



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 06/08- Kingsland**

**Date of Award: 12 February 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the workers: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **Kingsland Garment Cambodia, Ltd.**

Address: Street 2, Prek Talong Village, Sangkat Chak Angre Krom, Khann Mean Chey,  
Phnom Penh

Telephone: 012 956 939                      Fax: N/A

Representative: **Absent**

##### **Workers:**

Name: **Coalition of Cambodian Apparel W.D.U. and local union of C.CAWDU**

Address: #6 C, Street 476, Sangkat Tuol Tompoung 1, Khann Chamkarmorn, Phnom Penh

Telephone: 012 282 653 or 011 239 738      Fax: N/A

Representative:

- |                      |  |
|----------------------|--|
| 1. Mr. Oum Visal     | Vice-secretary of C.CAWDU                |
| 2. Mr. Ly Bunyin     | President of local union of C.CAWDU      |
| 3. Phal Savin        | Vice-president of local union of C.CAWDU |
| 4. Mr. Sao Khatdoeun | Secretary of local union of C.CAWDU      |
| 5. Mr. Kuo Kimleng   | Advisor of local union of C.CAWDU        |
| 6. Chhem Kosal       | Activist of local union of C.CAWDU       |

7. Srun Lay	Activist of local union of C.CAWDU
8. Chan Simhan	Activist of local union of C.CAWDU
9. Mr. Long Chhun Leng	Activist of local union of C.CAWDU
10. Mr. Long Chhun Eng	Activist of local union of C.CAWDU
11. Mr. Sao Khatda	Activist of local union of C.CAWDU
12. Sok Huon	Activist of local union of C.CAWDU
13. Oeur Bona	Activist of local union of C.CAWDU
14. Phann Touch	Activist of local union of C.CAWDU
15. Chen Chanthy	Worker

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the Company pay half wages to female workers who take maternity leave. This payment should be calculated using the average of total wages [paid] during the last twelve months. The company, on the other hand, states that it can calculate the amount by taking half of the [workers'] main wage, seniority bonus and attendance bonus.
- 2- The workers demand that the Company reinstate union activists including Long Chhun Eng, Long Chhun Leng, Chan Simhan, Phan Touch, Van Huon, Sao Khatda and Kou Kim Leng, and back pay their wages from the date of termination to the date of reinstatement. The employer states that it cannot reinstate the seven people.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).*

*An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing was unsuccessful, and the non-conciliation report No.031 KB/AK/VK, dated 08 January 2008 was submitted to the Secretariat of the Arbitration Council on 10 January 2008.*

### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:** 1 February 2008 (From 2:00 p.m. to 5:00 p.m.)

**Procedural issues:**

On 19 December 2007, the Department of Labour Disputes received a complaint from workers at Kingsland Company demanding that the company improve working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate this dispute and the last conciliation session took place on 28 December 2007 but resulted in neither of the 2 issues being conciliated. The non-conciliated issues were forwarded to the Arbitration Council on 10 January 2008 through a report of collective labour dispute No. 031 K.B/AK/V.K, dated 8 January 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer and worker parties to come to the hearing room of the Arbitration Council for an inquiry into the reasons that led the workers to go on strike. The union, the workers, and the employer attended the event as invited by the Arbitration Council. The workers said that what led workers to go on strike was that the Company did not abide by Arbitral Award 109/07 of the Arbitration Council, while case 06/08 (which has only two demands) is a different demand that is not related to this case. The Arbitration Council has reviewed and finds that case 06/08 is a different demand, because the names of workers who demand reinstatement are different from those in case 109/07, according to what was stated by the workers. In the meantime, the workers agreed to the Arbitration Council's request to reschedule the hearing day to 24 January 2008 at 8:00 a.m. However, the hearing date was rescheduled to 1 February 2008 at 2:00 p.m. after there was a request for postponement of the arbitration hearing by the workers.

On the hearing day, the workers attended the hearing as invited by the Arbitration Council but the employer was absent. Therefore, in this case the Arbitration Council considers the two non-conciliation issues based on the evidence and finding of facts as follows:

**EVIDENCE**

**Witnesses and experts:** N/A

**Documents, Exhibits and other evidence considered by the Arbitration Council**

Provided by the employer: N/A

Provided by the workers:

1. Letter by C.CAWDU to the Arbitration Council regarding statement on the collective dispute at Kingsland Company, dated 4 February 2008.

2. List of names of union leaders and activists at Kingsland Factory who the Company terminated and are demanding to be reinstated (the last list dated 30 January 2008)
3. Sample of union leader's identification card
4. Summary report regarding the disturbance on the union rights at Kingsland Company, dated 10 January 2008
5. Certificate of union registration of the local union of C.CAWDU at Kingsland Factory, dated 13 July 2007
6. Letter requesting to postpone hearing time

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report on the collective labour disputes conciliation at Kingsland Company, No. 073/08 KB, dated 15 January 2008;
2. Minutes of the collective labour dispute conciliation at Kingsland Company dated 28 December 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 41 KB/AK/VK/LKA to the workers to attend the hearing dated 17 January 2008;
2. Invitation No. 40 KB/AK/VK/LKA to the employer party to attend the hearing dated 17 January 2008;
3. Invitation No. 47 KB/AK/VK/LKA to the workers to attend the meeting to provide detailed information dated 17 January 2008;
4. Invitation No. 46 KB/AK/VK/LKA to the employer party to attend the meeting to provide detailed information dated 17 January 2008;
5. Invitation No. 068 KB/AK/VK/LKA to the workers to attend the hearing dated 23 January 2008;
6. Invitation No. 67 KB/AK/VK/LKA to the employer party to attend the hearing dated 23 January 2008.

**FACTS**

- Having reviewed the collective labour dispute conciliation report;
- Having listened to the statements of the worker and the employer representatives;
- Having examined the documents submitted;

**The Arbitration Council finds that:**

- In the factory there are a total of 650 workers and 450 workers are union members. Some workers still continue to strike and demand [that the employer comply with]

what is stated in the Arbitral Award 109/07-Kingsland, dated 12 December 2007, in which the employer has filed an objection; some workers are working normally. The workers claim that the Company has been recruiting more workers to replace those who are on strike.

**Issue 1: The workers demand that the Company pay half wage for those who [workers who] take maternity leave**

- The workers demand that the Company pay half wages for maternity leave, calculated on average of the total of each months wage over the twelve months [prior to the leave]. This means the total wages workers received plus overtime during the twelve months, divided by twelve.
- The workers mentioned in the hearing that in the past the Company paid half wages for maternity leave by taking the base wage of the workers as the basis for calculation. However, when the Ministry went to conciliate on this issue, the Company agreed to use half of the [base] wage, attendance bonus and seniority bonus as the basis for calculation.

**Issue 2: The workers demand that the Company reinstate Long Chhun Eng, Long Chhun Leng, Chan Simhan, Phan Touch, Van Huon, Sao Khatda and Kou Kim Leng, and back pay their wages from the date of termination through to their reinstatement.**

- In the hearing, the workers and the union claim that the termination of seven workers was based on union discrimination and the seven workers have not conducted misconduct serious enough for the Company to terminate them. When the Company learns that a person is a union activist or an active union member, it always terminates him or her. The workers [being terminated] are:

No.	Name	ID	Date employment commenced	Date employment terminated	Roles
1	Long Chhun Eng	869	12/7/01	30/10/07	Cutting and union activist
2	Long Chhun Leng	824	26/2/05	27/09/07	Cutting and union activist
3	Chan Simhan	676	16/3/99	6/10/07	Chief of sewing and union activist
4	Phan Touch	1338	25/10/05	6/10/07	Cleaning and union activist
5	Van Huon	777	29/10/05	27/9/07	Overlocking and union advisor
6	Sao Khatda	847	28/6/99	7/9/07	Cutting and union activist
7	Kou Kim Leng	1305	24/4/00	27/12/07	Mechanic and union advisor

- The workers said that the seven workers being terminated all have undetermined duration contracts.
1. **Long Chhun Eng** claims that the Company terminated him because he participated in union activities and because he went to attend the hearing at the Arbitration

Council to protect workers' rights on 30 October 2007; when he came back to the Company he was terminated by the employer. The worker did not agree to accept the termination payment from the employer and demanded to be reinstated and back paid wages from the time of termination to the time of reinstatement.

2. **Long Chhunleng** has not received termination payment from the employer and demands to be reinstated and back paid wages from the time of termination to the time of reinstatement. He claims that the employer terminated his employment without a proper reason. The Company said the reason for termination was that the worker did not agree to work. The worker claims that his sewing machine broke down and the head mechanic would not to fix it for him, and that was why he could not work.
3. **Chan Simhan** does not agree to accept termination payment from the employer and demands to be reinstated and back paid wages from the time of termination to the time of reinstatement. The worker claims that everyday the head of the group warned group members to leave the union otherwise [they should be] beware problems would be coming their way.
4. **Phan Touch** claims that the Company terminated him or her because s/he joined the union; s/he mentioned in the hearing that four days before the Company terminated him or her the Company gave him or her one warning because s/he went to the restroom briefly. After that the head of the group blamed him or her for picking up a piece of plastic to throw away into rubbish bin, instead of keeping it. Then s/he was called to meet the director in the office to receive a warning but did not go. On payday, the Company asked workers to look for him or her to sign a paper to receive a termination payment. However, s/he did not agree and went to use the union to help to find a solution. The worker demanded to be reinstated and back paid wages from the time of termination to the time of reinstatement.
5. **Van Huon**, who was absent at the hearing, did not agree to accept a termination payment from the employer; s/he demand to be reinstated and back paid wages from the time of termination to the time of reinstatement. The reason that the Company terminated him or her was because he did not agree to sew with one needle from 23 to 24 of August 2007 because his skill is in overlocking, and there was work to do in the overlocking section. Finally he demanded additional money, due to a miscalculation the Company made on 20 September 2007. At that time, the Company told him or her verbally that s/he was terminated, but s/he continued to come to work until the day s/he officially received the termination letter, on 27 September 2007.
6. **Sao Khatda**: The Company accused him of not respecting the Company's discipline. In the hearing, the workers claimed that because, as a union activist, he often walked

around to see the situation of workers in the factory; on 28 August the head of the group named Chhay told him in the Company restrooms that if he was still with the union, the Company would stop supporting him, because the union was against the Company. The worker further claims that he has no misconduct on her record, and thus he demand to be reinstated and back paid wages from the time of termination.

7. **Kou Kimleng** claimed in the hearing that the employer discriminated against him or her because s/he joined the union and used to participate in many events, by making demands such as providing his or her thumbprint, demanding a fee for an ID card, providing a thumbprint to support the strike etc. When s/he came back to work, the Company told him or her to go to remove waste from sewage. S/he did not agree to follow the command; the Company warned him or her only once on 7 October 2007. The Company told him or her that if s/he resigned from the union it would let him or her work overtime normally and increase his or her wage.

- **Additional point of demand:** The union representative and the workers demand that the Arbitration Council consider and resolve the additional issue of the termination of four other workers named Oeu Bona (terminated on 8 January 2008), Sok Huo (terminated on 4 January 2008), Van Srey Oun (terminated on 10 January 2008) and Srun Lay (terminated on 25 January 2008), and consider their termination as a direct consequence of the case. In the hearing the Arbitration Council asked for facts regarding the termination of the four workers and found that:

No.	Name	ID	Date employment commenced	Date employment terminated	Roles
1	Oeu Bona	856	25/11/01	08/1/08	Cutting and union activist
2	Van Srey Oun	776	29/10/05	10/1/08	Overlocking J18 and union member
3	Sok Huon	846	06/11/02	04/1/08	Cutting and union activist
4	Srun Lay	1302	19/11/97	25/1/08	Mechanic and union member

1. **Oeu Bona** claimed in the hearing that s/he did not commit any mistakes. On 7 January s/he submitted a request for leave, but the Company did not agree by pushing it from one person to another. On that same day, the Company gave him or her a written warning accusing him or her of walking around idly. S/he demanded to be reinstated and back paid her wages from the day of termination.
2. **Sok Huon** claimed in the hearing that the Company accused him or her of eating during office hours; in fact other workers also ate, but the Company did not blame them. The Company holds this against him or her because s/he joined the union. The worker demands to be reinstated and back paid his or her wages from the day of termination.

3. **Va Srey Oun** claimed in the hearing that s/he did not commit any mistakes, but the Company terminated him or her because s/he is a younger sibling of a union activist - Van Huon. The worker demanded to be reinstated and back paid his or her wages from the day of termination.
4. **Srun Lay** claims in the hearing that s/he did not commit any mistakes but the Company terminated him or her because s/he joined the union. The worker demands to be reinstated and back paid his or her wages from the day of termination.

### **REASONS FOR DECISION**

Before giving consideration to the issues in dispute, the Arbitration Council will consider the following points:

1. Can the Arbitrators conduct the hearing in absentia of the employer?

Clause 21 of Prakas 99/04 states, *"In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award."*

In this case, only the president of the local union of C.CAWDU at Kingsland Company and C.CAWDU attended the hearing while the employer did not appear at the hearing, despite being invited by the Arbitration Council; the employer did not provide a good reason for their failure to attend. The Arbitration Council, therefore, held and continued the hearing with the workers and in absentia of the employer to judge the case referred to it, and to issue an Arbitral Award based on evidence and clarification of the union in the hearing. (See Arbitral Award 53/04-Kuong Hong and 63/04-Shine Well).

#### **Issue 1:**

The workers demand that [during] maternity leave the Company pay [workers] half of the average of total wages received [by the worker] within the last twelve months including overtime in each month. The Company says that for workers who take maternity leave the employer can only provide half of the base wage, attendance bonus and seniority bonus once a month for three months.

Article 182 of the Labour Law grants rights to women who work in enterprises covered by this law to take 90 days leave to deliver their babies.

Article 183 of the Labour Law states, *"During the leave discussed in the preceding Article, women are entitled to half of their salary, including benefits in cash, to be paid by the employer.... However, the salary benefits discussed in the first paragraph shall be granted only to women having a minimum of one year of uninterrupted service in the firm."*

Article 183 of the Labour Law as mentioned above gives rights to women who work in enterprises covered by the Labour Law who have at least one year's service to receive half wages, including perquisites, paid by the employer. However, the Arbitration Council finds that Article 183 of the Labour Law does not mention clearly what are [the components of] the wage. Thus, the Arbitration Council will look at other Articles of the Labour Law in order to interpret Article 183.

Article 103 of the Labour Law states, "*Wage includes, in particular:*

- *the actual salary or remuneration*
- *overtime*
- *commissions*
- *bonuses and rewards*
- *profit sharing*
- *gratuities*
- *the value of benefits in kind*
- *family support allocations in excess of the legally prescribed amount*
- *holiday pay or compensatory holiday pay*
- *workers compensation paid by the employer and payments made during disability and maternity leave... "*

Article 103 of the Labour Law clearly states that overtime payment is [part of the] wage. Thus, female workers who take three months maternity leave are entitled to half wages and overtime payments should be included in the calculation.

In previous Arbitral Awards, the Arbitration Council decided that wage during maternity leave is calculated by using the wages [received] in the twelve months prior to the leave, divided by twelve to find the average monthly wage and that sum is divided by two to find half wages; then multiplied by three for the 90 days (three months), which is the duration of the maternity leave. (See Arbitral Award 68/04-City New, Issue 4; 18/06-GHG, Issue 3 and 33/07-Gold Fame, Issue 7).

In this case, the Arbitration Council agrees with the interpretation in previous Arbitral Awards. Thus, the Arbitration Council decides that the employer has to provide half wages to female workers with at least one year's service with the Company who take maternity leave; and overtime payments must be included in the calculation. This wage is calculated by taking the regular wages received within the twelve months prior to the female taking leave, divided by twelve to find the average monthly wage and then divided by two and multiplied by three.

**Issue 2: The workers demand that the Company reinstate Long Chhun Eng, Long Chhun Leng, Chan Simhan, Phan Touch, Van Huon, Sao Khatda and Kou Kim Leng,**

**and back pay their wages from the date of termination to the time they will be reinstated.**

According to the findings of fact, all terminated workers have undetermined duration contracts.

Article 74 of the Labour Law states, *“The labor contract of unspecified duration may be terminated by one of the contracting parties... However, there can be no dismissal of the employee without a valid reason...”*

Article 12 of the Labour Law states, *“... no employer shall take into consideration the ... union membership or activity of employees with respect to hiring ... termination of the employment contract...”*

Article 129 of the Labour Law states, *“Employers are forbidden to take into consideration union affiliation or union activities when making decisions concerning hiring, ... and dismissal...”*

In general, the Arbitration Council will consider evidence submitted in relation to a case to determine if there is union discrimination regarding termination of workers. (See Arbitral Award 03/03-Tonga, Issue 10; 10/03-Jacqsintex, Issue 4; 19/04-Kbal Koh, Issue 1; and 17/07-Charm Textile, Issue 1).

In this case, because the employer was absent at the hearing without a clear reason the Arbitration Council will render judgement based only on the claims provided by the workers.

Based on the findings of fact, the Arbitration Council will consider whether the termination of the seven workers mentioned above is related to union discrimination.

According to the workers' claim, the seven workers were terminated because they participated in union activities such as: attending the hearing at the Arbitration Council, joining the union, and participating in union activities to help workers. In addition, according to the workers' claim, the Company used minor reasons, such as spending a long time to use the restroom, to terminate workers; the Company also tried to transfer workers to jobs requiring skills they didn't have.

The Arbitration Council found that according to the statement by the workers, the termination is related to union activities as the Company has tried to terminate all workers who are union members.

Because the employer was absent in the hearing without a proper reason, the workers' claim will be taken as evidence. Thus, based on the above mentioned claims, the Company terminated workers because they were union activists rather than the trivial reasons the Company cited for the termination the workers.

In previous cases, the Arbitration Council ordered the employer to reinstate workers because the termination of the workers was due to union discrimination, in violation of

Articles 12 and 279 of the Labour Law, which prohibits an employer from using union membership or participation in union activities as a basis for decisions about employment, sanctions, or termination of an employment contract. (See Arbitral Awards 28/07-Dae Kwang, Issue 3; 123/07-E Garment, Issue 1).

In this case, the Arbitration Council agrees with the decisions of the Arbitration Panel in previous cases because Article 12 and Article 279 of the Labour Law prohibit an employer from using union membership or participation in union activities as a basis for making a decision about hiring, sanctions, or termination of a worker's employment contract.

Therefore, the Arbitration Council decides that the employer should reinstate the seven workers and back pay [their wages] from the day of termination.

In the hearing, the workers and the union requested that the Arbitration Council [also] arbitrate the issue of the termination of four workers mentioned above, because they consider the termination to be a direct consequence of the case dispute in this case. Therefore, the Arbitration Council needs to consider whether the termination of the four workers mentioned above is the direct consequence of the dispute in this case.

Article 312 of the Labour Law states, *"The Arbitration Panel may not decide any issues outside those in the non-conciliation report or issues that arise from events subsequent to the report and that are the direct consequence of the current dispute."* In the line with this, the Arbitration Council needs to look at two conditions:

1. *Whether the termination was made after the [non conciliation] report was made.*
2. *Whether the termination is the direct consequence of the previous dispute.*

In this case, the conciliation report by the Labour Inspector was made on 28 December 2008 while the four workers were terminated in January 2008. Thus, the first condition is fulfilled. For the dispute in this case, the workers and the local union of C.CAWDU demand: (1) the Company pay half wages to workers who take maternity leave by using wages received during the last twelve months as the basis for calculation and (2) that the Company reinstate union activists including: Long Chhun Eng, Long Chhun Leng, Chan Simhan, Phan Touch, Van Huon, Sao Khatda and Kou Kim Leng; in addition the Company should back pay their wages from the date of termination to the time they will be reinstated.

Thus, in order to find out whether the termination of the four workers mentioned above is a direct consequence of the two disputes above, the Arbitration Council will review and consider whether the reasons that led to the termination of the four workers was related to the demands in issues 1 and issue 2 mentioned above. The Arbitration Council considers that the termination of the four above mentioned workers is not related to and does not arise out of the two issues in dispute in this case and the Arbitration Council does not find sufficient evidence to prove that the termination of these workers really arose as a direct consequence of the dispute. Thus, the second condition is not fulfilled.

Therefore, the Arbitration Council declines to consider the additional demand for reinstatement of the four workers.

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

**DECISION**

**ISSUE 1**

- The employer has to calculate maternity leave payments (half of wages and perquisites), by taking the wages received [by the worker] in the last twelve months, divided by twelve to find the average monthly wage, then divided by two and multiplied by three.

**ISSUE 2**

- After this award enters into effect the employer shall reinstate Long Chhun Eng, Chan Simhan, Sao Khatda, Long Chhun Leng, Phan Touch, Van Huon, and Kou Kim Leng to their former positions and back pay [wages] to the seven workers to the date of reinstatement.

- Decline to consider the demand for reinstatement of Oeu Bona, Sok Huon, Van Srey Oun, and Srun Lay.

**Type of Award: Non binding awards**

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

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

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature: .....

Arbitrator chosen by the workers:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....