

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

**THE ARBITRATION COUNCIL**

Case: 113/04

Date of award: 13 January 2005

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**Jeou Star Company Name**

(Employer party)

**AND**

**Cambodian Labour Union Federation (CLUF)**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:** Ms. Pol Sokuthea, Administration Manager

**Address:** Sangkat Trompeng Krour sang, Khan Daunkor, Phnom Penh.

**Tel:** 012 788 879

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Chhim Phalla, Communication official from CLUF;  
2- Sreng Narith, Official from CLUF;  
3- Phan Chanra, Secretary from Union of Workers at Jeou Star factory;  
4- Prak Prathna, Assistant to Union of Workers at Jeou Star factory;  
5- Pov Sreynak, Assistant to Union of Workers at Jeou Star factory;  
6- Eun Ra, Worker at Jeou Star factory;  
7- Sok Chanthon, Worker at Jeou Star factory.

**Address:** Chhrouk Village, Sangkat Trapang Krosang, Khan Dangkor, Phnom Penh.

**Tel:** 012 670 237

**ISSUES IN DISPUTE:**

(In non-conciliation report)

The workers demand that the company reinstate three workers, Phan Chanra, Sok Chanthorn, and Miss. Eun Ra.

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

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labour Law (1997); the Prakas on the establishment of the Arbitration Council 338/02; the Prakas on the Arbitration Council 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Nomination of Arbitrators 103/04 and 265/04.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. However at the conciliation hearing both parties did not reach an agreement and a non-conciliation report number 2991/MoLVT dated 22 December 2004 was submitted to the Secretariat of the Arbitration Council on 23 December 2004.

#### **COMPOSITION OF THE ARBITRATION PANEL :**

Arbitrator chosen by the employer party:	<b>Mr. Mar Somborana</b>
Arbitrator chosen by the worker party:	<b>Mr. Liv Sovanna</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Kong Phallack</b>

#### **HEARING AND EVIDENCE:**

**Date and place of hearing:** 28 December 2004 at 2:00 p.m. at the Secretariat of the Arbitration Council.

**Witnesses and Experts:** N/A

#### **EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW :**

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

- 1- Business license number 3188 dated 25 November 1997;
- 2- Internal Work Rules dated 6 September 2001 and registered on 13 September 2001;
- 3- Letter of negotiation dated 30 November 2004 on a request to resolve three issues;
- 4- Notice to terminate the labour contract of worker Phan Chanra dated 14 December 2004;
- 5- The first one-year labour contract signed between the company and Phan Chanra dated 1 January and the second year labour contract between the company and Phan Chanra dated 1 January 2004;
- 6- Notice to terminate Ms. Eun Ra dated 14 December 2004;

- 7- Labour contract with a duration of ten months signed between the company and Ms. Eun Ra dated 1 March 2003, and a one year labour contract between the company and Ms. Eun Ra dated 1 January 2004;
- 8- Notice to terminate the labour contract of the worker named Sok Chanthorn dated 14 December 2004;
- 9- Labour contract of Mr. Sok Chanthorn dated 27 March 2002 and 1 January 2004;
- 10- Letter from the company dated 16 December 2004 sent to the Labour Inspection Department to terminate seven labour contracts of the workers;
- 11- Agreement to accept the severance pay of Mr. Sok Chanthorn dated 3 January 2005.

**Provided by the employee party:**

- 1- Registration certificate of the union at Jeou Star company number 642 dated 15 July 2004;
- 2- Identity card of Mr. Phan Chanra dated 3 September 2002;
- 3- Identity cards of union members of Ms. Eun Ra dated 8 May 2004;
- 4- Letter to recognize professional skills of Ms. Eun Ra dated 21 November 2003.

**Received from MoLVT:**

- 1- Non conciliation report on collective labour disputes number 2991/MoLVT dated 22 December 2004 of the Labour Inspection Department;
- 2- Minutes of collective labour disputes dated 2 December 2004.

**Testimony and [statements of] witnesses of the employees and the employer at the hearing.**

**Both parties agreed to a binding award.**

**CASE SUMMARY:**

Jeou Star Company is located at Sangkat Trompeng Kror sang, Khan Daunkor, Phnom Penh and consists of a total of 106 workers. On 2 December 2004 the Labour Inspection Department in Daunkor received a complaint from the workers at Jeou Star Company Industrial Co., Ltd., demanding the resolution of three issues.

On 17 December 2004 officials from the Labour Inspection Department in Daunkor came to conciliate the issues between the parties and two of the three issues were successfully conciliated. The non-conciliation issue was in respect of the reinstatement of three employees; the employer considered that their labour contracts were finished, and this non-

conciliation report was sent to the Arbitration Council through a letter dated 22 December 2004.

The Secretariat of the Arbitration Council invited both parties to participate in a hearing on 28 December 2004 at 2:00 p.m. at the Secretariat of the Arbitration Council. In the hearing the Arbitration Council encouraged the parties to continue negotiations in order to reach an agreement through a conciliation process. However, both parties did not understand each other and the conciliation process failed. Thus the Arbitration Council makes the following considerations and decisions:

**FINDINGS OF FACT:**

- Having examined minutes of the collective labour dispute conciliation;
- Having listened to the employer and the employees as described above and in the minutes of the hearing
- Having checked other relevant documents above

**We find that:**

**Worker: Phan Chanra**

The worker, named Phan Chanra, is a secretary of the union in the factory in the power section where there is a total of two workers. He started work for Jeou Star factory on 3 September 2002 as a casual worker for three months without having a written contract. Both parties recognized that the three month period was a temporary period and there was no contract signed.

After the end of the three month temporary period, both parties signed a labour contract two times, with the duration of each contract lasting one year. The first contract was signed on 1 January 2003 and the second one signed [had a duration] from 1 January 2004 to 1 January 2005. On 14 December 2004 the company gave notice to the worker, Mr. Phan Chanra, about his dismissal and the termination of his labour contract with the company because the contract was complete, his job was not well performed compared to other workers, and the company intended to decrease its staff.

The worker, Mr. Phan Chanra, rejected his termination and demanded that the company allow him to continue working because he had worked for more than two years in the factory. His labour contract is an undetermined duration contract, and as a secretary of the union of the company, he should be protected specifically by the law. In regard to his work performance, he has worked in the same way as the other [employees]. His termination may

be as a result of his involvement with the union, because before his dismissal; the employer had terminated the union leader in October 2004 and vice union leader in November 2004.

The employer responded that his labour contract was finished because the probation period was excluded. The company had reminded him 4 or 5 times to work hard but he did not listen. Regarding the reduction in the number of workers, the company really wanted to lay-off some staff because at times there is work, and at other times there is no work to do and too many workers. The worker, Mr. Phan Chanra; replied that the company just reminded him one time, but the company's representative had insisted that there were 4 or 5 reminders. In regard to the union, the company said that there was no discrimination because the union President resigned voluntarily and the union Vice President had an argument but s/he still works for the factory.

There are around 100 hundred members of the union in the factory, but the union does not yet have most representative status, although the union has applied for most representative status already. Forty workers have fixed duration contracts, and the company extended 33 contracts and dismissed seven workers. Based on the workers' argument in the hearing, the majority of the 33 workers [retained] are union members, as are the seven workers [dismissed].

In relation to the dismissal of Mr. Phan Chanra, [a significant number of] workers supported him and encouraged the employer to reinstate him, which the employer recognized.

**Ms. Eun Ra:**

Ms. Eun Ra began work at the factory in late December 2002 as a casual worker for three months without having a written contract. After ending the temporary period, the parties signed two labour contracts, the first one with a duration of eight months, from 1 March 2003 to 1 December 2003, and the second one with a one year duration, from 1 January 2004 to 1 January 2005. The total length of Eun Ra's labour contracts is one year and eleven months.

On 14 December 2004 the company gave notice to the worker, Ms. Eun Ra, about her dismissal and the termination of her labour contract with the company. The worker, Ms. Eun Ra, first accepted her dismissal, but after receiving instruction from her friends, she submitted her issue to the union rejecting the termination of the labour contract and demanding that the company allow her to continue working at the factory.

## **Worker, Sok Chanthorn**

On 3 January 2005, Mr. Sok Chanthorn agreed to take severance pay in respect of the termination of his labour contract with the company and agreed to withdraw his complaint.

### **REASONS FOR DECISION:**

#### **1- Jurisdiction of the Arbitration Council**

Under Chapter 12, Section 2 of the Labour Law, the Arbitration Council does not have jurisdiction to decide individual disputes, but the Arbitration Council understands that the Labour Inspectors and the Ministry of Labour and Vocational Training (MoLVT) have a duty to decide whether a dispute is an individual or a collective dispute before sending [the case] to the Arbitration Council. Generally, the Arbitration Council respects the decision made by the Labour Inspectors and the Ministry of Labour and Vocational Training to continue to resolve [the case] if there was no clear reason to object (see 10/03 - Jacqsintex and 02/04 - Cambodiana).

In this case the Arbitration Council agrees with the MoLVT's decision that the issue regarding termination of Phan Chanra's labour contract is a collective labour dispute because it meets the three conditions of a collective labour dispute as mentioned in Article 302:

- A - A collective labour dispute is any dispute that arises between one or more employers;
- B - [Relating to] an issue over working conditions, the exercise of the recognized rights of a professional organization and issues regarding relations between employers and workers; and
- C - [Is a] dispute could jeopardize the effective operation of the enterprise.

Regarding the termination of Phan Chanra's labour contract, the Arbitration Council finds that conditions A, B, and C above are fulfilled based on the following reasoning:

- Condition A is fulfilled because this issue was a complaint made by the union which is the workers' representative. The union is an organisation representing a group of workers. Thus, the condition that a collective labour dispute must involve a group of workers is fulfilled when the union files a complaint.

- Condition B is fulfilled because this issue is related to whether the workers were terminated due to their union's activities and enjoyed the rights vested by a professional organisation (rights to conduct any activities without interruption from the employer) because in the hearing the Arbitration Council finds that during the subsequent months, October,

November and December, the company terminated the union's President; Vice President and Mr. Phan Chanra, who is a secretary because he always appears to complain.

- Condition C is fulfilled because this dispute jeopardizes the function of the company's operations because the workers may conduct a strike regarding this issue. In the hearing, the employer and the workers' representatives agreed that there were many workers who supported the position that the company not dismiss Mr. Phan Chanra.

Thus the Arbitration Council agrees with the decision of the MoLVT, and the Labour Inspection Department who decided that this dispute is a collective labour dispute and sent it to the Arbitration Council to resolve the disputes.

However the termination of Ms. Eun Ra is not a collective labour dispute because this dispute does not fulfill all three of [the criteria] of a collective labour dispute as mentioned in Article 302.

- Condition A is fulfilled because this issue was made as a complaint by the union who is the workers' representative. The union is an organisation, which represents a group of workers.

- Condition B is not fulfilled because this dispute does not relate to whether the worker was terminated because he joined a union's activities and exercised the rights which are provided to unions (the [employee has the] right to [participate in] union activities without the interference of the employer).

- Condition C is not fulfilled because this may not jeopardize the function of the company's operations because in the hearing both parties agreed that there were not many workers in support of Ms. Eun Ra.

Thus, the Arbitration Council finds that this dispute is an individual dispute in accordance with Article 300 of the Labour Law, which states that "An individual dispute is one that arises between the employer and one or more workers or apprentices individually, and relates to the interpretation or enforcement of the terms of a labour contract." In addition, Article 301 states "...In [the] case of non-conciliation, the interested party can file a complaint in a court of competent jurisdiction within two months, otherwise the litigation will be lapsed." Hence, the worker, Eun Ra, must file her complaint in the Municipality of Phnom Penh Court within two months after the date of non-conciliation. Therefore, the Arbitration Council decides not to consider Ms. Eurn Ra's demand.

## **2- A termination of worker named Phan Chara**

The contract of Mr. Phan Chanra ended on 1 January 2005 and the employer gave notice about the termination of his contract by letter dated 14 December 2004.

In the hearing, the worker, Mr. Phan Chanra, demanded that the company reinstate him because his contract was a specified duration contract that lasted two years, including the probationary period of three months (so the total [period of his contract] lasted two years and three months). Thus, his labour contract converted to an undetermined duration contract. If his labour contract is an undetermined duration contract, the employer cannot dismiss him through non-renewal of a fixed duration contract. The employer had alleged that the termination of Phan Chanra's contract is correct because his labour contract is a fixed duration contract. The probationary period was not included. Thus, the employer can dismiss Mr. Phan Chanra by way of non-renewal of a fixed duration contract.

Based on the above facts, in order to make its decision, the Arbitration Council will consider the following points as below:

- A- Is the probation period a labour contract or not?
- B- Does a fixed duration contract convert to an unspecified duration contract [in this case]?
- C- Is the probationary period a fixed duration contract or an unspecified duration contract?

### **2-1 Is a probation period of the contract a labour contract?**

Article 65 of the Labour Law states that "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. It can be written or oral. It can be drawn up and signed according to local custom. If it needs registering, this shall be done at no cost. The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labour regulations even if it is not expressly defined." Furthermore, probationary contracts are described in Article 68 of the Labour Law; this Article is included in Chapter IV, which is titled "the Labour Contract"; this suggests that the Labour Law assumes that a probationary contract or probationary period is also a labour contract. Based on this Article; the Arbitration Council finds that a probationary period is also a labour contract because it establishes working relations between the worker and the employer.

## **2-2 Does a fixed duration contract become an unspecified duration contract?**

Article 67 of the Labour Law paragraph 2 states that "The labour contract signed with one consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years." In addition, Article 73 paragraph 5 states that "If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67."

In the past there was a conflict in respect of Article 67 of the Labour Law, with some understanding that a renewal of the contract refers to the activities of the renewal, and some understanding differently. In this case the length of the period mentioned in Article 67 paragraph 2 means the total length of the contractual period. In previous cases, the Arbitration Council has found that the length of the period specified in Article 67 paragraph 2 means the total length of the period of the contracts; thus, a fixed term contract automatically converts to an undetermined duration contract when the total term of employment exceeds two years (see 10/03-Jacqsintex; 02/04-Cambodiana; 81/04-Ever Green and 98/04-Great Union). Therefore, in this case if a probationary period is a fixed duration contract and if the total length of the period of employment is under a fixed duration contract that exceeds two years, then Mr. Phan Chanra has an undetermined duration contract.

## **2-3 Is a probationary period a Fixed Duration Contract or an Undetermined Duration Contract?**

In this case the worker Mr. Phan Chanra demanded that the company renew his labour contract because his contract became an undetermined duration contract as he worked for the factory for more than two years in addition to a three month probation period. In the hearing the Arbitration Council finds as follows:

- a- The worker, Mr. Phan Chanra, started to work in Jeou Star factory on 3 September 2002 as a casual worker for three months without a written contract. After the probationary period of the contract was complete, both parties signed two fixed duration contracts, each with a duration of one year. The first one was signed on 1 January 2003 and ended on 1 January 2004, and the second one was signed on 1

January 2004 with an end date of 1 January 2005. The total length of Mr. Phan Chanra's labour contracts was two years and three months.

Article 67(7) requires all fixed duration contract must be written, however the probation periods of the above workers were oral contracts. Thus, based on the principles [in the law], his contract is an undetermined duration contract.

But, Article 68 of the Labour Law states, "A contract for a probationary period cannot be for longer than the amount of time needed for the employer to judge the professional worth of the worker and for the worker to know concretely the working conditions provided. However, the probationary period cannot last longer than three months for regular employees, two months for specialized workers and one month for non-specialized workers."

According to this meaning, the Arbitration Council finds that a probationary period is a fixed duration contract of one, two or three months according to a different type of specialized skills.

Based on the above interpretation of a probationary contract, such contracts are a type of fixed duration contract.

So the Arbitration Council finds that Mr. Phan Chanra's labour contract lasted over two years [and therefore] must become an undetermined duration contract. As a result, in this case the employer did not renew Mr. Phan Chanra's labour contract, [meaning that actually in this case] the employer dismissed Mr. Phan Chanra.

Therefore, if the employer intended to dismiss Mr. Phan Chanra, who is a secretary of the union, the employer must follow the procedure of termination in respect of the fixed duration labour contract (see Article 116, which mentions wage payment; Articles 75 and 77 which mention prior notice; Article 89, which mentions severance pay; Article 91, which mentions damages; and Articles 166 and 167, which mention annual leave). Because of Mr Phan Chanra's status as a secretary leader, the employer must ask permission first from the Labour Inspector and must give a valid reason for the termination (see Articles 74; 79; 279 and 293, and Prakas 305/2001 and 313/2000).

Thus, the Arbitration Council finds that a termination of the labour contract of Mr. Phan Chanra is not correct according to law. Therefore the Arbitration Council decides that the employer must reinstate the worker, Phan Chanra.

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

**DECISION:**

- 1- Decline to consider the workers' complaint in respect of Ms. Eun Ra.
- 2- Order the employer to reinstate Phan Chanra immediately and provide him all wages from 1 January 2005 onwards after the Award comes into effect.

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

**Arbitrator chosen by the employer party:**

Name: **Mar Somborana**

Signed: .....

**Arbitrator chosen by the worker party:**

Name: **Liv Sovanna**

Signed: .....

**Chair of arbitration panel:**

Name: **Kong Phallack**

Signed: .....

*This Award will become binding after eight 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 the parties have agreed as such in writing before the notification of the Award, or if the parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*