 2004 for the reason that this worker had committed a series of serious misconduct and that the company had also given warning letters for many other instances, with the worker in dispute putting her thumbprint acknowledging that she had received damages from the company.

b. Worker, Saom Mary

With regard to the dismissal of Saom Mary, the Arbitration Council found that the workers failed to furnish any clear evidence such as written warnings, promises, etc. or to have the victim of the alleged insult testify that such an insult or failure to give permission for leave had caused the worker to suffer; worker party only verbally argued that Ms. Saom Mary had insulted the worker under her supervision and not given permission to her at her request, which resulted in her crying for the intervention of the union President to make Saom Mary to settle it.

c. Nuon Pich

Regarding the dismissal of Ms. Nuon Pich, the Arbitration Council found that the employee party did not produce any argument but that 60 workers were not satisfied with their Group Leader Nuon Pich; they offered nothing to oppose Nuon Pich's testimony that since she started work until Un Chantha's dismissal, she had never had any problem with any other worker. But after her dismissal, dissatisfaction mounted so fast among workers that the request was made to the company.

d. Ms. Ouk Channy

Regarding the dismissal of Ouk Channy, the Arbitration Council found that the worker party only argued that Ouk Channy had insulted workers under her supervision when they went to the union for its intervention, that she was always cursing the union leadership behind their back and that she was always taking messages from the workers to the employer, especially about workers' confidential matters she just heard from other workers. The employee party did not furnish any evidence that such acts of Ouk Channy had harmed any worker's health

and safety. Thus, what was raised by the employee party could not be considered a reason for the employer to dismiss Ouk Channy.

REASONS FOR DECISION:

The Arbitration Council finds that the workers do not have the right to order or demand that the employer dismiss any worker (including a manager, a supervisor or even a worker). (See Arbitral Awards #04/03-Li Da, #14/03-Chou Sing, #17/03&18/03-Hu Hing and #06/04-Chou Sing, #15/04-Lucky Zone, #16/04-Yada Printing, #32/04-Ecent, #34/04-Full Value, #52/04-Sin Kam, #73/04-genuine, and 87/04-Nobel).

Furthermore, Article 65 of the 1997 Labor Law on labor contracts provides that a labor contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties. Because this contract is subject to ordinary law, a Decree-Law No. 38 on Contracts also covers labor contracts. Article 22 of the Decree-Law No. 38 states that "a contract is deemed as a law binding upon the parties. The contract may be amended only if there is an agreement from both parties. The contract is effective only upon the parties".

In this context, only parties to a contract may terminate their labor contract. Thus, it means clearly that the hiring or dismissal of any worker in the company is the monopoly of the employer who is one of the parties to the contract.

Even if a worker did indeed commit such serious misconduct as set forth in Article 83 of the Labor Law, the Arbitration Council finds that the Labor Law does not require the employer to dismiss him/her; it simply gives the right to the employer to determine whether or not to dismiss a worker. (See Arbitral Awards #14/03-Chou sing, #17/03 and 18/03-Ho Hing).

However, in this case the employees' side did not show specific evidence that Ms. Chaut Bopha, a general manager in the company and three other workers named Saom Mary, Nuon Pich and Ouk Channy are dangerous people who could cause unsafe work in the workplace; only dissatisfaction over the management and behavior of the four individuals was argued.

Thus the Arbitration Council finds that the employees' demand is not legally based. Hence, the Arbitration Council decides to reject this demand.

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

DECISION:

Reject the employees' claim that the company dismisses Chaut Bopha, a General Manager, and the other three group leaders named Saom Mary, Nuon Pich and Ouk Channy.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: Ms. **Seng Vouchhun**

Signed:

Arbitrator chosen by the worker party:

Name: Mr. **Tuon Siphann**

Signed:

Chair of arbitration panel:

Name: Mr. **Kong Phallack**

Signed:

This Award will become binding after 8 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 parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.