



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 137/07 – MPA Security

Date of Award: 10 January 2008

ARBITRAL AWARD
(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

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

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

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

DISPUTING PARTIES

Employer party:

Name: **MPA Security Services International Ltd**

Address: Wat Bo Village, Salakomreuk Commune, Siem Reap District, Siem Reap Province

Telephone: 012 993 141

Fax: N/A

Representatives:

- | | |
|-------------------------|-------------------|
| 1. Mr. Khieu Van | Company's Lawyer; |
| 2. Mr. Nhueng Sieng Hak | Staff. |

Worker party:

Name: **Cambodian Tourism and Service Workers Federation (CYSWF)**

Address: Wat Bo Village, Salakomreuk Commune, Siem Reap District, Siem Reap Province

Telephone: 012 986 019

Fax: N/A

Representatives:

- | | |
|--------------------|--|
| 1. Mr. Sok Narith | Vice-President of CYSWF; |
| 2. Ms. Lean Chenda | Lawyer of CYSWF; |
| 3. Mr. Nhan Sony | Chairman of Organising and Education
Committee; |
| 4. Mr. Loy Sithen | Member of Organising and Dispute |

- | | |
|------------------------|------------------------------------|
| | Committee |
| 5. Mr. Chhun Bunchhean | President of CYSWF at MPA Company; |
| 6. Ms. Hok Pheara | Adviser of CYSWF; |
| 7. Mr. Sao Vann Then | Vice Secretary-General of CYSWF; |
| 8. Ms. Mok Leakna | Official of CYSWF. |

ISSUE IN DISPUTE

(In the Non-Conciliation Report)

Workers demanded that the company reinstate the 17 workers.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing which took place on 4 December 2007 was unsuccessful, and the non-conciliation report No. 517 was submitted to the Secretariat of the Arbitration Council on 7 December 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing:

First hearing: 18 December 2007 (from 02:00 p.m. to 02:30 p.m)

(The employer's lawyer requested to move the hearing date because he had not sufficient time to examine the documents)

Second hearing: 22 December 2007 (from 08:00am to 12:00pm)

Procedural issues:

On 2 November 2007, the Siem Reap Provincial Department of Labour and Vocational Training received a complaint from workers regarding union discrimination and the dismissal of 17 workers on 18 July 2007. Having received the complaint, the Siem Reap Provincial Department of Labour and Vocational Training designated its officials to conciliate the dispute. However the last conciliation session held on 30 November 2007 did not achieve a

positive result. The non-conciliated issue was submitted to the Secretariat of the Arbitration Council on 7 December 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party of MPA Company to a hearing to conciliate the non-conciliated issue on 18 December 2007 at 2:00 p.m. Both parties were present as summoned by the Arbitration Council. However, on 18 December 2007, which was the first hearing date, the employer's lawyer asked to postpone the hearing because he did not have sufficient time to review the documents. The Arbitration Council decided to postpone the hearing date as requested by the employer party. The Arbitration Council informed the Secretariat of the Arbitration Council to summon the disputing parties to a hearing to conciliate the non-conciliated issue on 22 December 2007 at 8:00 a.m. Both parties were present as summoned by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the non-conciliated issue as stated in the non-conciliation report of the Siem Reap Department of Labour and Vocational Training but was not able to resolve the issue. Therefore, in this case the Arbitration Council considers the issue based on the evidence and statements of both parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Trade Registration Certificate of MPA;
2. Statute of MPA dated 16 June 2002;
3. The confirmation on the reading of MPA's Internal Work Rules of worker delegates dated 29 November 2006;
4. Internal Work Rules of MPA dated 11 December 2006;
5. Agreement contract of security guards at MPA dated 12 June 2007;
6. Letter No. 507/04 stating the attitude of Oeun Sinuon dated 29 November 2004;
7. Letter No. 026/05 stating the attitude of Chhoy Chanra dated 31 March 2005;
8. Letter No. 496/05 stating the attitude of Hok Pheara dated 20 September 2004;
9. Curriculum Vitae of Chhun Bun Chhean, workers, dated 27 March 2007;
10. Letter No. 002/05 stating the attitude of Mean Sok Leng dated 31 March 2005;
11. Order No. 03 dated 23 October 2006 on the improvement of the Security and Safety at International Airports in Cambodia;

12. Complaint of Pov Sophin and Chhum Yun against security guard Sean Sophat dated 8 June 2007;
13. Pov Sophin's and Chhum Yun's report on the misconduct of Sean Sophat dated 8 June 2007;
14. Admittance Letter of Sean Sophat dated 1 May 2007;
15. Request of the security guards at MPA for the reinstatement of Sean Sophat dated 8 June 2007;
16. Letter No. 766 dated 1 August 2007 on the request for registration of MPA Security Guard Trade Union;
17. Notification on the election of MPA Security Guard Trade Union dated 9 July 2007;
18. Request for the registration of MPA Security Guard Trade Union dated 10 July 2007;
19. Statute of MPA Security Guard Trade Union dated 10 July 2007;
20. Invitation No. 034 dated 28 August 2007 to attend the labour dispute conciliation;
21. Invitation No. 059 dated 15 November 2007 to attend the labour dispute conciliation;
22. Minute of the collective labour dispute conciliation dated 30 November 2007;
23. Minute of the collective labour dispute conciliation dated 31 August 2007;
24. Authorisation letter of General Director of MPA Company dated 22 August 2007;
25. Weekly report of MPA – Siem Reap dated 14 May 2007;
26. Report dated 10 June 2007 on the disorder caused by Sean Sophat;
27. Report on the dismissal of 17 workers at MPA – Siem Reap dated 8 August 2007;
28. Letter No. 41 dated 6 September 2007 on the Apprenticeship Inspection;
29. Curriculum vitae of Sean Sophat dated 26 March 2007;
30. Letter No. 336/04 stating the attitude of Sean Sophat dated 25 December 2004;
31. Disciplinary measure against Hem Hean dated 3 August 2007;
32. Disciplinary measure against Yi Chanthea dated 3 August 2007;
33. Disciplinary measure against Ear Bona dated 8 August 2007;
34. Disciplinary measure against En Sambath dated 8 August 2007;
35. Disciplinary measure against Hok Pheara dated 8 August 2007;
36. Disciplinary measure against So Ny dated 8 August 2007;
37. Disciplinary measure against Oeun Sinuon dated 8 August 2007;
38. Curriculum vitae of Sun Rom Sel, worker, dated 28 March 2007;
39. Curriculum vitae of Hem Hean, worker, dated 30 March 2007;
40. Curriculum vitae of So Ny, worker, dated 31 March 2007;
41. Curriculum vitae of Eang Bonna, worker, dated 30 March 2007;
42. Curriculum vitae of In Sambath, worker, dated 28 March 2007;
43. Curriculum vitae of Chhun Bunchhean, worker, dated 27 March 2007;
44. Curriculum vitae of Hok Pheara, worker, dated 28 March 2007;

45. Curriculum vitae of Oeun Sinuon, worker, dated 26 March 2007;
46. Curriculum vitae of Yi Chanthea, worker, dated 29 March 2007;
47. Curriculum vitae of Chin Leat, worker, dated 26 March 2007;
48. Curriculum vitae of Chhak Saroeung, worker, dated 25 March 2007;
49. Curriculum vitae of Mean Sok Long, worker, dated 30 March 2007;
50. Compact Disk recording the reporting of the issue from the Radio Free Asia.

Provided by the worker party:

1. Supporting Petition of MPA staff at the Siem Reap International Airport;
2. List of union members dismissed by MPA Company;
3. Minute of enquiry of Mr. Bun Chhean dated 12 November 2007;
4. Minute of the collective labour dispute conciliation dated 30 November 2007;
5. Statute of MPA Security Guard Trade Union dated 10 July 2007;
6. Minute of enquiry of MPA Company dated 16 November 2007;
7. List of participants in the election to establish trade union at MPA Company dated 10 July 2007;
8. Rules for collective agreement bargaining.

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

1. Report No. 517 on the non-conciliated labour dispute dated 4 December 2007 of Siem Reap Department of Labour and Vocational Training;
2. Minute of the collective labour dispute conciliation.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 621 to the employer to attend the first hearing dated 13 December 2007;
2. Invitation No. 620 to the worker party to attend the first hearing dated 13 December 2007;
3. Invitation No. 641 to the employer to attend the second hearing dated 18 December 2007;
4. Invitation No. 640 to the worker party to attend the second hearing dated 18 December 2007;

FACTS

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

The Arbitration Council finds that:

- MPA is a company providing security services and it employs around 2,000 workers.
- The Cambodian Tourism Trade Union Federation and MPA Security Workers Trade Union at Siem Reap International Airport were the claimants in this case. The MPA Security Workers Trade Union at Siem Reap International Airport is not yet registered because the Department of Labour Dispute rejected its registration (via letter No. 766 dated 1 August 2007) because the three union leaders were not eligible to lead the union.
- On 9 July 2007, the Cambodian Tourism and Service Workers Federation (CYSWF) notified the Director of the MPA Security Company of the election of the leaders of MPA Security Workers Trade Union at Siem Reap International Airport.
- On 10 July 2007, the election of leaders of MPA Security Workers Trade Union at Siem Reap International Airport was held with 53 participants.
- As a result, Chhun Bun Chhean was elected President, Chhoy Chanra was elected Vice-President and Mean Sok Lon, was elected Secretary.
- On 10 July 2007, the MPA Security Workers Trade Union at Siem Reap International Airport applied for the registration at the Ministry of Labour.
- On 20 July 2007, the company accepted the documents related to the election and the statute of MPA Security Workers Trade Union at Siem Reap International Airport.
- On 31 July 2007, the Department of Labour Disputes received a file of documents from the MPA Security Workers Trade Union at Siem Reap International Airport applying for registration.
- On 1 August 2007, the Department of Labour Dispute received a set of documents from the MPA Security Company objecting to the candidacy of the leaders of MPA Security Workers Trade Union at Siem Reap International Airport because they were not eligible, adding that Chhun Bun Chhea, Union President, was born in 1983.
- On 1 August 2007, the Department of Labour Disputes notified the union of the objection of the company that the Union President was not eligible and asked the union to revise the documents in compliance with Article 269 of the Labour Law, stating that the Union President must be at least 25 years of age.

Issue: Workers demanded that company reinstate the 17 workers

- The 17 workers were employees of the MPA Security Company. They were trained by the MPA Security Company about security skills and operation of the X-ray machines and they were designated to work at Siem Reap International Airport. None of the workers had written contracts.

- Based on the documents received by the Arbitration Council, the 17 workers were union leaders, advisers, and members and the company officially dismissed them on 3 August 2007 and 8 August 2007.
- 12 workers were officially dismissed on 3 August 2007. Their names, employment dates, dismissal dates, and other relevant information are as follows:

No.	Name	ID	Employment date	Dismissal date	Position
1	Chhoy Chanra	2185	10 Jan 2003	3 August 2007	Vice-President
2	Mean Sok Leng	2431	1 Nov 2003	3 August 2007	Secretary
3	Sun Rom Sel	3441	19 Sep 2005	3 August 2007	Member
4	Hem Han	3444	19 Sep 2005	3 August 2007	Member
5	Chhin Leat	3929	1 May 2006	3 August 2007	Member
6	Chheak Saroeun	4454	1 Dec 2006	3 August 2007	Member
7	Chhun Bun Chhean	4457	1 Dec 2006	3 August 2007	President
8	Toy Sok Thon	4500	1 Dec 2006	3 August 2007	Member
9	Yi Chanthea	4505	1 Dec 2006	3 August 2007	Member
10	Vong Thy	4950	1 Apr 2007	3 August 2007	Member
11	Hean Sali	4913	1 Apr 2007	3 August 2007	Member
12	Morn Sokha	4926	1 Apr 2007	3 August 2007	Member

- 5 workers were officially dismissed on 8 August 2007. Their names, employment dates, dismissal dates, and other relevant information are as follows:

No.	Name	ID	Employment date	Dismissal date	Position
1	Eang Bona	3680	10 Dec 2005	8 August 2007	Adviser
2	En Sambath	3930	1 Nov 2003	8 August 2007	Adviser
3	Hok Pheara	3446	19 Sep 2005	8 August 2007	Senior Adviser
4	So Ny	3975	1 May 2006	8 August 2007	Adviser
5	Oeun Sinuon	2863	1 Nov 2004	8 August 2007	Adviser

- In the hearing, the company's lawyer claimed that the decision to dismiss the 17 workers was not due to union discrimination. The main cause of the dismissal was that Siem Reap International Airport no longer required the 17 workers. They violated the agreement dated 12 June 2007, which states that all the employees shall comply with the requirements imposed by the company and not object to the principles established by the company to ensure security and safety at Siem Reap International

Airport. Further, they did not even comply with the company's direction on 18 July 2007.

- The company's lawyer further claimed that the reason the Siem Reap International Airport no longer required the 17 workers was because the 17 workers staged a strike and issued a petition supporting Sean Sophat, whose card was taken and was dismissed on 18 June 2007. Their protest caused chaos at the airport and it upset the manager of the Siem Reap International Airport [who] requested that the 17 workers be replaced. The lawyer claimed that there was no written request from the Siem Reap Airport manager and he did not know the date the Siem Reap Airport manager made the request. The company's lawyer claimed that on 28 July 2007 the company called for a meeting among all its employees and told the workers about their transfer from Siem Reap International Airport to Phnom Penh International Airport because Siem Reap International Airport had requested that the company find new workers to replace the 17 workers who caused chaos on 8 June 2007. The 17 workers did not comply with the company's direction. After that the company transferred them to different organisations in Siem Reap but they refused to work. The various organisations where they were transferred included ANZ Royal on Venerable Tep Vong Street, ANZ Royal Phsar Chas, Lin Rattanak Hotel, Sofitel Royal Angkor, Amansara Angkor Century, and Khmer Angkor.
- The workers claimed that they made the demand and argued that the action brought against Sean Sophat by the company was incorrect. Sean Sophat was immediately dismissed without prior notice or explanation of the cause.
- Ms. Hok Pheara, Senior Union Adviser, claimed that all workers signed an agreement on 12 June 2007 and the reason they did not comply with the company's direction on 18 July 2007 was because most of their homes are in Siem Reap and Kompong Thom. They do not have homes in Phnom Penh and the reason they were not willing to work at the designated organisations in Siem Reap was because they were trained in airport and x-ray skills. The work in the designated organisations in Siem Reap did not match the skills they had been trained in. Therefore, all the workers demanded to return to work at Siem Reap International Airport.
- The union's lawyer claimed that the dismissal of the workers was due to union discrimination because the dismissal was made after the company was notified of the union's establishment. The company's lawyer claimed that the decision to dismiss the 17 workers on the given dates was not due to the union discrimination, but it was because they did not comply with the company's direction.
- The union's lawyer claimed that the same company manages both the Siem Reap International Airport and Phnom Penh International Airport; the Cambodian Tourism

and Service Worker Federation (CTSWF) also has a union office at Phnom Penh International Airport and the union made a collective agreement with the employer. The collective agreement made at Phnom Penh International Airport also covers workers in the Siem Reap International Airport.

- The company's lawyer claimed that the company does not recognize the leadership candidates of the MPA Security Worker Trade Union at Siem Reap International Airport because they are under the eligible age as set out in the law and the union had not yet been registered. The union's lawyer claimed that they will re-submit the documents in relation to the issue of union leaders being underage.
- Both parties accepted that the 17 workers had worked in Siem Reap International Airport since they commenced [employment at the company] adding that it was the first [time a] transfer [had been made] and this transfer occurred after the workers had established the union.
- The company's lawyer claimed that Siem Reap International Airport would no longer employ the 17 workers. Therefore, the company had no choice other than to dismiss them.
- The company's lawyer claimed that the company did not directly notify the workers of their dismissals because they knew that the company had dismissed them since 18 July 2007. The reason was because they did not comply with the company's direction. However, the company notified the Deputy Commissioner of Siem Reap Police Department in charge of security of the dismissal of the 17 workers' because the [workers] gave up work on 8 August 2007.
- Article 10 of the company's Internal Work Rules states that, "Any worker, who engages in intentional misconduct of which the company has evidence, the company will discipline him or her according to the level of seriousness of the misconduct as follows:
 - o Minor misconduct: Firstly, the person will receive verbal education and the misconduct will be recorded in his or her file. If the same misconduct is repeated, he or she will receive a written warning. A second written warning will be given, where the person continues to engage in the misconduct; and thirdly, he or she will be dismissed.
 - o Medium misconduct: Firstly, he or she will receive a written warning and the misconduct will be recorded in his or her file. Secondly, he or she will be suspended without pay for a short period of time (not more than 7 days) where he or she continues to engage in the misconduct, and thirdly, he or she will be dismissed.

- For serious misconduct as stated in the Labour Law, a worker will be dismissed. If necessary, the company will submit the case to the competent ministries for settlement in accordance with the applicable law.

REASONS FOR DECISION

Issue: Workers demanded that the company reinstate the 17 workers

In this case, workers demanded that the company reinstate the 17 workers who were dismissed by the company due to union discrimination. The employer did not agree to reinstate the 17 workers because the workers had breached the agreement and they did not comply with the company's direction. The Arbitration Council considers the issue as follows:

- Was the dismissal of the 17 workers due to union discrimination?
- Was the dismissal of the 17 workers in compliance with the law?

1. Was the dismissal of the 17 workers due to union discrimination?

Based on the above facts, both the employer and the workers agreed that the workers did not have written contracts; thus, the workers' labour contracts were unspecified duration contracts as stated in Article 67(7) of the Labour Law.

Based on the above facts, the worker party claimed that the dismissal was due to union discrimination.

In general, the Arbitration Council has held that the worker party bears the burden of proof in relation to an allegation of union discrimination (see Arbitral Awards 90/06 – Evergreen, Issue 1, 112/06 – River Rich, Issue 1, 01/07 – Supreme, Issue 1).

In this case, the worker party claimed that the dismissal of the 17 workers was made after the union establishment. Furthermore, the worker party did not provide testimony or evidence to show that the employer dismissed the 17 workers because of union discrimination. Therefore, the Arbitration Council considers that the worker party did not provide evidence to support its allegation that the employer dismissed the 17 workers due to union discrimination.

Therefore, the Arbitration Council decides that there was insufficient evidence to assume that the dismissal of the 17 workers was due to union discrimination.

2. Was the dismissal of the 17 workers in compliance with the law?

In the hearing, the employer party claimed that the dismissal of the 17 workers took place because they did not comply with the company's direction. They refused to work in Phnom Penh International Airport and other organizations including ANZ Royal and other hotels as outlined earlier [as directed] on 18 July 2007. [The employer alleged that] failure to

comply with the company's direction could amount to misconduct, which would allow the company to dismiss the [workers].

Article 83 of the Labour Law states that, "*The following are considered to be serious offenses:.. B. On the part of the worker*

- 1. Stealing, misappropriation, embezzlement;*
- 2. Fraudulent acts committed at the time of signing (presentation of false documentation) or during employment (sabotage, refusal to comply with the terms of the employment contract, divulging professional confidentiality).*
- 3. Serious infractions of disciplinary, safety, and health regulations.*
- 4. Threat, abusive language or assault against the employer or other workers.*
- 5. Inciting other workers to commit serious offenses.*
- 6. Political propaganda, activities or demonstrations in the establishment."*

Based on the content of Point 3 of Article 83 (B) above, the Arbitration Council considers that serious infractions of disciplinary regulations is serious misconduct of workers but this article does not state what the disciplinary regulations are. In this case, the Arbitration Council examined the company's Internal Work Rules and found that no part of the company's Internal Work Rules states that failure to comply with the company's Internal Work Rules is considered to be serious misconduct. However, in this case, the workers claimed that they were not willing to comply with the company's management. Thus, the Arbitration Council considers whether or not the workers have the right to comply with the company's rules. The Arbitration Council will also consider whether or not failure to comply with the company's management is considered to be misconduct which [could] lead to the dismissal of the workers.

Article 2(2) of the Labour Law states that, "*All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously.*"

In the previous cases, the Arbitration Council considered that Article 2 meant that the employer party has the right to manage and direct the company including the transfer of workers from one place to another, but the employer shall comply with the following conditions: 1) no deduction of wage, 2) workers shall not be transferred to a location which is far away, 3) the work shift shall not be changed from day to night or from night to day and 4) the transfer shall not be [to a position which] involves a substantially different skills set (see Arbitral Awards 17/03 and 18/03 – Ho Hing, Issue 1).

In this case, the Arbitration Council also agreed with the ruling of the arbitrators in the above case. The employer certainly has the right to manage and direct the company including the transfer of workers from one place to another but the employer shall comply

with some conditions including 1) no deduction of wage, 2) workers shall not be transferred to a location which is far away, 3) the work shift shall not be changed from day to night or from night to day and 4) the transfer shall not be [to a position which] involves a substantially different skills set.

In this case, the workers have x-ray skills and their homes were in Siem Reap and Kompong Thom, and the 17 workers were designated by the company to work in Phnom Penh International Airport which is too far from their homes; and the company designated them to work at other organisations in Siem Reap which required them to use skills which they had not been trained in. Thus, the Arbitration Council considers that the management of the employer was not appropriate; therefore, the workers could refuse to comply with the company's management. However, it was also the workers' fault that they did not comply with the company's direction by refusing to work at Phnom Penh International Airport and other targets in Siem Reap without attempting to negotiate with the company in the first place because it [could have affected] security. The workers' absence at the designated organisations could have affected security and the property of MPA Security Company's clients.

However, Article 27 of the Labour Law states that, "*Any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labour Inspector is empowered to control this proportionality.*"

Based on the above article, the Arbitration Council considers that the company's dismissal of workers was a serious disciplinary action because the company required the workers to work in Phnom Penh International Airport which is too far from their homes and transferred them to other organisations in Siem Reap where [they were required to use skills] they had not been trained in. Furthermore, the dismissal was not conducted in compliance with the disciplinary regulations set in Clause 10 of the Internal Work Rules, [which provided] that workers shall [firstly] be warned verbally and in writing.

Moreover, Article 26 of the Labour Law states that, "*An employer can not impose disciplinary action against a worker for any misconduct of which the employer or one of his representatives has been aware for over fifteen days.*"

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 above article, the Arbitration Council considers that 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 been informed about the serious misconduct. In this case, the workers failed to comply with the company's direction on 18 July 2007, but the employer did not take any official action to dismiss the 17

workers [on that day]. The employer waited until 3 August 2007 and 8 August 2007 to dismiss the 17 workers. Therefore, based on the content of Article 26 of the Labour Law the Arbitration Council considers that the employer renounced its right to dismiss the workers because the employer's action to dismiss the workers was taken more than 7 days after its knowledge of the misconduct.

Thus, the Arbitration Council considers that the dismissal of the 17 workers was not in compliance with the law. Therefore, the employer shall reinstate the 17 workers.

However, in this case, the workers demanded to return to work in Siem Reap International Airport but not to other places as directed by the MPA Security Company. Based on the above interpretation, the employer has the right to manage and direct the company including the transfer of workers from one place to another but the employer shall comply with some conditions including 1) no deduction of wage, 2) workers shall not be transferred to a location which is far away, 3) the work shift shall not be changed from day to night or from night to day and 4) the transfer shall not be [to a position which] involves a substantially different skills set. In this case, Siem Reap International Airport is not the employer of the 17 workers, but MPA Security Company. Therefore, MPA Security Company has the right to transfer workers to the organisations where their services are required not necessarily in Siem Reap International Airport. However, the employer shall train the workers on particular skills before transferring them to organisations where their current skill set is not relevant.

In conclusion, the Arbitration Council considers that the employer shall reinstate the 17 workers [and assign them] to work in locations appropriate to their skills and the company shall provide back pay of [their wages] from the date they were officially dismissed by the company.

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

DECISION AND ORDER

Order the employer to reinstate the 17 workers [and assign them] to work in locations appropriate to their skills and provide the workers with back pay [of their wages] from the date they were officially dismissed by the company.

Type of Award: Non-Binding Award

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: