



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគមន៍

THE ARBITRATION COUNCIL

Case number and name: 111/07 – Yung Wah II

Date of Award: 12 November 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **In Sothy**

Arbitrator chosen by the worker party: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co., Ltd. II**

Address: Phum Thmey, Takhmao Commune, Takhmao District, Kandal Province

Telephone: 012 1 771 575

Fax: N/A

Representatives:

1. Mr. Som Uy Pisey Administrative staff;
2. Mr. Kry Bora Administrative staff;
3. Ms. Tao Davuth Administrative staff.

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU)**

Address: Phum Thmey, Takhmao Commune, Takhmao District, Kandal Province

Telephone: 012 988 623

Fax: N/A

Representatives:

1. Mr. Ek Sopheakdey Secretary-General of C.CAWDU;
2. Ms. Chan Dany President of CAWDU at the factory;
3. Ms. Sok Phalla Vice-President of CAWDU at the factory;
4. Ms. Keo Sampos Secretary of CAWDU at the factory;

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|---------------------|---------|
| 5. Ms. Dith Chanthy | Worker; |
| 6. Ms. Chorn Leng | Worker; |
| 7. Ms. Sok Khema | Worker; |
| 8. Ms. Kim Sophat | Worker. |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Workers demanded that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 to workers. The company did not agree but claimed to have complied with Arbitral Award 54/07 dated 27 July 2007.
2. Workers demanded that Chinese group leaders in all sections should be helpful and cooperative when a labour dispute takes place at the production site or workplace. The company did not agree but asked to implement the Labour Law.
3. Workers demanded that the company allow union activists and union leaders to have free access to all the buildings in order to enlist more union members during the breaks and not discriminate against unions. The company did not agree since it has never discriminated against any union and union activists and union leaders could not have free access to all the buildings.
4. Workers demanded that the company pay workers between the fifth and the seventh day of the month. The employer did not agree but asked to implement the Arbitral Award by paying workers before the tenth day of the month.
5. Workers demanded that the company reinstate four workers in Cleaning Section: Chon Leng, ID: 7370; Dith Chanthy, ID: 7574; Sok Khema, ID: 067 and Kim Sophat, ID: 1407.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour 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 which took place on 15 October 2007 was unsuccessful, and the non-conciliation report No. 204/07 was submitted to the Secretariat of the Arbitration Council on 17 October 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Centre, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh.

Date of hearing: 26 October 2007 (from 8:00 a.m. to 12:00 p.m.)

Procedural issues:

Having received the complaint on 4 June 2007 from Cambodian Apparel Workers of Democratic Union (CAWDU) demanding for resolution to a collective labour dispute at Hung Wah II Company, Kandal Department of Labour Dispute attempted to conciliate the dispute on 2 July 2007 but the employer party was absent. On 26 September 2007, Kandal Department of Labour and Vocational Training made another attempt to conciliate the disputing issues and as a result eight out of 13 issues were conciliated. The non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 17 October 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the disputing parties to attend a hearing to conciliate the five issues on 26 October 2007 at 8:00 a.m. Both parties were present at the hearing summoned by the Arbitration Council.

On the hearing day, the Arbitration Council made a further attempt to conciliate the non-conciliated issues as stated in the non-conciliation report of the Department of Labour Disputes as a result Issue 2 and Issue 4 were conciliated. Therefore, in this case the Arbitration Council considers only Issue 1, Issue 3 and Issue 5 based on the evidence and the fact findings and statements of the disputing parties at the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Arbitral Award 54/07 – Yung Wah I, dated 27 July 2007;
2. Trade Registration Certificate No. 981 dated 27 March 1998 of Yung Wah Company;
3. Pay slip list and other bonuses of Ms. Sok Khema dated 24 May 2007;
4. Minute of Ms. Sok Khema dated 24 May 2007 (regarding the sale of textile debris);
5. Application form of Ms. Sok Khema dated 8 August 2003;
6. Cambodian Identity Card of Ms. Sok Khema dated 7 October 2000;
7. Labour contract of Ms. Sok Khema dated 8 August 2003;
8. Labour contract of Ms. Sok Khema dated 8 August 2003 (regarding non-commission provision for getting recruited);

9. Resident Book No. 285/03 of Ms. Sok Khema dated 11 August 2003;
10. Labour contract of Ms. Sok Khema dated 5 January 2004;
11. Physical Fitness Certificate of Ms. Sok Khema dated 9 March 2004;
12. Resident book of Ms. Sok Khema;
13. Internal Work Rules of Yung Wah II dated 29 May 2006;
14. Letter of Certification dated 26 May 2006;
15. Letter dated 26 May 2006 of Director of Yung Wah II requesting for the registration of the company's Internal Work Rules;
16. Pay slip list and other bonuses of Ms. Chon Leng dated 24 May 2007;
17. Dismissal letter of Ms. Chon Leng dated 24 May 2007;
18. Minute of Ms. Chon Leng dated 24 May 2007 (regarding the involvement in the sale of textile debris);
19. Job application form of Ms. Chon Leng dated 1 March 2006;
20. Cambodian Identity Card of Ms. Chon Leng dated 12 November 2001;
21. Labour contract of Ms. Chon Leng dated 1 March 2006 (regarding the non-commission provision for getting recruited);
22. Labour contract of Ms. Chon Leng dated 3 March 2006;
23. Residence book of Ms. Chon Leng;
24. Letter certifying residence of Ms. Chon Leng dated 1 March 2006;
25. Pay slip table and other bonuses of Ms. Dith Chanthy dated 24 May 2007;
26. Dismissal letter of Ms. Dith Chanthy dated 24 May 2007;
27. Minute of Ms. Dith Chanthy dated 24 May 2007 (regarding the involvement in the sale of textile);
28. Application form of Ms. Dith Chanthy dated 20 March 2006;
29. Cambodian Identity Card of Ms. Dith Chanthy dated 13 July 2002;
30. Labour contract of Ms. Dith Chanthy dated 22 March 2006 (regarding the non-commission provision for getting recruited);
31. Labour contract of Ms. Dith Chanthy dated 22 March 2006;
32. Letter No. 713 dated 21 March 2006 certifying residence of Ms. Dith Chanthy;
33. Residence book of Ms. Dith Chanthy;
34. Pay slip table and other bonuses of Ms. Kim Sophat dated 24 May 2007;
35. Dismissal letter of Ms. Kim Sophat dated 24 May 2007;
36. Minute of Ms. Kim Sophat dated 24 May 2007 (regarding the involvement in the sale of textile);
37. Application form of Ms. Kim Sophat dated 1 December 2006;
38. Voting Card of Ms. Kim Sophat dated 22 May 1998;

39. Labour contract of Ms. Kim Sophat dated 1 December 2003 (regarding the non-commission provision for getting recruited);
40. Labour contract of Ms. Kim Sophat dated 1 December 2003;
41. Application form of Ms. Kim Sophat dated 21 October 2003;
42. Labour contract of Ms. Kim Sophat dated 21 October 2003;
43. Labour contract of Ms. Kim Sophat dated 21 October 2003 (regarding the non-commission provision for getting recruited);
44. List of persons under the charge of Ms. Kim Sophat;
45. Letter certifying residence of Ms. Kim Sophat dated 15 September 2003;
46. Physical Aptitude Certificate No. 17873 of Ms. Kim Sophat dated 15 September 2003;
47. Labour contract of Ms. Kim Sophat dated 1 December 2003;
48. Photos of the goods stolen by workers;
49. Statute No. 092/03 dated 22 January 2003 of Yung Wah Company;
50. Pay slip table and other bonuses of Ms. Thol Thach dated 24 May 2007;
51. Dismissal letter of Ms. Thol Thach dated 24 May 2007;
52. Minute of Ms. Thol Thach dated 24 May 2007 (regarding the involvement in the sale of textile);
53. Application form of Ms. Thol Thach dated 1 October 2007;
54. Cambodian Identity Card of Ms. Thol Thach dated 12 October 2000;
55. Labour contract of Ms. Thol Thach;
56. Labour contract of Ms. Thol Thach (regarding the non-commission provision for getting recruited);
57. Resident Book of Ms. Thol Thach dated 2 October 2003;
58. List of persons under the supervision of Ms. Thol Thach;
59. Physical Fitness Certificate of Ms. Thol Thach dated 1 October 2003;
60. Labour contract of Ms. Thol Thach dated 5 January 2004;
61. Pay slip list and other bonuses of Ms. Mao Huoy dated 24 May 2007;
62. Dismissal letter of Ms. Mao Huoy dated 24 May 2007;
63. Minute of Ms. Mao Huoy Ms. Mao Huoy dated 24 May 2007 (regarding the involvement in the sale of textile debris);
64. Job application form of Ms. Mao Huoy dated 28 July 2006;
65. Cambodian Identity Card of Ms. Mao Huoy dated 28 December 2001;
66. Labour contract of Ms. Mao Huoy dated 28 July 2006 (regarding the non-commission provision for getting recruited);
67. Labour contract of Ms. Mao Huoy dated 28 July 2006;
68. Resident Book of Ms. Mao Huoy dated 30 July 2006;
69. List of persons under the supervision of Ms. Mao Huoy;

70. Report dated 24 May 2007 on the finding of 69 bags of textile debris;

71. Letter No. 193 dated 2 July 2007 permitting Yung Wah Company to release liquid waste.

Provided by the worker party:

1. Complaint of Ms. Kim Sophat dated 25 May 2007 against Yung Wah II Company;
2. Complaint of Ms. Dith Chanthy dated 25 May 2007 against Yung Wah II Company;
3. Complaint of Ms. Chon Leng (Luch Leng) dated 25 May 2007 against Yung Wah II Company;
4. Complaint of Ms. Sok Khema dated 25 May 2007 against Yung Wah II Company;

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

1. Report No. 204/07 on the collective labour dispute conciliation at Yung Wah Company dated 15 October 2007;
2. Minute of the collective labour dispute conciliation at Yung Wah dated 26 September 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 486 dated 22 October 2007 to the worker party to attend the hearing;
2. Invitation No. 485 dated 22 October 2007 to the employer party to attend the hearing.

FACTS

- Having examined the report on the collective labour dispute conciliation
- Having listened to the testimonies from both the employer party and the worker party
- Having reviewed other supplementary documents.

The Arbitration Council finds that:

- Yung Wah II employs a total number of 5,500 workers.
- There are four unions – Cambodian Labour Union, Cambodian Apparel Workers Democratic Union, Khmer Youth Trade Union and Cambodian Union.
- Cambodian Apparel Workers Democratic Union (CAWDU) is the claimant in this case. According to the claim of workers, CAWDU has 3,000 members but it has not yet registered because the union has yet to apply for registration.

Issue 1: Workers demanded that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 (to 11 August 2004) to workers

- Workers demanded that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 to workers because the workers had paid for the fee themselves while the payment of the medical check fee is the burden of the employer.

- The company did not agree but asked to implement Arbitral Award 54/07 – Yung Wah I dated 27 July 2007. The company claimed that the Arbitration Council ordered the company to reimburse the medical check fee from 11 August 2004.
- Both the worker party and the employer party agreed that the company had complied with the Arbitral Award and the company reimbursed the medical check fee calculating from 11 August 2004 as ordered by the Award. However, workers demanded that the company reimburse the medical check fee of 10,100 riels for the duration from 1998 until 2004 (to 11 August 2004).
- The union, who brought case 54/07 – Yung Wah I to the Arbitration Council, was Khmer Youth Trade Union.
- The company claimed that a total of 500 workers had undergone medical check from 1998 to 2004.

Issue 3: Workers demanded that the company allow union activists and union leaders to have free access to all buildings during the breaks to enlist more union members

- The factory owns Building 1, Building 2, Building 3 and Building 4.
- Building 2 and Building 3 are located in the same premise while Building 1 and Building 4 are located in a separate premise.
- Workers demanded that the company allow union activists and union leaders to have free access to all the buildings (Building 2, Building 3 and Building 4) in order to enlist more union members during the breaks claiming that it is the freedom of association.
- The company did not agree to allow workers pass through Building 4 because Building 4 is separate from Building 2 and Building 3. However, the company allows workers in Building 2 and Building 3 claiming that they are located in the same premise. Even during the working hours, to pass through Building 4 from Building 2 and Building 4, one needs to receive permission.
- The company claimed that the break time in Building 4 is different from those of Building 2 and Building 3. A group of workers in Building 4 takes break at 11:00 a.m. while the others take break at 11:30 a.m. while workers in Building 2 and Building 3 take break at 11:00 a.m.
- Workers did not show any evidence or testimony to support their claim.

Issue 5: Workers demanded that the company reinstate four workers – Chon Leng, ID: 7370; Dith Chanthy, ID: 7574; Sok Khema, ID: 067; and Kim Sophat, ID: 1407

- Ms. Chon Len, ID: 7370, was recruited on 4 March 2006 to work in Cleaning Section.
- Ms. Dith Chanthy, ID: 7574, was recruited on 24 April 2006 to work in Cleaning Section.

- Ms. Sok Khema, ID: 067, was recruited on 29 July 2003 to work in Cleaning Section.
- Ms. Kim Sopha, ID: 1407, was recruited on 22 October 2003 to work in Cleaning Section.
- The company quotes the report of the security guard as saying that on 24 May 2007, Nov Lang, Security Guard with ID: 1210, encountered 69 bags of textile debris hidden in the garbage bags but he did not know who hid those bags under the garbage bags because he did not see the person(s) who hid the textile debris under the garbage bags.
- In the hearing, the company showed photos of the textile debris found by the security guard. The employer party claimed that a bag of textile debris is equivalent to 1,000 riels.
- According to the claim of the company, on 24 May 2007, Mr. Nov Lang reported the security activities to the Director of the company regarding the finding of the textile debris hidden under the garbage bags. According to the report, the security guard claimed that six workers were involved in the textile debris stealing. Those were workers accused one another. Those workers included Ms. Sok Khema, ID: 067; Ms. Kim Sophat, ID: 1407; Ms. Chon Leng, ID: 7370; Ms. Dith Chanthy, ID: 7574 and workers with ID: 8474 and ID: 963.
- The report further showed that Ms. Sok Khema (ID: 067), Ms. Kim Sophat (ID: 1407) and Worker with ID: 8474 pointed at Worker with ID: 7370 (Ms. Chon Leng), Worker with ID: 7574 (Ms. Dith Chanthy) and the other Worker with ID: 963.
- At 9:00 a.m. on 24 May 2007, the company invited the six workers described in the report of the security guard for questioning regarding the incident. During the questioning session, union representative Sok Phalla and Keo Sampos were also present as monitors but they were not allowed to talk or sign the minute of the questioning. Union representative Keo Sampos jotted down the response of the six workers on her personal notebook.
- According to the claim of the worker party and the employer party, among the six workers, Thol That with ID: 963 and Mao Huoy with ID: 8474 received the payment for contract termination and resigned.
- Based on the company's minute and personal note of union representative Keo Sampos as well as the testimonies of the four workers in the hearing, the Arbitration Council finds as follows:

1. Ms. Chon Leng's case

- The Arbitration Council finds that the company's minute and personal note of union representative Keo Sampos are in conformity with each other. Ms. Chon

Leng rejected involvement in the stealing of the company's textile debris or receiving any money from the sale of textile debris.

- In the hearing, she claimed that she had not stolen the textile debris. The company's representative did not show any evidence to charge the worker besides the security guard's report.

2. Ms. Dith Chanthy's case

- The Arbitration Council finds that the company's minute and personal note of union representative Keo Sampos are in conformity with each other. Ms. Dith Chanthy rejected involvement in the stealing of the company's textile debris or receiving any money from the sale of textile debris.
- In the hearing, she claimed that she had not stolen the textile debris. The company's representative did not show any evidence to charge the worker besides the security guard's report.

3. Ms. Sok Khema's case

- The Arbitration Council finds that the company's minute and personal note of union representative Keo Sampos are in conformity with each other. According to the company's minute dated 24 May 2007 with Ms. Sok Khema's thumbprint, Ms. Sok Khema admitted that she had stolen the textile debris and put them in the garbage bags and garbage collector offered 1,000 riels for a bag of textile debris. The minute states that Ms. Sok Khema admitted that she committed misconduct on 23 May 2007 and she revealed that she did it with the involvement from workers with ID: 7370, ID: 7574, ID: 963, ID: 067 and ID: 8474.
- Based on the union representatives' minute who were also present in the questioning session held on 24 May 2007, she responded that she heard of stealing but she was not involved.
- In the hearing, Ms. Sok Khema and the two monitors Ms. Sok Phalla and Ms. Keo Sampos, who were also present at the questioning session held on 24 May 2007, claimed that when asked Ms. Sok Khema did not respond as what was stated in the company's minute. The minute was brought to her for her thumbprint afterward and it was not read or explained to her and it was not shown to the union.
- The employer party claimed in the hearing that its former administrator made the report and it did not know the details of the questioning. The company

party claimed that the former administrator, who had conducted the questioning and knew the details of the issue, already resigned.

4. Ms. Kim Sophat's case

- The Arbitration Council finds that the company's minute and personal note of union representative Keo Sampos are in conformity with each other. According to the company's minute dated 24 May 2007 with Ms. Kim Sophat's thumbprint, Ms. Kim Sophat admitted that she had stolen the textile debris and put them in the garbage bags and garbage collector offered 1,000 riels for a bag of textile debris. The minute states that Ms. Kim Sophat admitted that she committed misconduct on 23 May 2007 and she revealed that she did it with the involvement from workers with ID: 7370, ID: 7574, ID: 963, ID: 067 and ID: 8474.
- Based on the union representatives' minute who were also present in the questioning session held on 24 May 2007, she responded that she had heard of the stealing but she was not involved. Her claim was the same as Ms. Sok Khema's.
- In the hearing, Ms. Kim Sophat and the two monitors Ms. Sok Phalla and Ms. Keo Sampos, who were also present at the questioning session claimed that the minute was brought to her for her thumbprint afterward and it was not read or explained to her and it was not shown to the union.
- The employer party claimed in the hearing that its former administrator made the report and it did not know the details of the questioning. The company party claimed that the former administrator, who had conducted the questioning and knew the details of the issue, already resigned.
- According to the company's claim, on 25 May 2007 the company dismissed Ms. Chon Leng, Ms. Sok Khema, Ms. Kim Sophat and Ms. Dith Chanthy because the four workers had stolen the company's property—the textile debris witnessed by a security guard. The company claimed that stealing the company's property was a serious misconduct as what provided in Article 83 of the Labour Law. This Article allows the company to legally terminate labour contracts of the four workers.
- In the hearing, the worker party did not agree and demanded that the company make a thorough investigation because the security guard did not directly see [the perpetrators]. Ms. Chon Leng, Ms. Dith Chanthy, Ms. Sok Khema and Ms. Kim Sophat demanded that they be reinstated because they

had not stolen the company's textile debris adding that they were accused by workers with ID: 963 and ID: 8474 who already resigned.

REASONS FOR DECISION

Issue 1: Workers demanded that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 (to 11 August 2004) to workers

In this case, workers demanded that the company reimburse the medical check fee of 10,100 riels between 1998 and 11 August 2004 to workers with the reason that the workers had paid the fee themselves while such payment is the burden of the employer. The company party did not agree but asked to implement Arbitral Award 54/07 – Yung Wah I dated 27 July 2007. The Arbitration Council considers the issue as follows:

1. Can the Arbitration Council consider this case based on principle of Res Judicata?
2. Are workers still entitled to demand that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 to workers?

1. Can the Arbitration Council consider this case based on principle of Res Judicata?

In the previous cases, the Arbitration Council ruled out that, "*In compliance with the principle of Res Judicata, for cases already decided by the Arbitration Council the Arbitration Council can not make its decision on the same cases again.*" (See Awards 10/06 – North Gaiety, 49/06 – Sportswear, Issue 2 and 42/07 – South Bay, Issue 1)

In this case, the issue in dispute is the same as Award 54/07 – Yung Wah I, only the disputing parties were different. In Award 54/07, the disputing parties were Khmer Youth Trade Union and Yung Wah Company (Yung Wah I). For this case, the disputing parties were Cambodian Apparel Workers of Democratic Union (CAWDU) and Yung Wah Company (Yung Wah II). Therefore, the Arbitration Council considers that in this case the principle of Res Judicata does not apply on this case. Thus, the Arbitration can consider this issue.

2. Are workers still entitled to demand that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 to workers?

Article 247 of the Labour Law states that, "*The Ministry in Charge of Labour shall issue a Prakas to determine:*

a) the conditions under which pre-employment, re-employment, periodical, and special physical exams are given;...

c) the conditions under which employers are required to establish and provide at their expense:

...4) the medical exams of workers as stipulated in point a) of this article."

In the previous cases, the Arbitration Council ruled that, “*Article 247 of the Labour Law provides sufficient basis to oblige the employer to pay the medical check fee for workers who are recruited as new employees.*” (See Awards 30/06 – Best Tan, Issue 3 and Issue 44/06 – Gold Fame, Issue 4)

Likewise, in Award 54/07 – Yung Wah I whose claimant was Khmer Youth Trade Union, the Arbitration Council considered that, “Based on Article 247 above, Yung Wah I Enterprise is obliged to pay the medical examination fee to workers when they undergo the medical check before they were employed” (See Award 54/07 – Yung Wah I, Issue 2). In this case, the employer claimed to have implemented Arbitral Award 54/07 – Yung Wah I by reimbursing the medical check fee of 10,100 riels to workers who have undergone the medical check from 11 August 2004.

However, the union still demanded that the company reimburse the medical check fee to workers who had undergone the medical check from 1998 to 11 August 2004. Thus, the Arbitration Council considers whether or not workers are still entitled to claim for the reimbursement of the medical check fee of 10,100 riels during the demanding period.

Article 120 of the Labour Law states that, “*the statute of limitations for the payment of wages is three years from the date the wage was due.*”

Claims subject to the statute of limitations include the actual wage, perquisites and all other claims of the worker resulting from the labour contract, as well as the indemnity in the event of dismissal.”

In the previous cases, the Arbitration Council interpreted Article 120 that, “*The lapse of the claim for the medical check fee in this case is three years. It means that for workers who have paid the medical check fee of 10,100 riels him or herself in order to receive the medical certificate for the recruitment, statute of limitations shall start from the date of which the labour contract is signed because this is where the labour relation starts.*” (See Arbitral Awards 44/06 – Gold Fame, Issue 4; 47/07 – Chung Fai, Issue 2 and 54/07 – Yung Wah I, Issue 2)

Based on the above interpretation, the Arbitration Council considers that workers already lost the right to claim for the reimbursement of the medical check fee of 10,100 riels because the limitation period had lapsed.

Thus, the Arbitration Council decides to reject workers’ demand in this issue.

Issue 3: Workers demanded that the company allow union activists and union leaders to have free access to all buildings during the breaks to enlist more union members

Article 2 of the Labour Law stipulates that, “*Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.*”

In the previous awards, the Arbitration Council interpreted this Article to mean that the employer has the right and authority in the supervision and direction of his/her workplace as long as the right and authority comply with the law and are reasonably exercised. (See Arbitral Awards 82/06 – M&V III, Issue 7 and 108/06 – Trinunggal Komara)

The Arbitration Council considers that the right over the supervision and direction of the employer’s enterprise includes the right to determine the location that the enterprise allows or prohibits passage in order to avoid disruption in the production line as well as maintain the effective management of the company.

In this case, the union party demanded that the company allow union activists and union leaders to have free access to Building 2, Building 3 and Building 4 during non-working hours in order to enlist more members. The employer party claimed in the hearing that he could not allow the workers pass through Building 2, Building 3 and Building 4 due to security concerns and technical management concerns. Regarding this claim, the Arbitration Council notes that there is no provision of the Labour Law obliges the employer to allow union activists and union leaders to have free access to the company’s buildings besides Circular No 40 SKBY dated 1 October 1998 (Point 2) by the Ministry of Labour which requires the employer to provide worker delegates and unions with an appropriate place to post the names, photos, roles and activities of worker delegates and union leaders. Based on the above facts and legal principles, the Arbitration Council considers that the employer is not obliged to allow union activists and union leaders to have free access to pass through from one building to another as demanded.

Therefore, in this case, the Arbitration Council decides to reject the demand of workers that the company allow union activists and union leaders to have free access to the factory’s buildings during non-working hours.

Issue 5: Workers demanded that the company reinstate four workers in the Cleaning Section naming Ms. Chon Leng (ID: 7370), Ms.Dith Chanthy (ID: 7574), Ms. Sok Khema (ID: 067) and Ms. Kim Sophat (ID: 1407)

Article 83 of the Labour Law states that, “*The following are considered to be serious offenses:... B. On the part of the worker: 1. Stealing, misappropriation, embezzlement,*”

Based on this article, the Arbitration Council considers that stealing, misappropriation and embezzlement of the company’s property of workers are serious offenses.

In this case, the employer party dismissed Ms. Chon Leng, Ms. Dith Chanthy, Ms. Sok Khema and Ms. Kim Sophat based upon the reason that the four workers had stolen the

company's textile debris to sell which was a serious offense according to Article 83 of the Labour Law. The four workers demanded that the company reinstate them. The Arbitration Council considers [this issue] as follows:

1. Ms. Chon Leng and Ms. Dith Chanthy's cases

In the previous cases, the Arbitration Council decided that the employer is in charge of providing evidence to support his claim when workers were accused of committing serious offense. (See Arbitral Awards 41/04 – Micasa, Issue 2 and 59/05 – Tack Fat, Issue 3)

It is the same in this case. The employer accused Ms. Chon Leng and Ms. Dith Chanthy of stealing the company's textile debris. Thus, the employer is obliged to provide valid evidence to charge Ms. Chon Leng and Ms. Dith Chanthy. However, based on the above fact, the Arbitration Council finds that the company did not have sufficient evidence to accuse Ms. Chon Leng and Ms. Dith Chanthy of stealing the company's textile debris because security guard Nov Lang himself did not see who had hidden the textile debris in the garbage bags and did not know when it happened. In his report, the security guard assumed that the two workers had stolen the textile debris because he found the textile debris hidden in the garbage bags. The other responses of workers in Cleaning Section against the two workers were also unacceptable because no investigation was held by experts and the company's minute of the questioning did not have the signature of the union representatives. Moreover, according to the company's minute, Ms. Chon Leng and Ms. Dith Chanthy claimed that they did not steal the company's textile debris and they did not receive any money from the sale of the company's textile debris.

In conclusion, the Arbitration Council considers that the company did not provide sufficient evidence to accuse Ms. Chon Leng and Ms. Dith Chanthy of stealing the company's textile debris. Thus, the Arbitration Council cannot apply Article 83 (B-1) of the Labour Law to this case. Therefore, the Arbitration Council decides to accept the worker party's demand that the company reinstate Ms. Chon Leng and Ms. Dith Chanthy.

2. Ms. Sok Khema and Ms. Kim Sophat's cases

[These cases are] also consistent with the above interpretation. The employer is obliged to provide valid evidence to charge workers Sok Khema and Kim Sophat of stealing the company's textile debris (*See the above interpretation regarding the cases of Ms. Chon Leng and Ms. Dith Chanthy*). However, based on the above facts, the Arbitration Council finds that the company did not have sufficient evidence to accuse Ms. Sok Khema and Ms. Kim Sophat of stealing the company's textile debris because security guard Nov Lang himself did not see who had hidden the textile debris in the garbage bags and did not know when it happened. In his report, the security guard assumed that the two workers had stolen the textile debris

because he found the textile debris hidden in the garbage bags. The other responses of the workers in Cleaning Section against the two workers were also unacceptable because no investigation was held by experts and the company's questioning minute did not have the signature of the union representatives.

Moreover, the company's minute and personal note of the union representatives as well as the testimonies of Sok Khema and Kim Sophat were not consistent because the company's minute dated 24 May 2007 states that the two workers admitted that they had stolen the textile debris, hid them in the garbage bags, and contacted garbage collector for the sale of 1,000 riels per bag. However, according to minute of the union representatives who were also present in the questioning session held on 24 May 2007, the two workers responded that they had heard of the stealing but were not involved. And in the hearing, Ms. Sok Phalla and Ms. Keo Sampos, Ms. Sok Khema and Ms. Kim Sophat all made the same claim, adding that Ms. Sok Khema and Kim Sophat had not responded as what stated in the company's minute. Furthermore, in this case, the administrator, who made the report, had already resigned and could not come to the hearing.

Thus, the Arbitration Council considers that the workers neither stole nor took the company's property when they said they had heard of the stealing as well as the company's minute of the questioning and the failure of the company's former administrator's appearance in the hearing to explain who wrote the minute, was all not acceptable. Therefore, the Arbitration Council considers that the two workers did not steal the textile debris. Thus, the company cannot charge them based on the available evidence.

In conclusion, the Arbitration Council considers that the company did not have sufficient evidence to accuse Ms. Sok Khema and Ms. Kim Sophat of stealing the company's textile debris. Thus, the company cannot apply Article 83(B-1) on this case. Therefore, the Arbitration Council decides to accept workers' demand that the company reinstate Ms. Sok Khema and Ms. Kim Sophat.

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

DECISIONS AND ORDERS

Issue 1: Reject workers' demand that the company reimburse the medical check fee of 10,100 riels between 1998 and 2004 to workers.

Issue 3: Reject workers' demand that the company allow union activists and union leaders to have free access to all the company's buildings during non-working hours.

Issue 5:

1. Order the employer to reinstate the four workers in Cleaning Section: Ms. Chon Leng (ID: 7370), Ms. Dith Chanthy (ID: 7574), Ms. Sok Khema (ID: 067) and Kim Sophat (ID: 1407) from the day this Award comes into force.
2. Order the employer to compensate wage to the four workers from the date they were dismissed to the date they are reinstated.

Type of Award: Non-binding award

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 period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: