



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាធរកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 112/06-River Rich

Date of Award: 05 January 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

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

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **River Rich Textile Ltd.**

Address: Street 21, Prek Ta Pring Village, Setbo Commune, Saang District, Kandal Province

Telephone: 023 393 668 or 016 951 188 Fax: 023 393 368

Representative:

- | | |
|----------------------|------------------------|
| 1. Mr. Song Jianting | Company Director |
| 2. Mr. Chea Lichhay | Head of Administration |
| 3. Mr. Tai Sunheng | Administrator |

Worker party:

Name: **C.CAWDU**

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

Telephone: 012 709 509 or 012 988 623 Fax: N/A

Representative:

- | | |
|---------------------|------------------------|
| 1. Mr. Att Thon | Head of C.CAWDU |
| 2. Mr. Kong Atith | Secretary of C.CAWDU |
| 3. Mr. Chek Bun San | Ironing Section Worker |
| 4. Mr. Phin Sophea | Ironing Section Worker |
| 5. Mr. Hoeun Vuthy | Ironing Section Worker |

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KHMER ORIGINAL.**

6. Mr. Seng Soeun	Ironing Section Worker
7. Mr. Rin Pheakdey	Ironing Section Worker
8. Mr. Chheang Bunly	Ironing Section Worker
9. Mr. Pom Chenna	Ironing Section Worker
10. Mr. Tuon Touch	Ironing Section Worker
11. Mr. Srey Sary	Ironing Section Worker
12. Mr. Nhean Kimsan	Ironing Section Worker
13. Mr. Phuong Sophan	Ironing Section Worker
14. Mr. Nal Nak	Ironing Section Worker
15. Mr. Khov Chenda	Ironing Section Worker
16. Mr. Ly Born	Ironing Section Worker
17. Mr. Noy Peo	Dying Section Worker
18. Mr. On Chhekon	Packing Section Worker
19. Mr. Men Ny	Packing Section Worker
20. Mr. Kom Sophorn	Packing Section Worker
21. Mr. Hun Peo	Packing Section Worker
22. Mr. Say Savoeun	Packing Section Worker
23. Mr. Peo Chivorn	Packing Section Worker
24. Mr. Samrith Savuth	Packing Section Worker
25. Mr. Thon Sokneang	Packing Section Worker
26. Mr. Chuon Sopheak	Packing Section Worker

ISSUES IN DISPUTE

(In the non-conciliation Report)

1. The union demands the company to reinstate 19 workers. The employer does not agree to reinstate the 19 workers because they are temporary workers with written fixed duration contracts; the calculation of the benefits for termination of the contract can be done in two ways, either by calculating based on the fixed duration contract or undetermined labour contract.
2. The union demands the company to add workers who has been working for more than two months to be full-right workers. The employer does not agree because the workers who are the subject of the demand of the union are temporary workers with short period contract in writing.

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

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Prakas; and the Prakas on the Appointment of Arbitrators 099/06 dated 11 May 2006 (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. 235/06 KBV/KN dated 04 December 2006 was submitted to the Secretariat of the Arbitration Council on 04 December 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: 1st hearing - 12 December 2006 (from 08:00 a.m. to 12:00 p.m.)

2nd hearing - 22 December 2006 (from 08:00 a.m. to 12:00 p.m.)

Procedural issues:

Upon receipt of the complaint of workers regarding the demand for the company to improve working conditions in accordance with the Labour Law, on 24 November 2006, the Department of Labour Dispute assigned officer(s) to resolve and conciliate a dispute which, as a result, five issues of 7 issues were conciliated. The two non-conciliated issues were referred to the Arbitration Council on 04 December 2006. After receiving the case, all parties to the dispute were summoned by the Arbitration Council to the first hearing on 12 December 2006 at 8:00 a.m. and the second hearing on 22 December 2006 at 8:00 a.m.

Both parties were present at the arbitral hearing. The Arbitration Council attempted to conciliate further but none of the issues were conciliated. Therefore, the Arbitration Council will consider and make its decision based on the 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 by the company regarding request for permission for representative(s) of enterprise/establishment to attend the hearing, dated 12 December 2006.
- Letter by the company regarding request for permission for representative(s) of enterprise/establishment to attend the hearing, dated 22 December 2006.
- Letter to delegate rights to Chea Lichhay, head of administration, and Tai Sunheng, administrator, dated 21 December 2006.
- Summary statement of the collective labour dispute No. 112/06, dated 21 December 2006.

- Table of payment of wages from December 2005 to October 2006.
- Certificate of registration in the commercial list of the company, dated 03 August 2006.
- Statute of the company, dated 14 July 2006.
- Internal Work Rules of the company No. 042 SKBY dated 15 October 2004.
- Letter by the company No. 088/06 RVR to the head of the Secretary of the Arbitration Council regarding request to postpone the hearing date from 19 December 2006 to 22 December 2006.

Provided by the worker party:

- Job application of the 19 workers.
- Short period casual labour contract between the company and the 19 workers.
- Letter(s) by the 19 workers (with thumbprints) to delegate their rights to C.CAWDU to settle the demand of the 18 workers until the end of legal procedure.
- Complaint by workers (with thumbprints) to the head of C.CAWDU regarding request for the head of the C.CAWDU to help resolve their problems with the owner of River Rich Company.
- Statement by Mr. Att Thon, head of C.CAWDU, dated 06 December 2006.
- Letter by C.CAWDU to the directory of River Rich Factory regarding notification about the election to establish union at River Rich Factory.
- Letter to request for registration of the local CAWDU at River Rich Factory, dated 29 October 2006.
- Slip of registration of CAWDU, dated 11 November 2006.
- Statute of the local CAWDU at River Rich Factory, dated 29 October 2006.
- Minute of the election to establish CAWDU, dated 29 October 2006.
- List of names of participants in the election to establish the union at River Rich Factory (with signature), dated 29 October 2006.

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

- Report about collective labour dispute resolution at River Rich Company, dated 04 December 2006.
- Minute of collective labour dispute conciliation, dated 24 November 2006.
- Letter by the head of Department of Labour Dispute to inform Mr. Phin Sokha, No. 1878 KKBV/VK regarding request to register CAWDU at River Rich Factory, dated 19 December 2006.
- Letter by the head of Department of Labour Dispute to inform Mr. Chan Tola, No. 1693 KKBV/VK regarding request to register CAWDU at River Rich Factory, dated 21 December 2006.

Provided by the Secretariat of the Arbitration Council:

- Letter No. 572 LKA, dated 15 December 2006 to invite the workers to attend the hearing.
- Letter No. 573 LKA, dated 15 December 2006 to invite the employer to attend the hearing.

FACTS

River Rich company is located along street 21, Prek Ta Pring Village, Setbo Commune, Saang District, Kandal Province and employs approximately 1748 workers.

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

The Arbitration Council finds that:

Issue 1:

- The company terminated 19 workers whose contracts are short casual labour contracts of two months. The termination occurred on different dates:
 - On 31 October 2006, termination of 19 workers, among which 5 workers did not agree to the termination and demanded to return to work.
 - On 03 November 2006, termination of 98 worker, among which 13 workers did not agree to the termination and demanded to return to work.
 - On 21 November 2006, termination of one worker (at the expiration of the contract) who did not accept the termination and demand to return to work.
- The 19 workers are in the following name list:

No.	Worker's Name	Date of work start, 1 st time	Expiry Date of Labour contract, 1 st time	Date of work start, 2 nd time	Date the employer terminate the 2 nd time contract	Expiry Date of Labour contract, 2 nd time
1.	Chek Bunsan	21 Jun 2005	30 Nov 2005	14 Mar 2006	31 Oct 2006	30 Nov 2006
2.	Pom Chenna	08 Aug 2005	30 Jan 2006	03 Mar 2006	30 Oct 2006	30 Nov 2006
3.	Se Makra	15 Oct 2005	30 Jan 2006	14 Mar 2006	31 Oct 2006	30 Nov 2006
4.	Srey Sary	21 Jun 2005	30 Jan 2006	09 Mar 2006	03 Nov 2006	20 Nov 2006
5.	Seng Soeung	18 Aug 2005	30 Jan 2006	09 Mar 2006	03 Nov 2006	20 Nov 2006
6.	Phin Sophea	20 Jun 2005	30 Jan 2006	09 Mar 2006	03 Nov 2006	12 Dec 2006
7.	Nal Nak	18 Aug 2005	31 Jan 2006	03 Mar 2006	03 Nov 2006	20 Nov 2006
8.	Kong Sokheang	18 Aug 2005	30 Jan 2006	09 Mar 2006	03 Nov 2006	20 Nov 2006
9.	Tuon Touch	06 Jul 2005	31 Jan 2006	01 Mar 2006	03 Nov 2006	12 Dec 2006
10.	Khov Chenda	20 Jun 2005	30 Jan 2006	03 Mar 2006	03 Nov 2006	20 Nov 2006

No.	Worker's Name	Date of Work Commencement	Date the Employer terminate the Contract	Expiry Date of the Contract
11.	Chhean Bunly	25 Mar 2006	31 Oct 2006	03 Nov 2006
12.	Nhean Kimsan	23 Mar 2006	31 Oct 2006	30 Nov 2006
13.	Hoeun Vuthy	20 Jun 2006	03 Nov 2006	01 Nov 2006
14.	Phuong Phan	20 Apr 2006	03 Nov 2006	30 Nov 2006
15.	Yin Sambath	06 May 2006	03 Nov 2006	01 Nov 2006
16.	Kri Sokmeng	01 Mar 2006	03 Nov 2006	12 Dec 2006
17.	Rin Pheakdey	09 Mar 2006	03 Nov 2006	20 Nov 2006
18.	Bib Born	06 May 2006	03 Nov 2006	01 Nov 2006
19.	Noy Peo	22 Sep 2006	21 Nov 2006	21 Nov 2006

- Among workers who were terminated on 31 October 2006, six workers - Chan Tola, Tuy Thy, Thon Chanthuon, Yin Naro, Preap Narith, and Van Theng - each received US\$ 1,500 (one thousand five hundred US dollars) as termination compensation. The worker party claims that this is an act of buying workers (leaders of union) in order not to let these workers work in the company. However, the company party claims that the six workers came to negotiate with the company and put pressure on the company that they could make problems if the company did not agree with the termination compensation of US\$ 1,500 for each of them. Therefore, the company decided to give the amount to them to end the problem with the six people by agreeing to provide the amount of compensation which was more than stated in the law but was not against the law. The company claims that it has not discriminated against activities or the presence of the union.
- The worker party claims that the employer party terminated the labour contract of the 19 workers because they are activists who joined the union leader election through the notification dated 20 October 2006.
- In the hearing, both parties accepted that the union sent the letter to the company without enclosing the list of the names of 345 workers who participated in the election; there was only the list of the names of 14 candidates. However, the list of the names of 345 workers who participated in the election was sent to the Department of Labour Dispute on 24 October 2006.
- The company claims that it terminated the workers on two month labour contracts because it does not have any more work for them to do. However, the company will recruit them back when there is work again. For example, the company has recruited 40 workers to return on short term contracts of one month and two months from among those workers who were terminated recently. Workers agree

that the company has recruited workers who were terminated, on short term contracts.

- The local CAWDU at River Rich factory's registration was rejected by the Ministry of Labour through letter No. 1693 dated 21 November 2006 by the Department of Labour Dispute regarding the rejection to the candidacy of Mr. Chan Tola in the registration of the local CAWDU at River Rich Factory, and in letter No. 1878 dated 19 December 2006 by the Department of Labour Dispute regarding the rejection to the candidacy of Mr. Phin Sophea in the registration of the local CAWDU at River Rich factory.
- Workers claim that the company terminates their contract illegally before the expiration of the contract without proper reason because they did not commit any mistake; and the company does not take into consideration the benefits [workers provide by] working for the company; some workers have been working for more than one year but others just started working and the compensation [for both] is US\$ 300.
- The company claims that the termination of contract was according to the Labour Law and the reasons for termination are: 1) there is no work to perform; 2) the contracts of some workers have expired and some have not yet expired but the company agrees to pay them according to the law. The company suggests to pay the total sum of US\$ 300 for each worker or to make the calculation according to the law but the workers do not agree and request following the Labour Law.
- The two parties to the dispute agree that the 19 workers have never used their annual leave.

Issue 2:

- The worker party provided a list of about 300 workers (with thumbprints) to request C.CAWDU to help to resolve their problem at River Rich Factory.
- The worker party demands the company add workers who have been working for more than two months to be full-right workers because the workers [] are casual workers with short duration, written fixed duration contracts.
- Workers at the ironing section, packing section and dying section have 2 month contracts. The company renews the contracts each time without paying 5% of the wage at the end of each contract.
- There are 1748 workers in this factory with three types of contracts:
 - Contracts of two months duration
 - Contracts of one year duration
 - Undetermined duration contracts

REASONS FOR DECISION

Issue 1:

C.CAWDU demands the company to reinstate 19 workers because the company has committed union discrimination. The company asserts that the termination is not union discrimination but it is because the company has no work for the workers to perform. Therefore, the Arbitration Council will consider if the 19 workers who have been terminated are protected by the law and if this termination is an act of union discrimination.

Whether the 19 workers who have been terminated are protected by the Labour Law?

- For Mr. Srey Sary

Among the 19 workers, Mr. Srey Sary who was a candidate for the union election receives special protection from termination.

Paragraph 3 in article 3 of Prakas 305 provides, *“All workers and employees who are candidates for selection of union leaders shall also receive the protection from work dismissal like worker delegates. This protection lasts 45 days prior to the election and ends 45 days after the election if these candidates are not selected. The union shall inform the employers about this candidacy through every means deemed reliable.”*

As mentioned above in the content of article 3 of Prakas 305, all candidates for the election of union leaders are protected from being terminated from 45 days before the election until 45 days after the election if these leaders are not selected. In this case, the C.CAWDU provided list of names of 14 union leaders through a letter dated 20 October 2006 regarding the notification of union election at River Rich Factory. In that list of names, only Mr. Srey Sary has fulfilled the condition of special protection.

In previous awards, the Arbitration Council decided that article 3 of Prakas 305 means that a worker can receive special protection if (1) the worker is the type of worker entitled to special protection (2) the termination is done during the time of special protection and (3) the union has informed the employer about the candidacy of workers who are protected by any reliable means. (See Award 07/06-Dai Young, Issue 1; and 09/06-Grand Diamond City).

In this case, Mr. Srey Sary fulfills the first condition because he was a candidate for the union election. The second condition is also fulfilled as the employer terminated him during the time when he received special protection, i.e., he became candidate for election on 29 October 2006 and the termination was on 03 November 2006. The third condition is also fulfilled as the union provided notification about the election and Mr. Srey Sary as a candidate for the election. Therefore, the Arbitration Council considers that Mr. Srey Sary receives special protection from termination.

Generally, for cases in which the employers illegally terminates workers who are protected, the Arbitration Council orders the employers to reinstate the workers. However, in

this case, the Arbitration Council notices that Mr. Srey Sary's labour contract expired on 20 November 2006. [As of the present,] his contract has expired. In this case, the Arbitration Council cannot order the employer to reinstate Mr. Srey Sary when his contract has expired. Therefore, the Arbitration Council orders the employer to pay the termination compensation according to the Labour Law to Mr. Srey Sary. Therefore, the Arbitration Council finds that it is not necessary to discuss the workers' demand for Mr. Srey Sary case in the following points.

- For other 18 workers

Article 293 of the Labour Law states, *"The dismissal of a worker delegate or a candidate for worker delegate can take place only after authorisation from the Labour Inspector. The same protective measures apply to former worker delegate ... is subject to the same procedure."*

Paragraph 3 in article 3 of Prakas 305 provides, *"All workers and employees who are candidates for selection of union leaders shall also receive the protection from work dismissal like worker delegates. This protection lasts 45 days prior to the election and ends 45 days after the election if these candidates are not selected. The union shall inform the employers about this candidacy through every means deemed reliable."*

In addition, *article 4 of Prakas 305 provides this protection to union founders or all workers that are voluntary members of union. This protection lasts for 30 days after the date of registration of the union. To receive the protection, the union shall inform the employer about the names of people having to receive it by any reliable means. A copy of this information shall be sent to the Ministry of Labour and Vocational Training.*

As in the content of article 3 of Prakas 305 above, all candidates for election of union leaders are protected from termination for 45 days before the election and it lasts until 45 days after the election if the candidate is not selected. The Arbitration Council considers that for candidates for election, whether selected as union leaders or not, they are protected from being terminated after the employer knows about the candidacy. In this case, the C.CAWDU provided list of names of 14 union leaders through a letter dated 20 October 2006 regarding the notification of union election at River Rich Factory in which list only Mr. Srey Sary's name was mentioned. Other 13 workers - Mr. Thong Chanthuon, Mr. Chan Tola, Mr. Tuy Thy, Ms. Van Theng, Ms. Nhem Sokuntharith, Ms. Thorn Srey On, Mr. Preap Narith, Ms. Yem Pheanob, Ms. Lorn Kimnai, Mr. Yan Sok, Ms. Mean Hean, Ms. Son Lao, and Mr. Huon Rim - have agreed to the termination of the company. In the hearing, the worker party accepts that besides the list of the names of 14 candidates, the list of founding members (about 300 workers) was not sent to the company but the names were sent to the Labour Inspector. The Arbitration Council considers that, according to Prakas 305, article 3 above, the union should inform to the employer about these names by any means it deems reliable. Therefore, the

Arbitration Council considers that, among the 19 workers who demand to be reinstated, only Mr. Srey Sary is protected by law regarding termination.

However, article 4 of Prakas 305 provides protection to founding union members who become members voluntarily. This protection lasts for 30 days after the date of union registration. In this case, CAWDU sent a letter to the Ministry of Labour and Vocational Training to request for registration twice, dated 29 October 2006 and 02 December 2006, but both requests for registration were rejected by the Department of Labour Dispute because the Department could not prepare the documents for the Ministry to register the union. Therefore, the Arbitration Council considers that CAWDU does not have legal status to be representative of workers yet.

Is the termination of the 18 workers union discrimination?

Article 12 of the Labour Law states, “... *no employer shall consider on account of membership of workers’ union or the exercise of union activities to make decision on ... hiring ...termination of employment contract...*”

Article 279 of the Labour Law states, “*Employers are forbidden to take into consideration union affiliation or participation in union activities when making decision concerning recruitment ... and dismissal.*” In this case, the worker party claims that the company terminates the 18 workers because of union discrimination.

In previous cases, the Arbitration Council decides that if a party cannot provide evidence to support its claim, the Arbitration Council cannot accept the claim for consideration. (See Arbitral Award No. 79/05-Evergreen and 99/06-South Bay, Reason for Issue No. 1). The Arbitration Council also decides that as the worker party claims that this is union discrimination, it has to show official documents and evidence to support the claim. If the party does not show official documents and evidence that the employer terminates workers because of union discrimination, this claim will not be considered by the Arbitration Council. In this case, the company provides US\$ 1,500 as termination compensation to six workers - Chan Tola, Tuy Thy, Thon Chanthuon, Yin Naro, Preap Narith, and Van Theng; the worker party calls this an act of buying the union. The Arbitration Council finds that the 6 workers went to negotiate with the company by themselves. Thus other workers can go to negotiate for an amount in respect of the termination of contract with the company as well. However, up to now no workers have requested to negotiate with the company regarding the compensation for the termination of their labour contract.

In addition, the Arbitration Council finds that from 01 to 30 October 2006 [the company] terminated 19 workers, among which 5 workers demanded to return to work; from 2 to 3 November 2006 [the company] terminated 98 workers, among which 13 demanded to return to work; and from 03 to 21 November 2006, one worker was terminated (the end of contract) and the worker demanded to return to work. Among the 18 [remaining] workers

being terminated, some workers' contracts have expired and some have not yet expired. The Arbitration Council also found that among the 117 workers the company terminated, 40 workers have been re-recruited to work according to short duration contracts. The Arbitration Council considers that the termination of so many workers and re-recruitment of some workers back to work is the termination of old contracts and the preparation of new contracts for workers in order to not let workers accrue work seniority, as workers claim that the 18 workers had never used their annual leave.

Therefore, the Arbitration Council considers that the termination of the 117 workers and the 18 [remaining] workers who demanded to return to work does not constitute union discrimination but is the management of labour force resources according to the demands of company production.

Termination of 18 Workers:

Article 65 of the Labour Law states, "*A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.*"

Article 67 states, "*A labour contract signed with one consent for a specific duration must contain a precise finishing date.*"

In this case, the 18 [remaining] workers signed labour contracts which clearly provide for the starting date and the finishing date of 2 months. Among the 18 workers, two workers (Phin Sophea and Khov Chenda) have signed the two month contracts [and been employed] for the longest period, a total duration of 1 year and 5 months. For worker who signed the shortest contract and work for the shortest duration is Mr. Noy Peo.

Article 73 of the Labour Law states, "*A labour contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement on the condition that this agreement is made in form of writing in the presence of a Labour Inspector and signed by the two parties to the contract.*

If both parties do not agree, a contract of specified duration can be cancelled before its termination date only in the event of serious misconducts or acts of God.

The premature termination of the contract by the will of the employer alone for reason other than those mentioned in paragraphs 1 and 2 of this article entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract.

At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing is sent in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract."

Based on the above Article, the employer can terminate workers who have expired fixed duration contracts by providing termination compensation and other benefits as stated in the law. For the termination of those workers who have fixed duration contracts but which have not yet expired, the employer has to pay to the workers an amount equal to the wage which workers should have received until the end of the contract plus termination compensation and other benefits as stated in the law. Therefore, the Arbitration Council determines that the employer can terminate labour contracts of the 18 workers in conformity with what is stated in the law but has to provide termination compensation and any other compensation necessary for the carrying out of this termination based on the actual circumstances of each worker.

Article 166 of the Labour Law states that “*Unless there are more favourable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.*” In addition, Article 167 of the same law states, “*...If the contract is terminated or expires before the worker has acquired the right to use his/her paid leave, an indemnity calculated on the basis of Article 166 above is granted to the worker...*” This means that, regarding workers whose labour contracts are terminated and haven't used annual leave, such workers can receive wages for the number of days (one and a half day per month) in proportion to the duration they have worked for the company.

Therefore, the Arbitration Council considers that the company can terminate the 18 workers' labour contract but:

1. For workers whose labour contracts have expired: The company has to provide termination compensation of 5% of the wage workers have received during the contracting period plus compensation for annual leave which they have not taken from the date they started working for the company.

2. For workers who were terminated before the expiration of their labour contracts: [the employer] has to pay the workers who were terminated before the expiration of the contract in proportion to the wage the workers should have received until the end of the contract, plus termination compensation of 5% of the wage workers have[/should have] received during the contracting period plus compensation for annual leave which they have not taken from the date they started working for the company.

Because in this case workers do not ask the Arbitration Council to determine the compensation, compensation for termination of labour contracts and actual benefits for each worker whom terminated, the Arbitration Council considers that the employer has to calculate the amount and all benefits [] in order to properly pay each of the 18 workers the lawfully determined amount as described above.

Issue 2:

Workers demand the company to add those workers who have worked for more than two months to be full-right workers. The employer does not agree claiming that those are casual workers with written fixed duration contract. Full-right worker means regular worker.

Before considering this demand, the Arbitration Council will consider which worker is the party to the dispute in this Issue 2.

Article 268 of the Labour Law states, *“In order for their professional organisation to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statuses and list of names of those responsible for management and administration, with the Ministry in charge of Labour for registration...”*

Article 266 of the Labour Law states, *“... Professional organisations of workers are called “workers’ union”...”*

In this case, CAWDU at River Rich factory does not have proper registration at the Ministry of Labour. Therefore, the union does not receive rights and benefits provided by the Labour Law. This means that the union does not have legal right to represent its members.

In the hearing, the worker party raises that this demand is for approximately 300 workers whose names are in an attached list of names. However, the list of names can only show that approximately 300 workers made a petition to C.CAWDU to help resolve their labour dispute at River Rich factory. The Arbitration Council notes that the 300 workers’ petition to C.CAWDU is not a legal letter to delegate rights for C.CAWDU to represent them in this demand. The Arbitration Council also notices that only 19 workers, the party to the dispute in issue 1, made letter to delegate rights to C.CAWDU to represent them in this labour dispute and the 19 workers also came to the hearing. Therefore, the Arbitration Council considers that the worker party to this dispute is only 19 workers.

Article 9 of the Labour Law states,

“In accordance with the stability of employment, it is distinguished:

- regular workers*
- casual workers*

Regular workers are those who regularly perform a job on a permanent basis.

Casual workers are those who are contracted to

- perform a specific work that shall normally be completed within a short period of time.

- perform a work temporarily, intermittently and seasonally.*

In previous cases, the Arbitration Council decided that casual workers become regular workers if the workers work at least 21 days per month for two consecutive months. (See award No. 26/04-Sport Wear, Reason, issue 5; 12/06-HSN, Reason, issue 2; 44/06-Gold Fame, Reason, issue 6; and 47/06-Flying Dragon).

However, in Issue 1, the Arbitration Council decided to reject the workers' demand that the company reinstate them. The company does not have work relations with the 19 workers anymore and the workers' demand that the employer add them to be regular workers no longer exists.

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

DECISION

Issue 1:

- Reject the workers' demand that the employer reinstate the 19 workers and order the employer to pay the termination compensation for the 19 workers according to the law.

Issue 2:

- Decline to consider the demand of the 19 workers that the employer add workers who worked for more than two months to be full-right workers.

Type of Award: Non Binding

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 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 worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

Dissent by Arbitrator An Nan

Workers demand the company to reinstate them claiming that they have no mistake and they mention that the termination is union discrimination. The Company, on the other hand, argues that the termination is not union discrimination but it is because it has no work for workers to do. In order to decide on this demand, [the Arbitration Council] should consider if the termination is legally correct.

Because the worker union claims that this termination is a discrimination against the union, I consider on the fact and legal principle as follows:

The 19 workers are in ironing section and are member of CAWDU. Work in the company is differentiate into many different sections each requires different job in order to finish a product including weaving section, stitching section, fray trimming section, lamp controlling section, washing section, ironing section, collar label stitching section, stitching control section, and packing section. These works have to be done in a production line. This means that if the employer does not have enough work, it would affect not only the ironing section but all the sections. Thus, if the company does not have work, it should reduce in all sections to be proportionate to the number of workers in each section.

Sometimes the employer provide overtime work to workers in ironing section (provide 150% over normal wage). This means that sometimes the employer has more work than usual for workers to do.

In addition, the company party does not provide any explicit evidence to support that the ironing section does not have work to do. Therefore, for the claim of the company that there is no work in ironing section, I think it is not true.

In previous arbitral awards, the worker party who claim that there is union discrimination has responsibility to show evidence to support the claim that there is discrimination. (See award 50/05-Fortune and 93/06-Evergreen, Reason, issue 1)

The employer terminated workers' contracts on 31 October and 03 November 2006, three days after CAWDU held an election to establish a union at the factory on 29 October 2006. In addition, the employer terminated labour contract before the expiration date and

provided termination compensation. Generally, normal employer would keep workers whom s/he has paid to work for her/him because it makes more benefit than just paying to workers without having them to work. In this case, the employer provided USD 1,500 to 6 union leaders to terminate contracts, if compared to normal workers, only USD 300 is paid to them. This explains the plain intention of the company that it does not want to have this union in the company.

Article 12 of the Labour Law prohibits the employer not to discriminate against membership of worker union or exercise of union activities or use these as reason to make decision on hiring, or termination of labour contract.

In addition, Article 279 of the Labour Law states, *“Employers are forbidden to take into consideration union affiliation or participation in union activities when making decision concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”*

Based on the above Article, the employer at River Rich Company is forbidden from discrimination against activities in the union and uses this as a reason to terminate the labour contract of the 19 workers. I consider the termination of labour contract by the employer as a union discrimination. Therefore, the employer has to reinstate the workers and payback their wage from the day the company terminate their contract.

Date: January 5, 2007

Signature

Arbitrator An Nan