



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 153/08-Hytex Garment

Date of Award: 21 January 2009

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: **Hytex Garment (Cambodia) Ltd.**

Address: National Road 2, Sangkat Chak Angre Leu, Khan Mean Chey, Phnom Penh

Telephone: 016 999 130

Fax: N/A

Representative:

- | | |
|----------------------|------------------------|
| 1. Mr. Ham Phea | Lawyer |
| 2. Mr. Khuon Vireak | Head of administration |
| 3. Mr. Sok Sreyching | Administration officer |

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) and local union of C.CAWDU at Hytex factory**

Address: #6C, Street 476, Sangkat Tuol Tompoung I, Khan Chamkamorn, Phnom Penh

Telephone: 012 988 623

Fax: N/A

Representative:

- | | |
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| 1. Ms. Meas Vanny | Coordination officer of C.CAWDU |
| 2. Mr. Sreang Sreng | Officer of C.CAWDU |
| 3. Ms. Om Savin | President of local union of C.CAWDU at Hytex factory |

4. Ms. Sok Nov	Vice- President of local union of C.CAWDU at Hytex factory
5. Ms. Kry Chamnan	Union advisor
6. Ms. Chet Sophorn	Activist
7. Ms. Chin Sreypov	Activist

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company pay the payment in lieu of prior notice according to Article 75. The company does not agree to the demand.
- 2- The workers demand that the company pay the indemnity for dismissal according to Article 89. The company does not agree to the demand.
- 3- The workers demand that the company pay the damages according to Article 91. The company does not agree to the demand.
- 4- The workers demand that the company pay their outstanding wage according to Article 124. The company does not agree to the demand.
- 5- The workers demand that the company pay the amount the company owed to them according to Article 116. The company does not agree to the demand.
- 6- The workers demand that the company pay the payment in lieu of annual leave according to Article 166 and 167. The company does not agree to the demand.

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 was unsuccessful, and the non-conciliation report No. 1321 KB/AK/VK, dated 9 December 2008 was submitted to the Secretariat of the Arbitration Council on 16 December 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:

- First hearing: 22 December 2008 (at 2:00 p.m.)

- Second hearing: 29 December 2008 (at 8:00 a.m.)

Procedural issues:

On 25 November 2008, the Department of Labour Disputes received a complaint by workers at Hytex Garment Company demanding that the company pay termination payments in accordance with Articles 75, 89, 91, 116, and 166 of the Labour Law. After receiving the complaint, the Department of Labour Disputes assigned an expert officer to settle this dispute and the last conciliation was held on 1 December 2008 but did not receive any conciliation result on the six issues. The six non-conciliation issues were referred to the Arbitration Council on 16 December 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the company party and the worker party to the hearing and conciliation on the six non-conciliation issues twice on 22 December 2008 (at 2:00 p.m.) and on 29 December 2008 (at 8:00 a.m.). Both parties were present as invited by the Arbitration Council.

On the hearing days, the Arbitration Council attempted to conciliate on the six issues but did not receive any conciliation result. However, in the hearing the worker party agreed to [] reduce their demands into four issues as described in the fact finding section below since the company has changed its location to opposite the Extraordinary Chamber in the Court of Cambodia since 3 December 2008. Thus, in this case, the Arbitration Council will consider only the four issues as described in the fact finding section based on evidence and reasoning as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Authorisation letter to Mr. Ham Phea, Lawyer, to represent the company, dated 29 December 2008.
2. Certificate of commercial registration No. 1361 PN.JKB.KN, dated 6 June 1996.
3. Registered Internal Work Rules of Hytex Garment Company No. 036 SKBY.SK, dated 5 April 2001.
4. Minutes of the collective labour dispute settlement at Hytex Garment Company, dated 1 December 2008.

5. Letter by the Director of Hytex Garment Company regarding a request to suspend the employment contracts of workers in the sewing and finishing sections, dated 25 August 2008.
6. Minutes of the meeting, dated 26 August 2008.
7. Interim Order by the Arbitration Council No. 012 KBA, dated 9 September 2008.
8. Arbitral Award 116/08-Hytex Garment, dated 19 September 2008.
9. Complaint letter by Simon J.Y. Tai regarding a claim for damages compensation in the amount of US\$ 550,000 multiplied by 4150 riels which equals to 2,282,500,000 riels, dated 6 October 2008.
10. Slip No. 3138 to certify receipt of money by the Phnom Penh Municipal Court, dated 8 October 2008.
11. Summons letter by the Phnom Penh Municipal Court on civil case No. 1142, dated 9 October 2008.
12. Record of implementation of a provisional remedy, dated 3 December 2008.
13. Letter No. HYC 00012/08 to object to the thumbprints of 51 workers and three of the workers had repetitive thumbprints in case 749 KM/AK/VK LKA, dated 30 December 2008.
14. 23 pages of payroll list.

Provided by the worker party:

1. Certificate of union registration of the local union of C.CAWDU at Hytex Garment Factory, dated 11 February 2008.
2. Statement on case 153/08-Hytex Garment, dated 17 December 2008.
3. Notification letter No. HYC 1408, dated 6 August 2007.
4. Agreement between the employer and Cambodian Labour Union in the resolution of collective labour dispute in Hytex Garment Company in case 08/08, dated 25 January 2008.
5. Agreement dated 8 December 2007.
6. Rental agreement between Keo Maly Company and Hytex Garment Company, dated 1 October 1998.
7. Agreement dated 8 October 1998.
8. Provisional remedy of Phnom Penh Municipal Court, dated 24 October 2008.
9. Arbitral Award No. 105/08-Hytex Garment, dated 4 September 2008.
10. Arbitral Award No. 22/08-Hytex Garment, dated 5 March 2008.
11. Minutes dated 30 October 2008.
12. Minutes of inquiry for information from the representative of workers at Hytex Garment Company, dated 27 August 2008.

13. Minutes of meeting, dated 26 August 2008.
14. Thumbprints of workers at Hytex Company to the president of C.CAWDU regarding request for resolution of dispute, dated 22 October 2008.

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

1. Report No. 1321 KB/AK/VK, dated 9 December 2008 on the collective labour dispute settlement at Hytex Garment Company.
2. Minutes of the collective labour dispute resolution at Hytex Garment Company, dated 1 December 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 750 KB/AK/VK/LKA dated 18 December 2008 to the worker party to attend the hearing.
2. Invitation No. 749 KB/AK/VK/LKA dated 18 December 2008 to the employer party to attend the hearing.

FACTS

- Having reviewed the report of collective labour dispute conciliation
- Having listened to statement by the worker party and the employer party
- Having examined additional documents

The Arbitration Council finds that:

- Hytex Garment Company is located in Sangkat Chak Angre Leu, Khann Mean Chey, Phnom Penh. Based on the report of collective labour dispute resolution, 9 December 2008, the company employs approximately 400 workers. However, in the lead up to the hearing, the worker and the employer parties claimed that the factory has moved its location to opposite the Extraordinary Chamber in the Court of Cambodia since 3 December 2008. [] A total of 352 workers are making a demand for the company to terminate their contracts and make payment according to the Labour Law.
- The local union of C.CAWDU at Hytex Company is the claimant in this case.
- The worker party shows that the 352 workers are all employed under undetermined duration contracts. The employer does not object to this claim.
- According to the worker party, only 182 workers among the 352 claimants in this case are members of the union while the other 170 workers who are not members of the union endorsed their thumbprints to request the union to represent them.
- The employer party argues that among the 352 workers, 158 of them do not exist in the company's payroll list, thus they are not the company's workers. However, the

employer does not provide names and the ID codes of the workers. The Arbitration Council ordered the parties to provide evidence in writing to support their claims.

- On 30 December 2008, the employer party submitted additional evidence to object to the workers' claim that there are 352 workers. The Arbitration Council found that the employer objected to the thumbprints of 51 workers and three of them had repeated thumbprints. However, the employer does not clearly mention the specific names of any of these workers.
- In the hearing, the Arbitration Council clarified the workers' demand again. The workers agreed to reduce their demands from six issues to four issues as follows:
 1. Pay wages during the employment suspension [] period from 1 August 2008 to 1 October 2008 which the company has not paid to 36 workers in the cutting and printing sections according to the Arbitral Award dated 4 September 2008.
 2. Pay wages during the employment suspension [] period from 29 August 2008 to 29 September 2008 to 380 workers in the finishing and sewing sections.
 3. Pay wages for the period the company locked out [] its employees from 2 October 2008 to 3 December 2008 to 352 workers.
 4. Pay termination payments to 352 workers who did not agree to go to work in the new location of the company from 3 December 2008.
- The Arbitration Council found that among the four issues mentioned by the workers, additional issues 1, 2 and 3 mentioned in the hearing do not exist in the report No. 1321 KB/AK/VK, dated 9 December 2008, on collective labour dispute resolution at Hytex Garment. The worker party states that they did not raise these issues during the conciliation at the Ministry level.

Issue 1: Pay wages during the employment suspension period from 1 August 2008 to 1 October 2008 in which the company has not paid 36 workers in the cutting and printing sections according to the Arbitral Award dated 4 September 2008

- The workers claim that the company has not paid wages during the suspension of 36 workers in the cutting and printing sections in accordance with Arbitral Award dated 4 September 2008.
- Both the worker and the employer parties state that this demand was already decided in an Arbitral Award dated 4 September 2008 which the employer party made an objection to and the worker party did not file a lawsuit to the court.

Issue 2: Pay wages during the employment suspension period from 29 August 2008 to 29 September 2008 to 380 workers in the finishing and sewing sections

- The workers demand that the company pay wages during the suspension period from 29 August 2008 to 29 September 2008 to 380 workers in the finishing and sewing

sections because the company did not suspend their employment in accordance with the Labour Law.

- The company party, on the other hand, claims that it applied for the suspension to the Ministry of Labour on 25 August 2008 because it did not have sufficient work for the workers to do. On 26 September 2008 the Ministry of Labour paid an inspection visit to make an evaluation but the officer of the Ministry of Labour dared not issue a letter to approve the suspension because the workers conducted a strike to demand that the company terminate their employment contracts.
- The employer party claimed that the workers went on strike and locked the company's gate.
- The workers argued that the company transported equipment and goods out of the factory gradually without seeking a solution and [] to avoid making termination payments to the workers according to their demand; thus the workers locked the company's gate in order to prevent the company from transporting things out.
- The company party states that the issue related to the demand for the company to pay termination payments was referred to the Arbitration Council once already on 5 September 2008 but the Arbitration Council decided to close this case because the workers did not agree to stop their strike in accordance with the Arbitration Council's Interim Order dated 5 September 2008.
- In the hearing, the employer states that it cannot provide wages to 380 workers in the finishing and sewing sections for the period from 29 August 2008 to 29 September 2008 because this was the period when the workers were on strike.
- Prior to the hearing date, the Arbitration Council received information from the two parties that the workers were still setting up tents in front of the old factory although the factory has changed its location to opposite the Extraordinary Chamber in the Court of Cambodia since 3 December 2008.

Issue 3: Pay wages for the period the company locked out from 2 October 2008 to 3 December 2008 to 352 workers.

- The worker party claims that the company submitted an application for suspension from 29 August to 29 September 2008 and would allow workers to come back to work on 2 October 2008. However, on 2 October 2008 when the suspension period was supposed to be over, the company did not open the factory door but instead locked out the employees.
- In the hearing, the employer argues that it cannot provide wages from 2 October 2008 to 3 December 2008 to the workers because during this period the workers were on strike which started on 27 August 2008 and the workers were the ones who locked the factory gate.

- The workers confessed that they did lock the gate but then they took the lock back. After that the company locked the gate with the company's lock and did not allow the workers to go to work.
- The company states that because the strike was going on, the company did not have a plan to reopen the factory and dared not return there as the rental contract has expired and the company already had a new location for the factory.

Issue 4: Pay termination payments to 352 workers who did not agree to go to work in the new location of the company from 3 December 2008

- Hytex Company had a rental contract to lease premises at Sangakat Chak Angre Leu, Khann Mean Chey, Phnom Penh for 10 years (from 1 October 1998 to 1 October 2008).
- As the lease was due to expire, the company found a new location opposite the Extraordinary Chamber in the Court of Cambodia, Angsonsul district (Kambol), Kandal Province.
- The employer gave evidence that the move to new premises was finished by 3 December 2008.
- The company said that it has no intention to terminate the employment contract of any worker. If a worker decides that he or she wants to work in the new location, the company will accept all of them and will provide transportation for three to six months.
- The workers state that the 352 workers did not agree to go to work in the new location and demand that the company terminate their employment contracts and pay them according to Articles 75, 89, 91, 166 and 167 of the Labour Law.
- The worker party states that this demand is based on the Notification No. 1408, dated 6 August 2007 and the Arbitral Award 22/08, dated 5 March 2008.
- Notification No. 1408, dated 6 August 2007, states, "until now the company has not yet moved locations, but if the company moves locations, the company will be responsible for all the workers according to their promise as follows:
 1. If there is any worker who can not move, the company will pay for termination of the contract in accordance with the Law.
 2. The company will provide written notice and settle with the workers one month before they move.
 3. If they move, the company will apply voluntary principles."
- The company states that the Notification 1408, dated 26 August 2007, is not applicable to members of the local union of C.CAWDU at Hytex Garment but only to members of Cambodian Labour Union Federation because the local union of C.CAWDU at Hytex Garment was not a signatory party on the notification.

- The workers also state that there are other two agreements in which the company promised that it would not change the location: the agreement dated 8 December 2007 and the agreement dated 25 January 2008. The [employer] party does not object to this claim.
 - The agreement dated 8 December 2008: the company will not change its location; in case the company changes location, it will notify [] the employees two months in advance in order to discuss and find a solution.
 - The agreement dated 25 January 2008: The company will not change from the old location to the new location”
- The employer claims that this demand was already in the Arbitral Award 116/08 in which the Arbitration Council decided to close the case; thus the Arbitration Council should not re-decide on this issue.
- The worker party states that this case has different facts from the facts in Arbitral Award 116/08 when the company had not changed its location but now the company has changed its location.

REASONS FOR DECISION

In this case the Arbitration Council will consider as follows:

1. The demands in issues 1, 2, and 3 added by the workers in the hearing
2. The demand in issue 4: Pay termination payments to 352 workers who did not agree to go to work in the new location of the company from 3 December 2008

1. The demands in issues 1, 2, and 3 added by the workers in the hearing

Based on the above findings of fact, the worker decided to reduce their demands from six issues to four issues. The Arbitration Council found that issues 1, 2, and 3 of the workers' demand are not in the non-conciliation report. Thus, does the Arbitration Council have jurisdiction to resolve the three issues raised by the worker party?

Article 312 of the Labour Law states, *“The Arbitration Council has no duty to examine issues other than those issues specified in the non-conciliation report or matters, which arise from events subsequent to the report, that are the direct consequence of the current dispute.”* According to this, the Arbitration Council needs to look at two conditions:

1. *Whether issues 1, 2 and 3 in the workers' demand arose after the report was made.*
2. *Whether issues 1, 2 and 3 are the direct consequence of the original dispute.*

According to the claim by the worker party and the employer party in the hearing, the Arbitration Council considers that: issues 1, 2 and 3 in the workers' demand are not in the report No. 1321 KB/AK/VK, dated 9 December 2008, on the collective labour dispute

resolution at Hytex Garment Company. Additionally, the Arbitration Council asked for clarification from the worker party on this matter and the response was that the workers did not include these issues in the conciliation at the Ministry of Labour. Moreover, the problems happened before they were brought to the Ministry of Labour, such as, for instance, issue 1 regarding the demand for payment of wages during employment suspension from 1 August to 1 October 2008. Issue 2 is about the demand for payment for 380 workers in the finishing and sewing sections from 29 August 2008 to 29 September 2008. The third issue is about payment of wages for 352 workers for the period the company locked out the employees from 2 October 2008 to 3 December 2008. Based on the date of the demands, it is clear that these issues arose before the conciliation at the Ministry level and they are not the direct consequence of the original dispute [mentioned in the non-conciliation report].

Thus, according to Article 312 above, the Arbitration Council does not have a duty to consider these issues (see Arbitral Awards 14/07-Shoe Premier; 42/07-South Bay, issue 3; 06/08-Kingsland, issue 2). In conclusion, the Arbitration Council does not have jurisdiction over the above three issues demanded by the worker party.

Therefore, the Arbitration Council declines to consider the workers' demand in issues 1, 2 and 3.

2. The demand in issue 4: Pay termination payment to 352 workers who do not agree to go to work in the new location of the company from 3 December 2008

In relation to the demand in issue 4, in the hearing the employer party argues that the demand was brought to the Arbitration Council one time already in case 116/08 in which the Arbitration Council decided to close the case; so the Arbitration Council should not decide on this case again. However, the worker party claims that the facts in this case are different from that in case 116/08 because in case 116/08 the company had not moved its location while in this case the company has moved locations. Therefore, the Arbitration Council will decide whether the Arbitration Council can make a decision on this issue again.

In previous cases, the Arbitration Council rejected the workers' demand if the issue brought to the Council fulfills three conditions: (1) the same parties (2) the same issue in dispute and (3) the Arbitration Council has fully made a decision so that to avoid a contradictory result on the same dispute and to bring an end to the dispute with one final decision. (See more about *res judicata* principle in Arbitral Awards 24/06-Fortune, issue 4; 106/06-Quick Sew, issue 5; 42/07-South Bay, issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases related to the principle of *res judicata*. However, in this case the Arbitration Council found that the issue in this demand can fulfill only two conditions: (1) the same parties (2) the same issue in dispute. Condition 3 is not fulfilled because in the Arbitral Award 116/08 the Arbitration Council did not make a decision on the merits of the case (the

Arbitration Council closed the case because the worker party continued to go on strike so that the Arbitration Council could not proceed to conduct a hearing).

In conclusion, the Arbitration Council considers that the principle of *res judicata* is not applicable in this case. Thus, the Arbitration Council considers that the Arbitration Council can make a decision on this issue again because the Arbitration Council had not decided on this issue in case 116/08. Hence, the Arbitration Council will consider this demand as follows:

In this case the employer changed the factory location from Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh to the new location in Ang Snuol District, Kandal Province. The workers do not agree to go to work in the new location and demand that the company terminate their contract and pay for damages. The employer party, on the other hand, does not agree to this and claims that it did not terminate the employment contracts of these workers. The company would accept all of them if they go to work in the new location and guarantee to provide transportation for three to six months. The Arbitration Council will consider this case as follows:

Article 2 of the Labour Law that states, *“All natural persons or legal entities ... are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously ... under the supervision and direction of the employer...”*

In previous cases, the Arbitration Council considered that this Article 2 means that the employer has the right to manage and direct the company including the right to transfer workers from one place to another provided it fulfills some conditions: 1) no wage reduction (2) no change from day shift to night shift or from night shift to day shift (3) no change requiring substantially different skills (4) no transferring the workers to a far place. (See Arbitral Awards 17/03 and 18/03-Ho Hing, issue 1; 63/06-FY, issue 5; 108/06-Trinunggal Komara, issue 1; 90/07-GDM, issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases [] outlined above. This means that the employer has the right to transfer workers from one place to another but the transfer must not affect wages of the workers being transferred. It must not be a transfer of workers from a nearby workplace to a far one; it cannot be a transfer from day shift to night shift and it must not require the workers to perform very different skills. In the findings of fact, the Arbitration Council found that the employer transferred workers from the old location in Chak Angre Leu to the new location in Angsnuol District (Kambol) in Kandal Province which is far from the old location. Thus, the Arbitration Council considers that the employer does not fulfill the fourth condition related to the management right of the employer as in Article 2 of the Labour Law.

Article 1 of Decree 38 states, *“A contract is an agreement between two persons to create, change or terminate one or more obligations which bind them.”*

Article 22 of Decree 38 states, *“A contract is a law between the parties. Amendments to or termination of the contract can only be made with the consent of both contracting parties. A contract shall be executed with honesty and according to the will of the parties.”*

Based on the contents of article 1 and article 22 [of Decree 38] above, the Arbitration Council considers that a contract is a law [] that is binding between the parties. Thus, any modification to the contract needs to be agreed by both parties to the contract.

In this case, the employer entered into a contract with the workers and, based on the claims by the parties in the hearing, the Arbitration Council found that there is no clause [in the agreement] that provides that the workers need to transfer to work with the company in the new location. Thus, if the company changes its location, this needs to be agreed upon by the workers. In the case the company decides to move the location by its unilateral will, it means that the company has violated the employment contract or that the employer has terminated the contract by its own will (that is, constructive cancellation of contract by the employer). Therefore, the workers have the right to terminate the employment contract and demand damages.

In addition, in relation to the transfer of location, the Arbitration Council found that the company followed the notification dated 6 August 2007 and had an agreement dated 8 December 2007 and another agreement dated 25 January 2008. Thus, the Arbitration Council will consider the notification and the agreements as follows:

1. Notification No. 1408, dated 6 August 2007:

In the hearing, the employer party claims that the notification No. 1408, dated 6 August 2007, does not cover members of C.CAWDU as the union was not a signatory in the notification.

In relation to the employer's claim, the Arbitration Council considers that the notification No. 1408 does not state clearly that it covers only [members of] the Cambodian Labour Union. The Arbitration Council found that notification 1408 was also signed by worker delegates at the factory. Moreover, the wording in the notification refers to all workers and in the Arbitral Award 22/08-Hytex, dated 5 March 2008, the employer did not make an objection that the notification was not applicable to [members of] the local union of C.CAWDU. Therefore, the Arbitration Council considers that this notification is applicable to all workers in the factory.

2. Agreement dated 8 December 2007

Point 1 of the agreement dated 8 December 2008 states, *“The company will not change its location; in case the company changes location, it will notify within 2 months in advance in order to discuss and find a solution.”*

The Arbitration Council found that the agreement was between the employer and Cambodian Labour Union. In the hearing the employer argued that the agreement is not

applicable to members of C.CAWDU. Based on the contents of the above agreement, the Arbitration Council considers that the employer did not have an intention to change the factory location but in case it requires moving location, the company would notify employees two months in advance. However, in reality the Arbitration Council does not find that the employer gave prior notice to the workers before it moved the location in accordance with the agreement.

3. Agreement dated 25 January 2008

Point 7 of this agreement states, *“The company will not change from the old location to the new location”*. In Arbitral Award 22/08, the Arbitration Council found this agreement also stated that *“the company still keeps the work for the workers in these two sections the same according to their profession and skills, the work equipment is still the same, the workplace of the workers is still the same, and the processing of the product still goes on as normal, and it should not cause workers to be without work.”*

Based on the findings of fact, on 3 December 2008 the employer transported all equipment from the old location to the new location while 352 workers did not agree to move to the new location and the employer did not give prior notice in writing to inform the workers before the transfer happened. The employer did not pay a termination payment to the workers in accordance with the law.

Based on the interpretation above, the Arbitration Council considers that the fact that the employer moved from the old location to the new location means that the employer has breached the contract and did not abide by the agreement it entered into with the workers. Moreover, point 1 of the notification No. 1408, dated 6 August 2007, states that *“If there is any worker who can not move, the company will pay for termination of the contract in accordance with the Law.”* The Arbitration Council considers that the terms **“pay for termination of the contract in accordance with the Law”** does not clearly specify the benefits the workers should be entitled to when their employment contract is terminated.

Because the employer has breached the employment contract and the agreements it entered into with the workers, the Arbitration Council will interpret the terms **pay for termination of the contract in accordance with the Law** to mean that the workers are entitled to payments as follows:

1. Indemnity for dismissal

Article 89 of the Labour law states, *“If the labour contract is terminated by the employer alone, except in the case of a serious offense by the workers, the employer is required to give the dismissed worker, ..., the indemnity for dismissal as explained below:*

- *Seven days of wage and fringe benefits if the worker’s length of continuous service at the enterprise is between six and twelve months.*

- *If the worker has more than twelve months of service, an indemnity for dismissal will be equal to fifteen days of wage and fringe benefits for each year of service. The maximum of indemnity cannot exceed six months of wage and fringe benefits.”*

Based on Article 89 of the Labour Law, the employer is required to pay indemnity for dismissal when the employer terminates the employment contract of workers who are employed under undetermined duration contracts. In this case, the employer has breached the employment contract and the agreements. Thus, the Arbitration Council considers that the workers are entitled to indemnity for dismissal to an amount dependent on the seniority of the workers:

- *Seven days of wage and fringe benefits if the worker’s length of continuous service at the enterprise is between six and twelve months.*
- *If the worker has more than twelve months of service, an indemnity for dismissal will be equal to fifteen days of wage and fringe benefits for each year of service.*

2. Damages

Article 91 of the Labour Law states, *“The termination of a labour contract without valid reasons, by either party to the contract, entitles the other party to damages.*

These damages are not the same as the compensation in lieu of prior notice or the dismissal indemnity.

The worker, however, can request to be given a lump sum equal to the dismissal indemnity. In this case, he is relieved of the obligation to provide proof of damage incurred.”

The Arbitration Council considers that the contents of this article mean that a party is entitled to damages when an employment contract is terminated at the will of the other party without a proper reason.

In Arbitral Award 84/08-Trinunggal Komara, the Arbitration Council interpreted that workers are not entitled to damages because the employer had sufficient reason for the termination of the workers’ employment contract. (See Arbitral Award 84/08-Trinunggal Komara, reason for decision).

The findings of fact in this case are different from those in case 84/08. In this case, the employer entered into three agreements with the workers and ensured that it would not change its location. However, the employer moved from the old location to the new one on 3 December 2008. Further, the Arbitration Council could not find that the employer had any negotiation or official notification to the workers before the change of location.

Therefore, the Arbitration Council considers that the employer did not try to find a solution with the workers properly before the transfer. Thus, the employer is required to pay damages to the workers because the employer’s act has violated the agreements. In this case, the workers did not provide any evidence of the damage incurred to them. According to

Article 91, the workers can demand an amount of money equal to indemnity for dismissal. In this case, the workers are free from the obligation to provide evidence to prove the damage incurred. In this case, the workers did not provide evidence to prove the damage they suffer, thus the Arbitration Council decides that the employer needs to pay for damages in an amount equal to indemnity for dismissal.

3. Payment in lieu of prior notice

Article 75 of the Labour Law states, *“The minimum period of a prior notice is set as follows:*

- *Seven days, if the worker’s length of continuous service is less than six months.*
- *...”*

Article 77 of the Labour Law states, *“The termination of a labour contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the employer to compensate the worker the amount equal to the wages ...”*

Termination of an employment contract at will on the part of employer alone without prior notice or compliance with the prior notice period will require the employer to pay compensation to the workers in an amount equal to the wages and benefits that the worker would have received during the notice period.

In this case, the employer did not give proper notification when it moved location, thus the employer is required to pay a payment in lieu of prior notice to the workers according to the seniority of each worker and in accordance with Article 75 of the Labour which determine the period of prior notice as follows:

4. Payment in lieu of annual leave

Article 167 of the Labour Law states, *“If the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker.”*

According to this Article, in case of a termination of contract or early expiration of contract, workers are entitled to receive payment in lieu of annual leave. Thus, based on the reasoning as mentioned above, the Arbitration Council considers that the company’s transfer of location has violated the agreement the employer made with the workers and that led to termination of employment contracts; thus the workers are entitled to payment in lieu of annual leave.

5. Outstanding last wages

Article 116 states: ... *“In the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work.”* Therefore, the workers are entitled to receive their outstanding wage in accordance with Article 116.

In conclusion, the Arbitration Council orders the company to pay termination payment to 352 workers as follows: 1. indemnity for dismissal, 2. damages, 3. payment in lieu of prior notice, 4. payment in lieu of annual leave, and 5. outstanding wages.

DECISION AND ORDER

Order the employer to pay termination payments to 352 workers as follows: 1. indemnity for dismissal, 2. damages, 3. payment in lieu of prior notice, 4. payment in lieu of annual leave, and 5. outstanding wages.

Type of Award: Non binding award

This Award will become binding after eight 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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: