

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

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**THE ARBITRATION COUNCIL**

Case: 11/04

Date of award: 16 March 2004

## **ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**CAMS**

(Employer party)

**And**

**Union of Independent Employees of International Airport**

(Employee party)

### **Details of employer party:**

Address: National Road 04, Kakab Commune, Dangkor District, Phnom Penh

Tel: 023 890 023

Fax: 023 890 274

Representatives: Mr. Gilles de Maxiury, Mrs. Chhiv Phirom and Mrs. Chao Sodamony.

### **Details of employee party:**

Address: N/A

Tel: 012 759 672 and 012 878 369

Fax: N/A

Representatives: 1- M. Khim Linda, vice president of the union;

2- Mr. Sok Kosal, secretary for the union;

3- Mr. Saom Veasna, advisor;

4- Mr. Son Theng Samnang; and

5- Mr. Po Chhon, member of the union.

**ISSUES IN DISPUTE:**  
**(In non-conciliation report)**

- 1- Lost and Found staff members demand the company to increase their section's salary from USD160 to USD180 equal to that of the Check-in.

**JURISDICTION<sup>1</sup> OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Section II B<sup>2</sup> Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338 of 11 December 2002), and the Arbitration Council Procedural Rules.

An attempt to conciliate the collective dispute which is the subject of this Award was made on 10 February 2004 as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was unsuccessful and non-conciliation report dated 01 March 2004 was submitted to the Secretariat of the Arbitration Council on 03 March 2004.

**COMPOSITION OF THE ARBITRATION PANEL :**

Arbitrator chosen by the employer party:	Mr. <b>Mar Samborana</b>
Arbitrator chosen by the worker party:	Mr. <b>An Nan</b>
Chair arbitrator (chosen by the two arbitrators):	Mr. <b>Ang Eng Thong</b>

**HEARING AND EVIDENCE**

***Date and place of hearing:***

- 1- First, on 09 March 2004 at 14h30 at Arbitration Council Secretariat; and
- 2- Second, on 12 March 2004 at 14h00 at the Secretariat of Arbitration Council.

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<sup>1</sup>Jurisdiction means judicial power.

**Witnesses and experts: N/A**

**Evidence considered by the Arbitration Panel:**

**I. Documents obtained from employer party:**

1. CAMS's internal work rules;
2. Letter of the Union of Independent Employees of the International Airport (hereinafter known as the union) regarding the termination of a Collective Bargaining Agreement dated 24 December 2003;
3. Inquiry report of the Labor Inspectorate regarding the employer CAMS dated 05 January 2004;
4. Letter of request for the delay in a collective dispute labor resolution at CAMS dated 05 January 2004;
5. Letter of approval to delay the resolution to a collective labor dispute between CAMS and the union to 15 January 2004, dated 12 January 2004;
6. Letter of approval to delay the resolution to a collective labor dispute between CAMS and the union to 22 January 2004, dated 15 January 2004;
7. Collective labor dispute conciliation report of the Labor Inspectorate on pay raise and the principle for dividing work shifts dated 22 January 2004;
8. Collective bargaining agreement on pay raise and work arrangement reached between the Union of Independent Employees of International Airport and Cambodia Airport Management Services Co., Ltd (CAMS), dated 11 February 2004;
9. Five workers' letter regarding inequalities of pay raises, asking the Ministry for its intervention;
10. Report of inquiry regarding CAMS, dated 13 February 2004;
11. List of job responsibilities of the Check-in Staff;
12. List of job responsibilities of the Lost and Found Staff; and
13. Comparison between the Lost and Found Staff and Check-in Staff.

**II. Documents obtained from employee party:**

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<sup>2</sup> From Articles 309 to 317 of the Labor Law

1. Letter of request to staff by CAMS, dated 12 December 2004;
2. Letter of change in Mr. Po Chhon's position, dated 19 August 2002;
3. Certificates in World Tracer issued SITA for a course from 13 to 24 January 2003.

### **III. *Presentation by the disputed parties in the hearing***

#### **CASE SUMMARY**

CAMS is positioned on Russian Federation Boulevard, Kakab Commune, Dangkor District, Phnom Penh and employs 645 workers. On 04 February 2004, five workers in the Lost and Found of the company brought a complaint to the Dangkor District's Labor Inspection office, asking the company to raise their salary from USD160 to USD180, the amount earned by the Check-In workers. On 27 February 2004, the office endeavored to conciliate the dispute for the last time; however, the two sides did not come to a deal. The non-conciliation point is that:

*The Lost and Found staff demands that the company increase their salary from USD160 to USD180 as earned by the Check-In because the two sections use similar techniques.*

Nonetheless, the company side did not approve this because Lost and Found requires work techniques different from those at Check-In. The company party added that in reference to the 11 February 2004 Collective Bargaining Agreement, the company had already raised the salaries of the Lost and Found Staff from USD136 to USD160 and therefore it could not provide a further increase.

The case was submitted to the Arbitration Council on 03 March 2004. The Secretariat of the Arbitration Council invited the two parties to furnish necessary documents and useful evidence to support their claims on 11 March 2004 at 15h00.

Both sides agreed that this award is not binding.

#### **FINDINGS OF FACT:**

- After having reviewed the non-conciliation report of the labor dispute,
- After having heard the presentation of the company and employees as described above and in the hearing records,
- After having reviewed documents as described above.

We find that:

- 1- The demand for pay increase from USD160 to USD180 by the Lost and Found arose out of the outcome of the Collective Bargaining Agreement (CBA) between the employer and the union representing CAMS employees dated on 11 February 2004 signed by the employer party and the President and Vice President of the Union of Independent Employees of International Airport as evidenced by the labor dispute conciliation report of the Labor Inspectorate dated 22 January 2004. The CBA offered the Check-In staff USD180 in wage and the Lost and Found staff only USD160 [per month].
- 2- The five employees claimed that the Check-In and the Lost and Found sections used to have the same wages because they have similar working conditions and techniques. But subsequent to the collective bargaining, the company, then, agreed to increase the salary of the Check-In staff to USD180 and that of Lost and Found to only USD160, which would be unjust to them. The five workers added that the work in their section is very much computer-based; [they not only] have to face the passengers regarding the losing and breaking of their baggage, but also to take care of passengers' baggage, which was not the responsibility of the Lost and Found before. Therefore, [the claim] the duties and responsibilities of the employees in the Lost and Found are not less than those of the Check-In; and accordingly, [they] should be entitled to the same salaries as are the Check-In.
- 3- The employer party said that the Check-In and the Lost and Found are two sections requiring different duties and responsibilities. They might have had similar skills and techniques before, but now it is different, the Check-In having more skills, duties and responsibilities than before; which is why, it is increasingly different from the Lost and Found.

- 4- The Lost and Found staff argued that on the final day of negotiation for the collective bargaining agreement (22 January 2004), their representatives were not present due to a personal urgent matter, a reason why they failed to raise their demand then. However, immediately after they received the information of the wages, they lodged a complaint to the employer and the Labor Inspector and notified the union through a copy [of their complaint].
- 5- The employer party claimed that the negotiation for the collective bargaining agreement had taken place for many days between the employer party and the union with the most representative status which represents all the CAMS employees. On 22 January 2004, in the presence of the Department of Labor Inspection, company party and the union representing the employees of the company arrived at an agreement on wage setting and work arrangements, and according to this agreement, the union and the company signed a collective bargaining agreement on wage increases and work arrangements on 11 February 2004, agreeing that the collective bargaining negotiation would continue on while the wage issue would not be raised anymore.

## **REASONS FOR DECISION**

Article 96 (2) of the Labor Law provides:

*The collective agreement is a written agreement relating to the provisions provided for in Article 96 - paragraph 1. The collective agreement is signed between: (a) one part: an employer, a group of employers, or one or more organisations representative of employers; and (b) the other part: one or more trade union organisations representative of workers.*

Article 97 of the Labor Law stipulates, "the provisions of a collective agreement shall apply to employers concerned and all categories of workers employed in the establishments as specified by the collective agreement." Additionally, Article 9 of Prakas 305 SALVY of 22 November 2001 states, "the union with the most representative status has the right to call on the employer to bargain about the collective agreement applying to all the workers who the union represents..."

Based on the MoSALVY's letter of recognition of the union's most representativeness (No. 085 SALVY of 06 March 2003), the Union of Independent Employees of International Airport possesses the most representative status within CAMS's framework in Pochentong International Airport (Phnom Penh International Airport); for this reason, this union has the right to sign a collective agreement to apply to all the workers within the company. The negotiation for the collective agreement between CAMS and the union continued constantly since December 2003 in the presence of the union's leadership and activists, and the employer party. On 15 January 2003 (2004?), the parties to the collective bargaining agreement decided to delay the negotiation until 22 January 2004, a decision signed by all sides to the collective agreement. On 22 January 2004, the union's leadership and active members and the employer party agreed to resume the negotiation as was due, without any opposition or request for further delay. As a result, the two sides arrived at an agreement in the collective bargaining process with regard to pay increases and work arrangements and [this] was signed by the union's leadership as well as all of its present activists and the employer, in the presence of the Labor inspector (Mr. Pol Chandara, head of Dangkor's office of Labor Inspection). Later on, the collective agreement was officially signed on 11 February 2004 between the employer and the leadership of the Union of Independent Employees of International Airport (the union with the most representativeness), in accordance with the substance of the above-mentioned 22 January 2004 agreement. Consequently, the Arbitration Council finds that the negotiation for signing the collective agreement was made in accordance with the legal procedures, which should result in the collective bargaining agreement binding the two parties to the agreement as well as all the workers represented by the union. Therefore, the demand by the Lost and Found staff violates the essence of the foregoing collective agreement. The Arbitration Council finds that this demand could only be only considered in case that the workers in the Lost and Found could show and provide evidence leading to the 11 February 2004 collective agreement's being deemed null and void. However, the Arbitration Council did not receive or have any evidence to consider the above agreement null and void. For this reason, the demand of the Lost and Found workers, though procedurally correct, has no legal basis.

Based on the foregoing reasoning, the evidence and the law, the Arbitration Council decides as follows:

**DECISIONS AND ORDERS :**

Reject the complaint of the Lost and Found workers for the company to increase wages for their section from USD160 to USD180, an amount equal to that for those in the Check-In.

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

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature: .....

Arbitrator chosen by the employee party:

Name: **Liv Sovanna**

Signature: .....

Chair of Arbitration Panel:

Name: **Ang Eng Thong**

Signature: .....

*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.*