



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 134/08-Chevron

Date of Award: 19 November 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

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

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

DISPUTING PARTIES

Employer party:

Name: **Chevron (Cambodia) Limited**

Address: Phnom Penh Center, 4th floor, Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh

Telephone: 012 444 999

Fax: N/A

Representative:

- | | |
|---------------------|--|
| 1. Mrs. Heng Sovann | Head of Human Resource Dept of Chevron Company |
| 2. Mrs. Ou Vuochly | Information and Legal Officer of Employer Federation |

Worker party:

Name: **Coalition of Cambodian Apparel Worker Democratic Union (C.CAWDU) and local union C.CAWDU of Caltex Company**

Address: #6 C, Street 476, Sangkat Tuol Tompoung 1, Khan Chamkarmorn, Phnom Penh

Telephone: 016 525 781

Fax: N/A

Representative:

- | | |
|-------------------|--|
| 1. Mr. Sar Mora | President of Cambodian Food and Service Workers Federation |
| 2. Mr. Nep Ty | President of local union of C.CAWDU |
| 3. Mr. Yoeun Ret | Vice-president of C.CAWDU |
| 4. Ms. Sok Phanny | Worker |

- 5. Mr. Nhim Noeurn Worker
- 6. Mr. In Prumcheanit Worker
- 7. Ms. Oum Narin Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company either provide medical [allowances] or buy medical insurance for petrol station attendants like other staffs who work in Star Mart and in the office. The company states that it is in the process of dealing with this request.
- 2- The workers demand that the company re-provide annual bonus (thirteenth month wage) the company used to provide in the past. The company states that it is in the process of forwarding this request to the higher company authority.
- 3- The workers demand that the company provide US\$3 seniority bonus to those workers who have been working from one year and up, US\$5 to those who have been working from three years and up and US\$ 10 to those who have been working from [five] years and up. The company states that it will try to put forward the request to the higher company authority.
- 4- The workers demand that the company increase by US\$30 the wage of workers who work as cashier, petrol station attendant and cleaner in order to cope with the increase in commodity prices and for them to have a decent living. The company states that it will also try to put forward the request to the higher company authority.
- 5- Leaders of the local union of Cambodian Food and Service Workers Federation at petrol station(s) demand that the company reinstate 1) In Prumcheanit, 2) Nhim Noeurn, and 3) Sok Phany. The company states that it cannot reinstate the 3 individuals because they committed serious misconduct according to the company's Internal Work Rules. However, the company will pay them their outstanding wage, overtime payment and unused annual leave.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor 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 was

unsuccessful, and the non-conciliation report No.1154 KB/AK/VK, dated 20 October 2008 was submitted to the Secretariat of the Arbitration Council on 20 October 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 3 November 2008 (at 8:30 a.m.)

Procedural issues:

On 10 June 2008 the Department of Labour Disputes received a complaint from Cambodian Food and Service Workers Federation (CFSWF), dated 9 June 2008 regarding the demand for improvement of some working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve this labour dispute and the last conciliation session was held on 9 October 2008 but did not reach a successful conciliation of the 5 non-conciliation issues. The 5 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 20 October 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the 5 non-conciliation issues on 3 November 2008 at 8:30 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the five non-conciliation issues. As a result, two issues were conciliated - issue 1 and issue 4 - as the workers party withdrew these issues from this case to wait for decision of the company. Therefore, in this case the Arbitration Council will consider only on issue 2, issue 3 and issue 5 based on the evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Letter to authorize Mrs. Ou Vouchly, Information and Legal Officer of the employer federation, dated 3 November 2008.
2. Request for visa on the Internal Work Rules of Caltex Cambodia Limited, dated 28 March 2007.
3. Internal Work Rules of Caltex Cambodia Limited No. 041 KKBV/AK/ATK, dated 10 April 2007.

4. Warning letter for the first time regarding carelessness work performance of Ms. Sok Phanny, dated 31 March 2008.
5. Letter to terminate employment contract of Ms. Sok Phanny, dated 3 April 2008.
6. Minutes regarding top-up phone card, dated 7 April 2008.
7. Minutes of interview with Mr. Sam Sokkong.
8. Interview with one sales staff at Kalmet Hospital regarding loss of US\$ 270 top-up phone card on 8 February 2008.
9. Interview with cashier staff regarding loss of US\$ 270 top-up phone card at Karlmet petrol station on 8 February 2008.
10. Letter to suspend employment of Mr. In Prumcheanits, dated 24 April 2007.
11. Letter to terminate employment of Mr. In Prumcheanit, dated 13 February 2008.
12. Minutes of inquiry with staff In Prumcheanit regarding a complaint by a customer that he did not refill the right amount of petroleum on 19 December 2007 at 7:58 a.m.
13. Index C regarding confidentiality, dated 12 January 2005.
14. Employment contract of Mr. In Prumcheanit, dated 12 January 2005.
15. Letter to terminate employment of Mr. Nhim Noeurn, dated 3 April 2007.
16. Minutes regarding client theft of Mr. Nhim Noeurn's card.
17. Incentive program based on workers' result of work for 2007.
18. Certificate of commercial registration No. 3925 PN.JBY of Chevron (Cambodia) Limited, dated 18 July 2008.
19. Code of conduct and business process of Chevron Company.

B. Provided by the worker party:

1. Statement regarding dispute at Caltex Cambodia Company (Chevron), dated 3 October 2008.
2. Certificate of union registration of the local union of C.CAWDU at Caltex Company, dated 12 June 2006.
3. Letter to notify about result of the convention of the local union of C.CAWDU at Caltex company, dated 25 August 2008.
4. Statute of the local union of C.CAWDU of petroleum service at Caltex Company.
5. Request letter to meet with the company to resolve some request, dated 21 January 2008.
6. Request letter to meet on 25 April 2008 at 9:00 a.m. at the director's office No. 007/08 SKJSK, dated 18 April 2008.
7. Request letter for a discussion on 6 March 2008 No. 005/08 SKJSK, dated 29 February 2008.
8. Letter to suspend employment of Mr. In Prumcheanit, dated 24 December 2007.

9. Complaint letter by Ms. Sok Phanny, dated 4 April 2008.
10. Letter to terminate employment of Ms. Sok Phanny, dated 3 April 2008.
11. Complain letter by Mr. Nhim Noeurn, dated 4 April 2008.
12. Letter to terminate employment of Mr. Nhim Noeurn, dated 3 April 2008.

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

1. Report of collective labour dispute resolution at Chevron Company No. 1154 KB/AK/VK, dated 20 October 2008.
2. Minutes of collective labour dispute conciliation at Chevron Company, dated 9 October 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the worker party to attend the hearing, No. 669 KB/AK/VK/LKA, dated 24 October 2008.
2. Letter of invitation to invite the employer party to attend the hearing, No. 668 KB/AK/VK/LKA, dated 24 October 2008.

FACTS

- Chevron Company is located in Phnom Penh Center, 4th floor, Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh. It employs approximately 600 workers including approximately 50 management staff and over 500 workers working in different petroleum stations all around the country.
- There are two unions in the company - Khmer Youth Trade Union (KYTU) and C.CAWDU which is one of the unions under CFSWF. CFSWF is the claimant in this case on behalf of C.CAWDU. According to the workers' claim, C.CAWDU has approximately 250 members who work in different Caltex stations but the union does not have the most representative status.

Issue 1: The workers demand that the company either provide medical [allowance] or buy medical insurance for petrol station attendants like other staffs who work in Star Mart and in office.

The workers agreed to withdraw this issue from this case to wait for the decision from the company as the company is in the process of forwarding this request to the company's representative in Singapore.

Issue 2: The workers demand that the company re-provide annual bonus (thirteenth month wage) the company used to provide in the past

- The company states that from 1996 to 2004 it used to provide an annual bonus in an amount equal to one month of wages to the workers. However, by the end of 2004 the company changed from providing the annual bonus to provision of a bonus based on work performance in order to ensure fairness for those who work hard.
- The workers acknowledge the employer's claim above but request that the employer follow what it practiced in the past because, by following the provision of bonus based on work performance, only a few staff can receive the bonus.
- The employer states that it does not agree to the demand. It suggests that for now the provision of bonus based on work performance should be implemented while the company will refer the request to Singapore. The employer adds that the provision of bonus based on work performance is based on the criteria mentioned in the Variable Bonus Program, VBP, starting from 2005. The employer promised to provide the Variable Bonus Program, VBP, to the Arbitration Council by 7 November 2008. The Arbitration Council received this document by the deadline. Based on the document the Arbitration Council received from the employer, the Arbitration Council finds as follows:
 - A. The program to provide bonus based on work performance is for COCO staff (manager, assistant, cashier, CSA, cleaner, expert and repairer (mechanic) of the stations)
 - B. The Variable Bonus Program has the following purposes:
 - Encourage team work because this has been organized as incentive for groups.
 - Encourage and motivate station staff to achieve high sales rate, provide good service to customers and keep the premises clean.
 - Increase accountability among staff.
 - Increase profits from sales and strengthen safety in the workplace.
 - C. Mechanism of the incentive is as follows:
 - Stations that have achieved 95 percent or more are entitled to one month of salary plus the multiplier (x 1.5)
 - Stations that have achieved from 90 to 94 percent are entitled to one month of salary plus the multiplier
 - Stations that have achieved from 80 to 89 percent are entitled to one month of salary
 - Stations that have achieved from 70 to 79 percent are entitled to one month of salary minus the multiplier
 - Stations that have achieved less than 69 percent are entitled to one month of salary minus the multiplier (x 1.5).

- The workers and the employer claim that there is no agreement, collective bargaining agreement, internal work rules or employment contract regarding this demand.

Issue 3: The workers demand that the company provide US\$3 seniority bonus to those workers who have been working from one year and up, US\$5 to those who have been working from three years and up and US\$ 10 to those who have been working from five years up

- The workers demand that the company provide US\$3 seniority bonus to those workers who have been working from one year and up, US\$5 to those who have been working from three years and up and US\$ 10 to those who have been working from five years and up for the reason that the market price of goods has increased.
- The employer does not agree but states that it has referred this request to Singapore.
- The workers and the employer claim that there is no agreement, collective bargaining agreement internal work rules or employment contract regarding this demand.

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Issue 4: The workers demand that the company increase by US\$30 the wage of workers

The workers agreed to withdraw this issue from this case to wait for the decision from the company as the company is in the process of forwarding this request to the company's representative in Singapore.

Issue 5: The workers demand that the company reinstate In Prumcheanit, Nhim Noeurn, and Sok Phany

1. Case of In Prumcheanit

- Mr. In Prumcheanit commenced his employment on 3 February 1999 as a petrol attendant at Pet Lok Sang Caltex station. Both parties agree that Mr. In Prumcheanit has an undetermined duration contract. The Arbitration Council found that Mr. In Prumcheanit's contract starts from 3 February 1999 without an ending date.
- According to the company, on 19 December 2007 a woman customer, who drove a red car, made a complaint that Mr. In Prumcheanit did not fill the right amount of gasoline of US\$ 10 for her car as the car petrol gage did not move up.
- In the hearing the employer claims that on 20 December 2007 the company started the investigation on the accusation by the customer. The company decided to suspend the employment of Mr. In Prumcheanit on 24 December 2007 and decided to terminate him on 13 February 2008.

Based on evidence the company provided, the Arbitration Council found as follows:

- Based on the minutes regarding Mr. In Prumcheanit, dated 20 December 2007, Mr. In Prumcheanit filled the right amount of gasoline of US\$ 10. The chief of the station inspected the computer and found the amount of US\$ 10. In the hearing, Mr. In Prumcheanit claims that the reason that he filled an additional 3 liters of gasoline for the customer to end the problem was because he was afraid that the company would terminate him should the customer make a complaint about him.
- Based on a set of minutes, undated but which had the company's seal of Sok Sokunthy, chief of Pet Lok Sang Caltex Station, Mr. In Prumcheanit filled the right amount of gasoline of US\$ 10 for 9.01 liters for a woman customer who drove a red Atoz car at about 8:00 a.m. However, the customer did not accept it because her petrol gage did not move up. In order to compromise and end this problem, Mr. In Prumcheanit bought three liters of gasoline for that customer and paid with his own money in order to bring an end to the problem.
- Based on the report printed from a computer on 19 December 2007, Mr. In Prumcheanit filled the gasoline for a customer at 7:57 a.m. that cost US\$ 10, equal to 9.01 liters. It was Silver Techron type, filled from pump 05, station 2. At 8:25 a.m. Mr. In Prumcheanit filled US\$ 3.3 of gasoline for a customer which is equal to 3 liters of Silver Techron type, filled from pump 05, station 2.
- Based on the minutes of Change Swee Wah, supervisor of the retail section, dated 24 December 2007, the company alleges Mr. In Prumcheanit did not filled gasoline up to an amount of US\$ 10, on 19 December 2007 at 8:00 a.m.
- In the hearing, the company representative acknowledged that Mr. In Prumcheanit did fill the right amount of US\$ 10. However, he filled additional 3 liters of gasoline for the customer without permission from the company, although he paid with his own money. Such act violated the company's Internal Work Rules, clause 13(c) regarding misconduct that is cause for termination of employment.
- Clause 13 of the Company's Internal Work Rules states, "Workers may be terminated from work for committing the following misconduct: ... (c) Violate Code of Conduct and Business Code." However, the company does not clearly explain about this Code of Conduct and Business Code.
- The Arbitration Council ordered the company to submit the Code of Conduct and Business Code to the Secretariat of the Arbitration Council by 7 November 2008. The company submitted the documents by the deadline but the Code of Conduct and Business Code did not clearly mention about additional refilling of gasoline for customer by paying one's own money.

- Mr. In Prumcheanit considers that the termination was not fair and demands that the company reinstate him as he did not commit any misconduct. The company party states that it cannot reinstate Mr. In Prumcheanit.

2. Case of Nhim Noeurn

- Mr. Nhim Noeurn commenced his employment on 31 August 2001 as a cashier in StarMart Shop in Bokor Caltex station. His employment contract is an undetermined duration contract and the two parties acknowledge that it is undetermined duration contract; the two parties did not provide the contract in writing to the Arbitration Council.
- The company accused him of being careless in performing his duty that led to the loss of a top-up phone card in an amount equal to US\$ 440 on 19 March 2008 at 10:10 p.m.
- Based on the minutes written by Mr. Nhim Noeurn himself and his clarification in the hearing, he acknowledges the loss as alleged by the company but he claims that he did not steal the card. He adds that the camera in StarMart affirms that he did not take the card, but customers did it. He did not know how customers stole [the card].
- The company decided to terminate him on 3 April 2008 for the reason that he violated the company's Internal Work Rules, point 13(g) regarding misconduct that is cause for termination of employment.
- Based on the inquiry minutes, the company was informed about this misconduct on 21 March 2008 and the company started the investigation immediately.
- Clause 13 of the Company's Internal Work Rules states, "Workers may be terminated from work for committing the following misconduct: ... (g) being careless in the performance of duty that leads to a loss in an amount equal to or more than US\$ 200.
- Mr. Nhim Noeurn considers that the termination was not fair and demands that the company reinstate him as he did not commit any misconduct. The company party states that it cannot reinstate Mr. Nhim Noeurn.

3. Case of Sok Phanny

- Ms. Sok Phanny commenced her employment on 9 January 1997 at Karlmet Caletex station as a petrol attendant then changed to work as a cashier in StarMart on 7 December 2005. Ms. Sok Phanny's employment contract is an undetermined duration contract and the two parties acknowledge that it is an undetermined duration contract; the two parties did not provide contract in writing to the Arbitration Council.
- The company accused Ms. Sok Phanny of being careless in performing her duty that led to the loss of a top-up phone card in an amount equal to US\$ 270 on 8 February 2008 at 5:30 p.m.

- The company issued the first warning letter on 31 March 2008 regarding her carelessness in performing her duty that led to the loss of the top-up phone card in an amount equal to US\$ 270 on 8 February 2008. The warning letter was signed by Chang Swee Wah, chief of retail sales in Cambodia.
- Based on the minutes in writing and clarification in writing, Ms. Sok Phanny accepts the loss of the phone card as alleged by the company but claims she did not steal it. Ms. Sok Phanny states that the camera in StaMart confirms that she did not take the card but customers did it. He did not know how the customer stole [the card]. Ms. Sok Phanny states that she reported this to police.
- The company decided to terminate Ms. Sok Phanny on 3 April 2008 for the reason that she violate the company's Internal Work Rules, point 13(g) regarding misconduct that is cause for termination of employment.
- Clause 13 of the Company's Internal Work Rules states, "Workers may be terminated from work for committing the following misconduct: ... (g) being careless in the performance of duty that leads to a loss in an amount equal to more than US\$ 200.
- Ms. Sok Phanny considers that the termination was not fair and demands that the company reinstate her as she did not commit any misconduct. The company party states that it cannot reinstate Ms. Sok Phanny.

REASONS FOR DECISION

Issue 2: The workers demand that the company re-provide annual bonus (thirteenth month wage)

In relation to this demand, the Arbitration Council found that there is no employment provision, employment contract, Internal Work Rules or collective bargaining agreement providing for this matter. Thus, the Arbitration Council considers that the workers' demand does not have a legal ground. Thus, the workers' demand is for interests as it is a demand for more than what is provided by law.

Generally, for interests disputes, the Arbitration Council always considers whether the union who is a party in dispute has most representative status. Based on the findings by the Arbitration Council, this union does not have the most representative status. The Arbitration Council considers that most representative status gives legal qualification to the union to negotiate and establish a collective bargaining agreement in a company and the legal right to bring a dispute to the Arbitration Council for resolution. In order to receive most representative status, Article 277 of the Labour Law 1997 states that the union needs to be registered and fulfill other conditions provided in this Article.

Here, the union does not have a legal right to enter into a collective bargaining agreement on behalf of all workers in the company (see Article 96(2B) and Prakas 305,

clause 9 paragraph 1). This is the right of the registered union with the majority of workers and which fulfills other requirements stipulated in Article 277 of the Labour Law. Thus, in order to be consistent with previous cases, the Arbitration Council considers that the union does not have legal qualification to represent workers to resolve a dispute related to collective benefits of all workers in the company.

In addition, Clause 43 of Prakas 099 SKBY, dated 21 April 2004 states, *“An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.”*

The Arbitration Council finds that if the Arbitration Council issues an award to resolve an interests dispute, it will become a collective bargaining agreement that applied to all workers in the factory and this will cause other workers to lose their right to strike on other dispute related to benefits in the future; thus it will create unfairness for other workers. (See *Arbitral Awards 57/04-Evergreen; 60/04-United Art, issue 3; 08/07-Siu Quinh, issue 3; 33/07-Goldfame, issue 2 and 51/07-Goldfame, issue 4*).

Furthermore, the Arbitration Council has concluded that a union without the most representative status does not have right to bring an interests dispute to the Arbitration Council for a resolution. (See *Arbitral Awards 57/04-Evergreen; 60/04-United Art, issue 3; and 08/07-Siu Qunih, issue 3*).

In this case, C.CAWDU does not have the most representative status. Thus, the Arbitration Council decides to decline to consider the workers' demand.

Issue 3: The workers demand that the company provide US\$3 seniority bonus to those workers who have been working from one year and up, US\$5 to those who have been working from three years and up and US\$ 10 to those who have been working from five years and up

In relation to this demand, the Arbitration Council found that there is no employment provision, employment contract, Internal Work Rules or CBA that mention about this matter. Thus, the Arbitration Council considers that the workers' demand does not have a legal ground. Thus, the workers' demand is for interests as it is a demand for more than what is provided by law.

Generally, for interests disputes, the Arbitration Council always considers the most representative status of the union who is a party in dispute. In this case, C.CAWDU does not have the most representative status. Thus, the Arbitration Council decides to decline to consider the workers' demand. (See *reasons for decision in issue 2 above*).

Issue 5: The workers demand that the company reinstate In Prumcheanit, Nhim Noeurn, and Sok Phany

1. Case of In Prumcheanit

Based on the findings of fact, In Prumcheanit claims that he is employed under undetermined duration contract. The Arbitration Council will consider what type of contract he has according to the Labour Law and whether his termination was valid.

The Arbitration Council found that the employment contract of Mr. In Prumcheanit does not have an expiration date thus it is undetermined duration contract in accordance with Article 67 of the Labour Law.

Article 74 of the Labour Law 1997 states, *“The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party. However, no layoff can be taken without a valid reason relating to the worker’s aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or company”.*

Previous Arbitral Awards interpret that the termination of an undetermined duration contract must be in accordance with the intention of Article 74 of the Labour Law and benefits are provided to workers according to Article 75, 89, 91, and 167 of the Labour Law. (See *Arbitral Award 97/04-Grace Sun, issue 1*).

According to contents of Article 74 of the Labour Law and Arbitral Award 97/04-Grace Sun, an undetermined duration contract can be terminated only when the termination has fulfilled the following conditions:

- a. *there is a valid reason*
- b. *there is prior notification*
- c. *if there is no valid reason, then termination payments, damages and payment in lieu of annual leave shall be paid.*

Based on the findings of fact above, the company terminated Mr. In Prumcheanit based on the reason that he violated the Code of Conduct and Business Code mentioned in clause 13(c) [of the Internal Work Rules]. The company did not explain what the violation of Code of Conduct and Business Code means. Thus, the Arbitration Council will consider whether Mr. In Prumcheanit committed serious misconduct as accused by the company.

Based on the above findings of fact, Mr. In Prumcheanit did not fill the wrong (less) amount of gasoline for the customer as accused by the company and the company also accepts this fact. Because Mr. In Prumcheanit did not want to have a problem with the customer, he spent an additional US\$ 3.33 that is equal to 3 liters of gasoline from his own pocket for the customer with an intention to end the problem; he was worried that if he had problem with the customer he might face termination of employment and the chief of the

petrol station also agreed this is what happened. Based on the clarification by the parties and having examined the evidence, the Arbitration Council finds that the company conducted an inspection and investigation of the case of Mr. In Prumcheanit but the company did not find that Mr. In Prumcheanit filled the wrong amount of gasoline as accused by the customer and it did not find that Mr. In Prumcheanit took the company's gasoline without payment.

Article 27 of the Labour Law states, *"Any disciplinary sanction must be proportional to the seriousness of the misconduct..."*

In this case, the employer did not provide any other evidence to prove that Mr. In Prumcheanit committed misconduct proportional to termination of employment and the Arbitration Council does not find that Mr. In Prum Cheanit committed misconduct that could lead to his dismissal.

Clause 34 of Prakas 099 SKBY, dated 21 April 2004 states, *"...Within the limitations of the Labor Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:*

A. orders to reinstate dismissed employees to their former or any other appropriate position;..."

Based on the above Prakas, the Arbitration Council decides to order the company to reinstate Mr. In Prumcheanit.

2. Case of Nhim Noeurn

Based on the findings of fact, both parties agreed that employment contract of Mr. Nhim Noeurn is an undetermined duration contract and the Arbitration Council did not find any document in writing submitted by the company. Thus, the Arbitration Council considers that his employment contract is undetermined duration contract according to Article 67 of the Labour Law.

The company accused Mr. Nhim Noeurn of committing the misconduct mentioned in clause 13(g) of the company's Internal Work Rules. The Arbitration Council will consider this case of termination of Mr. Nhim Noeurn as follows:

On 19 March 2008 Mr. Nhom Noeurn caused the loss of company's top-up phone card worth equal to US\$ 440. Mr. Nhim Noeurn acknowledges that he did cause the loss of the phone card of that value.

Arbitral Award 76/05-Global Footwear, issue 1, states, *"...The Arbitration Council finds that the misconduct is serious only when it is repeated, with support of concrete evidence or with clear specification in the Labour Law or the Internal Work Rules of the Company..."*

Based on the findings of fact and interpretation above, the Arbitration Council considers that Mr. Nhim Noeurn has committed misconduct which is an violation of clause

13(g) of the company's Internal Work Rules regarding being careless in performing his duty that led to the loss worth more than US\$ 200.

Article 26, paragraph 2, of the Labour Law states, *"The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question."*

Based on the contents of Article 26(2) of the Labour Law above, the Arbitration Council considers that the terms "if this action is not taken within a period of seven days" means that the employers needs to exercise his right to take a dismissal action only within 7 days; if the employer does not exercise this right, it is considered that the employer has renounced his right to terminate the workers from work within a period of 7 days from the date the employer himself or his representative learn about a worker' misconduct.

Based on the company's minutes of inquiry, the company learned about Mr. Nhim Noeurn's misconduct on 21 March 2008, decided to terminate him on 1 April 2008 and gave official notification on 3 April 2008. It was 10 calendar days from the date the company learned about Mr. Nhim Noeurn's misconduct to the date it decided to dismiss him. Thus, according to the Law it means that the employer has renounced its right to terminate Mr. Nhim Noeurn. Therefore, the company needs to reinstate Mr. Nhim Noeurn. (See Arbitral Award 64/06-Caltex, issue 1).

3. Case of Sok Phanny

Based on the findings of fact, both parties agreed that employment contract of Ms. Sok Phanny is an undetermined duration contract and the Arbitration Council did not find any document in writing submitted by the company. Thus, the Arbitration Council considers that her employment contract is an undetermined duration contract according to Article 67 of the Labour Law. Therefore, the Arbitration Council will consider the case of Ms. Sok Phanny as follows:

In this case, the company accused Ms. Sok Phanny of committing misconduct as mentioned in clause 13(g) of the company's Internal Work Rules because on 8 February 2008 she caused the loss of a top-up phone card worth US\$ 270. The Arbitration Council finds that Ms. Sok Phanny was actually careless which was the cause to the loss of top-up phone card that worth US\$ 270 and this is considered serious misconduct according to clause 13(g) of the company's Internal Work Rules above.

Arbitral Award 76/05-Global Footwear, issue 1, states, *"...The Arbitration Council finds that the misconduct is serious only when it is repeated, with support of concrete evidence or with clear specification in the Labour Law or the Internal Work Rules of the Company..."*

Based on the findings of fact and interpretation above, the Arbitration Council considers that Ms. Sok Phanny has committed misconduct which is in violation of clause 13(g) of the company's Internal Work Rules regarding being careless in performing her duty that led to the loss worth more than US\$ 200.

Article 26, paragraph 2, of the Labour Law states, *"The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question."*

Based on the minutes dated 8 February 2008, the company learned about this since the date of this report as the company issued a warning letter to Ms. Sok Phanny on 31 March 2008 and decided to terminate her on 2 April 2008. To the date of the decision of dismissal, it was more than 7 days.

Based on the contents of Article 26(2) of the Labour Law as above, the Arbitration Council considers that the employer has renounced his right to terminate Ms. Sok Phanny. Therefore, the termination of Ms. Sok Phanny is not in accordance with the Law. (For additional reasons for decision, see the case of Mr. Nhim Noeurn)

In conclusion, the company needs to reinstate Ms. Sok Phanny.

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

DECISION AND ORDER

Issue 2: Reject the workers' demand for the company to re-offer the annual bonus (13th month bonus)

Issue 3: Reject the workers' demand for the company to provide US\$ 3 to those workers who have been working from one year and up, US\$5 to those who have been working from three years and up and US\$ 10 to those who have been working from five years and up.

Issue 5: Order the company to reinstate In Prumcheanit, Nhim Noeurn, and Sok Phany from the date this Arbitral Award enters into effect.

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 time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: