

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 107/06-Now Corp**

**Date of Award: 6 December 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Ven Pov**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

**DISPUTING PARTIES**

**Employer party:**

Name: **Now Corp Company**

Address: National Road No. 51, Choeung Ork Village, Lom Hach Commune, Ang Snuol District,  
Kandal Province

Telephone: 024 398 399/ 016 994 007      Fax: N/A

Representative:

- |                       |                      |
|-----------------------|----------------------|
| 1. Mr. Kim Chul       | Company Director     |
| 2. Ms. Kong Sokunthea | Interpreter          |
| 3. Mr. Ly Srun        | Communications Staff |
| 4. Mr. Ly Sopheap     | Communications Staff |
| 5. Mr. Long Heang     | GMAC Officer         |

**Worker party:**

Name: **NIFTUC**

Address: # 59 B, Street 432, Sangkat Tuol Tompoung 2, Khann Chamkarmorn, Phnom Penh.

Telephone: 012 1 840 836

Representative:

- |                    |  |
|--------------------|--|
| 1. Ms. Ros Kan     | Vice President of NIFTUC                           |
| 2. Mr. Ros Socheat | President of Local NIFTUC at Now Corp Company      |
| 3. Mr. Mut Kosal   | Vice President of Local NIFTUC at Now Corp Company |

Name: **CFWR**

Address: # 85, Street 192, Sangkat Toeuk Laak 3, Khann Tuol Kork, Phnom Penh

Telephone: N/A

Fax: N/A

Representative:

1. Mr. Chhum Veasna

President of CFWR

2. Ms. Ouk Srey Mom

President of Local CFWR at Now Corp Company

### **ISSUES IN DISPUTE**

(In the non-conciliation Report)

The workers demand that the company pay 100 percent wages for the last two-month period of work suspension. The employer does not agree arguing that the money for accommodation, of US\$7 per month per person, is not held by the company. All of this money therefore would be needed to be loaned.

### **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 Arbitrators 099/06 (Fourth 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 was unsuccessful, and the non-conciliation report No. 068/06 KBV/KN dated 16 November 2006 was submitted to the Secretariat of the Arbitration Council on 16 November 2006.*

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

**Place of hearing:** Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd.,  
Sangkat Tonle Basak, Khan Cham Kar Mon, Phnom Penh

**Date of hearing:** 20 November 2006 from 2:00 p.m. to 5:00 p.m.

#### **Procedural issues:**

On 14 November 2006, the Department of Labour and Vocational Training received a complaint from NIFTUC and CFWR demanding that the company improve working conditions in one aspect. On the same day as receiving the complaint, because the workers were on strike, the Department of Labour and Vocational Training assigned officer(s) to conduct a conciliation. This conciliation was unsuccessful and the unresolved issue was submitted to the Arbitration Council on 16 November 2006.

After receiving the case, and information that the workers remained on strike, the Arbitration Council issued an order on 16 November 2006 to order the workers to return to work as normal.

The Arbitration Council summoned the employer party and the two unions and workers to a hearing and conciliation with respect to the one non-conciliated issue on 20 November 2006 at 2:00 p.m. Both parties appeared as invited by the Arbitration Council. On the hearing day, the Arbitration Council attempted a further conciliation but the issue was not resolved. Therefore, in this award, the Arbitration Council will consider the issue in dispute based on evidence and findings of fact as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

#### **Provided by the employer party:**

- Letter No. NEW/06/014 dated 15 November 2006 by Now Corp Company to request intervention in the workers' strike at Now Corp Company.
- Letter No. 195 KBV/KN dated 8 November 2006 by the Department of Labour and Vocational Training of Kandal Province regarding the suspension of workers' labour contracts.
- Letter No. 153 KBV/KN dated 8 September 2006 by the Department of Labour and Vocational Training of Kandal Province regarding the suspension of workers' Labour Contracts.
- Brief statement of labour dispute dated 18 November 2006
- Internal Work Rules, registration No. 016/06 KBV dated 21 August 2006
- Pictures of the activities of workers on strike at Now Corp Company
- Company Statute
- Certificate of registration in commercial list dated 25 October 2005
- Announcement dated 15 November 2006 about recruiting old workers back to work
- Report about activities during the strike at Now Corp Garment Factory dated 17 November 2006.
- Letter of request to conduct a strike by workers at Now Corp Factory dated 11 November 2006
- Letter from the company's Director authorizing Mr. Ly Srun [to represent the employer at the Arbitration Council], dated 20 November 2006
- Report about activities during strike at Now Corp Garment Factory dated 18 November 2006.

- Minute of the collective dispute resolution dated 14 November 2006.

Provided by the worker party:

- Statement of complaint by the local NIFTUC and CFWR at Now Corp Company dated 11 November 2006, regarding the Director of Now Corp Company.
- Statement of complaint by Ms. Hai Sokheng, worker, dated 16 November 2006; complaining of a person named Mark, who dragged the workers' hands to get them to come back to work.
- Statement of complaint by Ms. Hem Thea, Ms. Sem Nai and Ms. Ouk Srey Mom dated 16 November 2006; complaining of a person named Phuon I, who was fighting and causing injury.

Provided by the Ministry of Labour and Vocational Training:

- Report on the resolution of the collective dispute at Now Corp Company No. 068/06 K.K.B.V./K.N. dated 16 November 2006 by the head of Department of Labour and Vocational Training of Kandal Province.
- Minute on the resolution of the collective dispute dated 14 June 2006.

Provided by the Secretariat of the Arbitration Council:

- Order of the Arbitration Council No. 027 KBA dated 16 November 2006

**FINDINGS OF FACT**

- Having examined the report of the collective dispute resolution
- Having listened to the statements of the worker party and the employer party.
- Having examined the additional documents.

**The Arbitration Council finds that:**

**Issue 1: The workers demand that the company pay 100 percent wages for the last two-month period of work suspension.**

- Now Corp Company suspended approximately 964 workers (that is, all workers) during the period 11 September 2006 to 10 November 2006. The employer provided an accommodation payment. This work suspension was approved by the Department of Labour and Vocational Training of Kandal province by letter No. 153 KBV/KN dated 8 September 2006.
- The company claimed that because they needed to build another building, there was not enough purchase orders and the new production line had not yet been completed the company requested that the Department of Labour and Vocational Training of

Kandal province to suspend 503 workers for a second time. Besides these 503 workers, the company offered work to workers who were [previously] suspended in a step by step process. The company stated that in respect of the 503 workers, the company would bring them all back to work.

- The suspension of the labour contracts of the 503 workers was allowed from 11 November 2006 to 11 January 2007 by the Department of Labour and Vocational Training of Kandal Province through letter No. 195 KBV/KN dated 8 November 2006.
- The workers demand that the company provide 100 percent wages for this second period of work suspension because the workers believe that this suspension does not follow the legal procedures set out in the Labour Law. The employer justifies the second period of work suspension by the Department of Labour and Vocational Training letter No. 195 KBV/KN dated 8 November 2006.

### **REASONS FOR DECISION**

#### **Issue 1: Workers demand that the company pay 100 percent wages for the last two-month period of work suspension.**

In this case, the Arbitration Council considers the following points:

- Is this [second] labour contract suspension lawful?
- Are the workers entitled to 100 percent wages?

#### **1. Is this labour contract suspension legal?**

Article 71 states that *“The labour contract shall be suspended under the following reasons...*

*11. When the enterprise face a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall be under the control of the Labour Inspector.”*

In this case, the company suspended work for the first time from 11 September 2006 to 10 November 2006; thus the Arbitration Council finds that this matter can be considered as a *“...particular unusual difficulty ...”* as mentioned in Article 71(11) of the Labour Law and approved by the Department of Labour and Vocational Training of Kandal Province. The worker party does not object to the first suspension; limiting their demand to the second suspension of work. Thus the Arbitration Council will consider only the second [two-month] suspension.

Article 71(11) of the Labour Law as mentioned above, states that the suspension of the labour contract shall be under the control of the Labour Inspector. Based on the above mentioned findings of fact, the company did request the Kandal provincial Labour Dispute Office, to approve the suspension of the labour contract for a second time. The request was accepted

by the Department of Labour by letter No. 195 KBV/KN dated 8 November 2006 and the suspension period was scheduled for 11 November 2006 to 11 January 2007.

[This leads to the question,] does the approval of the Department of Labour and Vocational Training of Kandal Province by letter No. 195 KBV/KN dated 8 November 2006 bind the Arbitration Council [to consider the suspension lawful]?

The Arbitration Council considers that any permission, interpretations or legal advice provided by the Labour Inspector do not bind the Arbitration Council. The Arbitration Council may still interpret the Labour Law as none of the Articles in the Labour Law prevent the Arbitration Council from interpreting those laws. In addition, according to discussions in previous awards, and in particular the discussion in Arbitral Award 95/04-ASD Cambodia Co. Ltd, which noted that *“None of the Labour Law Articles state expressly that the Arbitration Council has no power to decide on any case relating to the Labour Inspector’s decision. On the other hand, the sentence of the control by the Labour Inspector is an extra protection for the workers, and should not be interpreted as excluding the jurisdiction of the Arbitration Council. If, for example, there was a collective dispute about a suspension done under the company’s internal rules as mentioned in the Article 71(7) of the Labour Law, then the Arbitration Council would clearly have jurisdiction. It is similar to a collective dispute about the suspension of employment contracts in compliance with Article 71(11) of the Labour Law.*

*Therefore, the Arbitration Council has full power to consider this case to review whether this suspension is in accordance with the law and has a valid reason. In doing so, the Arbitration Council is not seeking to review the decision of the Labour Inspector, but just to resolve the collective dispute by applying its procedures.”*

Article 71(11) of the Labour Law mentioned above states, *“When the enterprise face a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension **shall not exceed two months** and be under the control of the Labour Inspector.”*

According to the above mentioned Article 71(11), there are three main elements an enterprise must fulfill in order to suspend a labour contract [lawfully]. [The Arbitration Council] will consider each of those elements one by one to see if the employer party in this case has fulfilled those elements.

**1<sup>st</sup> element:** the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty.

In the hearing the employer party claims that it has to build another building in order to expand its garment production line. In addition, it was also stated that at present there are not a lot of purchase orders that can provide adequate work for employees. The Arbitration Council considers that the employer has fulfilled the first element.

**2<sup>nd</sup> element:** The suspension shall not exceed 2 months

The Arbitration Council will consider the second element to determine whether the employer can suspend the labour contract for two months in total or for two months many times over.

Based on the above mentioned facts, Now Corp Company has already suspended the labour contract once, from 11 September 2006 to 10 November 2006. The company renewed the suspension from 11 November 2006 to 11 January 2007. [The Arbitration Council must then ask;] is the second suspension allowed or prohibited by Article 71(11)?

In the provision of Article 71(11), it may be possible that the Arbitration Council can interpret that the employer can suspend labour contracts in accordance with this Article if the duration of each suspension does not exceed two months. Meanwhile, the Arbitration Council may also be able to interpret this Article as meaning that the employer can only suspend the labour contract, according to Article 71(11), for a total duration of suspension not in excess of two months. With respect to these two interpretations above, the Arbitration Council, who has the authority to settle case 107/06-Now Corp, has a preference for the second interpretation: that the employer can only suspend a labour contract for a period not in excess of two months. According to the Arbitration Council's jurisprudence in Arbitral Award 95/04-ASD Cambodia Co Ltd, the Arbitration Council considers that labour contract suspensions of two months can only be undertaken one time. The Arbitration Panel in this case agrees with the view set out by the Arbitration Panel in Arbitral Award 95/04-ASD Cambodia Ltd. The original text of the draft Labour Law 1997 in French states that "...**Cette suspension** devraot etre inferieure ou egale a deux mois..." The Arbitration Council considers that the language and grammar used in the French text, unambiguously means that suspensions of the labour suspension cannot exceed two months.

Meanwhile, Article 71 of the Labour Law mentions 11 situations and conditions where the labour contract can be suspended. Each of these situations and conditions are applied in different ways. For example, Article 71(3) states: "... This absence is limited to six months, but can, however, be extended until there is a replacement." The Arbitration Council considers that Article 71(3) provides a possibility for a suspension to be renewed until there is a replacement. [The Arbitration Council notes that] on the other hand, Article 71(11) does not contain any term which opens the possibility for renewing or extending the suspension of work as explicitly mentioned in Article 71(3).

**3<sup>rd</sup> element:** The suspension must be under the control of Labour Inspector. (see Arbitral Awards 22/05-Ocean, 49/05-Ocean and 59/05-Tack Fat). In this case, the employer party made a request to the Labour Inspector and received permission via a letter from the Department of Labour and Vocational Training of Kandal Province.

Therefore, [in consideration of all three elements] the Arbitration Council considers that the second suspension of the labour contracts by Now Corp Company is not in accordance with

the spirit of Article 71(11) because this particular suspension fulfills only the first and third elements [of Article 71(11)] but the second element is not fulfilled.

**2. Are workers entitled to 100 percent wage?**

In Arbitral Award 46/04-M&A the Arbitration Council stated, *“According to Notification No. 017 of the Ministry of Social Affairs and Labour, the employer has to pay the workers a minimum salary of US\$45 every month. But in cases where the enterprise faces an economic or material problem or difficult circumstances, the employer has the right to suspend the employment contract if the suspension is under the control of the Labour Inspection Department. If the employer has not suspended the contract in conformity with the procedures mentioned in Article 71(11) of the Labour Law, the employer has an obligation to pay the minimum wage to the workers.”* In addition, in previous Arbitral Awards, the Arbitration Council decided that if the suspension does not follow legal procedures, the workers are entitled to 100 percent wages for the period of the suspension (see Arbitral Awards 21/03-Wonrex, No. 01/04-New Point 3 and 60/04-United Art).

In conclusion, the employer must pay 100 percent wages to the workers for the period of the unlawful labour contract suspension; the last two months.

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

**DECISION**

- Order the employer to pay 100 percent wages for the last two-month period of suspension; from 11 November 2006 to 11 January 2007.

**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 the Ministry of Labour and Vocational Training 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: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....