



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 154/08-Flying Dragon

Date of Award: 6 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: **Flying Dragon (Cambodia) Garment Limited**

Address: Chom Chao Street, Sangkat Steung Mean Chey, Khan Mean Chey, Phnom Penh

Telephone: 012 573 795

Fax: N/A

Representative:

1. Mr. Vat Oeurt

Company's administration officer

Worker party:

Name: **Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) and local union of C.CAWDU at Flying Dragon 3 Garment Company**

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

Telephone: 012 988 623

Fax: N/A

Representative:

1. Ms. Meas Vanny

Officer of C.CAWDU

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|-----------------------|---|
| 2. Mr. Sreang Sreng | Officer of C.CAWDU |
| 3. Ms. Nat Leang Seap | President of local union of C.CAWDU at Flying Dragon
3 Factory |
| 4. Ms. Keo Pov | Vice-President of local union of C.CAWDU |
| 5. Ms. Nat Seang Set | Union activist |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Ministry of Labour and Vocational Training review and revise the company's Internal Work Rules which was visaed on 6 April 2005. The company states that it already made new Internal Work Rules, visaed on 24 April 2008.
- 2- The workers demand that the company should stop the attitude of union discrimination such as the act of not agreeing to negotiate [with union], escorting out [of the company], a union representative who requested for negotiation. The company states that it has never discriminated against a union, and it always cooperates with all union leaders and union members in the factory.
- 3- The workers demand that the company reinstate Ms. Nat Leang Seap, the President of the local union of Cambodian Apparel Workers Democratic Union in the factory. The company states that it cannot reinstate Ms. Nat Leang Seap because, according to the company's Internal Work Rules, if a worker is absent from work for seven consecutive days it is considered as abandon of work by the worker.
- 4- The workers demand that the company reimburse medical check fees related to:
 - paid sick leave, and
 - work-related accidents certified by a doctor.

The company states that so far it has never failed to pay as accused by the workers which means that it always reimburses these payments.
- 5- The workers demand that the company provide sufficient work for them to do because the company has transported material out of the factory. The company states that it does not have much work for the workers to do and the material transported out belong to another company which was kept there for a period of time.
- 6- The workers demand that the company pay 100 percent of their wages for the period of the past few months (August, September, October and November) and the coming months because they need to come to punch their card in on the days the company does not have work for them to do (that is, work intermittently). The company does not agree to the demand as it follows the agreement dated 24 May 2008 (providing

50% of wages).

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. 1348 KB/AK/VK 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: 24 December 2008 (at 8:00 a.m.)

Procedural issues:

On 12 October 2008 the Department of Labour Disputes received a complaint by workers in the Flying Dragon Company regarding the demand [] to improve 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 1 December 2008 but did not receive any conciliation result on six issues. The six non-conciliation issues were referred to the Secretariat of the Arbitration Council on 16 December 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 six non-conciliation issues on 24 December 2008 (at 8:00 a.m.). Both parties, as invited by the Arbitration Council were present.

On the hearing day, the Arbitration Council attempted to further the conciliation on the six non-conciliation issues and received a conciliation result on three issues: issues 1, 2 and 5, as the worker party withdrew these issues from the case. Therefore, the Arbitration Council will consider only on issue 3, issue 4, and issue 6 based on evidence and reasoning 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. Statute and memorandum of Flying Dragon (Cambodia) Garment Limited, dated 2 August 1999.
2. Certificate of commercial registration of Flying Dragon (Cambodia) Garment No. 113 PN.NTK, dated 12 January 1998.
3. Letter No. 05/0048 dated 12 June 2005 by the Director of Flying Dragon (Cambodia) Garment Company regarding a request for amendment of the old Internal Work Rules and a request for visa on the company's new Internal Work Rules.
4. Internal Work Rules of Flying Dragon (Cambodia) Garment Company, dated 10 June 2005.
5. Letter No. 08/0001 dated 3 April 2008 by the Director of Flying Dragon (Cambodia) Garment Company 3 regarding a request for consideration and visa on the company's Internal Work Rules.
6. Internal Work Rules of Flying Dragon (Cambodia) Garment Company 3, dated 3 April 2008.
7. Collective agreement between workers and the Director of the company, dated 24 May 2008.
8. Documents related to Ly Srey Neang: letter to suspend employment, doctor certificate and letter to authorise receipt of money on behalf of the worker.
9. Documents related to Chhen Navy: letter to suspend employment, doctor certificate and letter to authorise receipt of money on behalf of the worker.
10. Announcement regarding job abandonment by Nat Leang Seap.
11. Payroll slip of Nat Leang Seap.
12. Letter of authorisation for Mr. Vat Oeurt No. FD08-001, dated 29 December 2008.

B. Provided by the worker party:

1. Certificate of union registration of the local union of C.CAWDU at Flying Dragon 3, dated 22 December 2003.
2. Summary statement of the disputing case in Flying Dragon 3 by C.CAWDU, dated 20 December 2008.
3. Thumbprints of workers in Flying Dragon 3, to the President of C.CAWDU to request help to resolve the collective dispute in the factory, 13 sheets of paper.
4. Letter No. 1091 KB/AK/VK regarding recognition of new union leaders, dated 3

October 2007.

5. Letter No. 082-08 SBKK regarding paid sick leave (with the same wages and attendance bonus), dated 14 August 2008.
6. Medical documents, leave request letter and employment suspension letter of Nat Leang Seap.

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

1. Report No. 1348 KB/AK/VK dated 24 November 2008 on the collective labour dispute settlement at Flying Dragon 3.
2. Minutes of the collective labour dispute conciliation at Flying Dragon 3, dated 1 December 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 752 KB/AK/VK/LKA dated 18 December 2008 to the worker party to attend the hearing;
2. Invitation No. 751 KB/AK/VK/LKA dated 18 December 2008 to the company party to attend the hearing;

The Arbitration Council finds that:

- Flying Dragon Company is located along Chom Chao Street in Sangkat Steung Mean Chey, Khan Mean Chey, Phnom Penh. According to the report on collective labour dispute resolution, the company employs approximately 550 workers. However, on the hearing date the employer states that the number of workers remains at only 91 because the company does not have work to do and thus it intends to further the termination of more workers. The workers do not object to the employer's claim.
- Local union of C.CAWDU in Flying Dragon 3 is the claimant in this case. According to the workers' claim, the number of union members remains at approximately 80 workers. The Arbitration Council asked the worker party to provide the list of names of union members by 25 December 2008 and the employer to respond to this if it does not think it is correct. However, the employer party requested that the Arbitration Council consider the case based on this number provided. In the hearing, the employer states that Cambodian Union is the union with a majority of membership but it does not know how many of the union members remain at the moment. The worker party does not object to the employer's statement.

Issue 3: The workers demand that the company reinstate Ms. Nat Leang Seap, President of the local union.

- In the hearing, Ms. Nat Leang Seap demands that the company reinstate her and backpay her wages from 4 October 2008 (wages for October, November and December) to the date she is reinstated. Ms. Nat Leang Seap states that she received her wages for July which was paid to her in August 2008.
- Ms. Nat Leang Seap, President of the local union, commenced her employment on 9 May 2000 under an undetermined duration contract. On average, she receives wages of US\$ 70 per month.
- On 8 August 2008 Ms. Nat Leang Seap fainted in the factory. The company (the Law Enforcement Inspection Unit under the management of Mr. Nuth Phalla) sent her to the Russian Hospital. The company states that it did not follow up the treatment for Nat Leang Seap in the days [] following her visit [] to the hospital.
- On 9 August 2008 Ms. Nat Leang Seap informed the company about her stay at the hospital through her elder sister, Ms. Nat Leang Set. The head of administration states that he was not aware of this issue.
- On 13 August 2008 Ms. Nat Leang Seap asked for help from Ms. Nat Leang Set to seek leave permission for one month (from 8 August 2008 to 8 September 2008) but the company did not approve the leave for the reason that this was not in accordance with the company's procedure as the company wanted Ms. Nat Leang Seap to submit an application for employment suspension.
- On 14 August 2008 C.CAWDU submitted a leave request letter on behalf of Ms. Nat Leang Seap again and left the letter with a security guard. However, the company did not permit the leave because it was not in accordance with the company's procedure as the company wanted Ms. Nat Leang Seap to submit an application for employment suspension. The Arbitration Council received a letter dated 14 August 2008 by C.CAWDU to the Director of the company with the signature to endorse receipt of the letter by Soeurn Chanboth.
- On 8 September 2008, Ms. Nat Leang Seap came to the administration office to ask for permission for one more month of sick leave (from 8 September 2008 to 8 October 2008) but the company did not approve the leave because the company wanted her to submit an application for employment suspension. The Arbitration Council received a letter from Ms. Nat Leang Seap requesting leave from 8 September 2008 to 8 October 2008; this request was not approved by the head of group, section supervisor or the company's administration.
- On 3 October 2008 the company called Ms. Nat Leang Seap to the company in order to ask her to submit a request for employment suspension but she did not agree to it. For this reason, on 4 October 2008 the company made an announcement that Ms.

Nat Leang Seap had abandoned her work because she was absent without permission for more than six consecutive days.

- On 20 November 2008 the company submitted a letter to the Labour Inspector to request the termination of Ms. Nat Leang Seap's employment but then withdrew the letter due to [the process] involving [] expenses.
- Up to the hearing day, the company has not submitted a request to the Labour Inspector nor has it received a letter from the Labour Inspector to approve the termination of Ms. Nat Leang Seap.
- The employer party states that it cannot reinstate Ms. Nat Leang Seap and would like the Arbitration Council to make decision on this issue.

Issue 4: The workers demand that the company pay for medical expenses (wages during sick leave and the cost of treatment of work-related sickness)

- The workers demand that the company pay for the medical expenses of Ms. Nat Leang Seap as follows:
 - Wages during sick leave from 8 August 2008 to 8 September 2008 in accordance with the Internal Work Rules and
 - Cost of treatment of work-related sickness in an amount of 3 million and 200 thousand riels in accordance with Article 248 of the Labour Law.
- The workers demand that the company pay wages during sick leave from 8 August 2008 to 8 September 2008 in accordance with the Internal Work Rules to Ms. Nat Leang Seap who fainted during working hours on 8 August 2008. The company confirms that the incident did happen and she was sent to the Russian Hospital by the company.
- Ms. Nat Leang Seap states that from 8 August 2008 she was admitted to the hospital twice. The Arbitration Council received two letters to permit admission to the Cambodian-Russian Hospital and letters to permit discharge from the hospital as follows:
 - Letter to permit admission to Cambodian-Russian Hospital, dated 8 August 2008 and on 3 September 2008.
 - Letter to permit discharge from Cambodian-Russian Hospital, dated 22 August 2008 and 13 September 2008.
- The Arbitration Council found that in accordance with the Internal Work Rules of Flying Dragon Company, visaed on 24 April 2008, Clause 8, point 8-6, regarding sick leave: "Sick leave is permitted by the company for a reason of chronic or infectious disease with proper certification from a private or state hospital with an additional certification by the company's doctor. The company will pay full wages to the worker

for the first month of leave, 60 percent for second and third months, and no payment from fourth to sixth months but the position will be maintained. From month six onwards, the company will consider termination from work.”

- The Arbitration Council received a leave request letter by Ms. Nat Leang Seap which was not approved by the head of group, section supervisor, nor the company's administration [] regarding the leave request from 8 August 2008 to 8 September 2008.
- The employer party states that the reason that the company did not approve the leave for Ms. Nat Leang Seap was because, as a procedure, the company requires those who take sick leave to submit a letter to suspend employment first.
- The employer party states that the fact that the employer required Ms. Nat Leang Seap to submit a request for employment suspension was in accordance with the agreement dated 24 May 2008. The employer does not mention the specific point of the agreement.
- The Arbitration Council found that the agreement dated 24 May 2008 mentions sick leave as follows:
 - *Point 2 (C): sick leave with permission and certification from state or private doctor and additional certification from the company's doctor. The company will pay the workers as follows: (1) provision of full wages and other perquisites [] should the leave [] be for a maximum of 7 days per year. Attendance bonus will be provided in proportion...*
 - *Point 2 (D): sick leave with permission for the reason of chronic or infectious disease, the company will pay the workers in accordance with point 8.6 of Article 8 of the Internal Work Rules.*
 - *Point 2 (E): sick leave with permission for treatment of illness or treatment by surgery with proper certification from state or private doctor and additional certification from the company's doctor for a period longer than 7 consecutive days per year, the company will pay the workers as follows: (1) unpaid suspension of the workers' employment contract. The workers' position is maintained for the workers until they recover and able to return to work normally...*
- The Arbitration Council received evidence documents from the company party regarding the paid suspension of employment contracts due to sickness as follows:
 1. Worker named Ly Srey Neang, ID 4380, took three months of leave for treatment of illness from 5 December 2006 to 5 March 2007, attached with doctor certificate. The company paid 100 percent of wages during the first

month and 60 percent of wages during the second and third months.

2. Worker named Chhen Navy, ID 6611, took two months of leave for treatment of illness from 17 March 2006 to 18 May 2006, attached with doctor certificate. The company paid 100 percent of wages during the first month and 60 percent of wages during the second month.
 3. Worker named Nat Sokna, ID 0410, took five months of leave for treatment of illness from 18 March 2006 to 21 September 2006, attached with medical examination letter. The company paid 100 percent of wages during the first month and 60 percent of wages during the second and third months.
 4. Worker named Em Kunthea, ID 6605, took two months of leave for treatment of illness from 16 July 2008 to 16 September 2008, attached with doctor certificate. The company paid 100 percent of wages during the first month and 60 percent of wages during the second month.
- Ms. Nat Leang Seap states that during her sick leave she received treatment for her heart disease, lung disease, liver disease, woman's disease and surgery on her goiter and that she spent a total amount of three million and 200,000 riels for the treatment. She thus demands that the company reimburse the whole amount she paid.
 - The Arbitration Council received some doctor prescriptions describing the illness of Ms. Nat Leang Seap but they are all in a foreign language.
 - The company states that it cannot reimburse the expenses and requests that the Arbitration Council decides according to the Law.

Issue 6: The workers demand that the company pay 100 percent of wages for the period the company did not have work for them to do in the [] previous months (August, September, October and November 2008)

- The workers demand that the company pays 100 percent of their wage for the period of no work as follows:
 - In August 2008: There was no work for 13.5 days
 - In September 2008: There was no work for 12 days
 - In October 2008: There was no work for one month and
 - In November 2008: There was no work for one month.
- The worker party states that during these periods of no work, the workers punched in to work normally and the company paid 50 percent of their wage; the company did not seek permission from the Ministry of Labour.
- The company states that during the period of no work it did not apply for permission

from the Ministry of Labour as it follows the agreement dated 24 May 2008 which requires the company to pay 50 percent of wages to the workers during the period of no work. The agreement was signed by 13 worker delegates and two representatives of the Cambodian Union. However, representatives of C.CAWDU did not take part in this agreement.

- Representatives of C.CAWDU in the hearing acknowledged the existence of the agreement to provide 50 percent of wages to the workers during the period of no work but claim that they did not sign the agreement.
- The Arbitration Council found that point 1 of the agreement dated 24 May 2008 states that: (a) in case the company does not have sufficient work or no work to do for a period of 5 or fewer days, the company will provide 50 percent of the main wage ... (b) in case the company does not have sufficient work or no work to do for a period of five days or more, the company will provide 50 percent of the main wage ... (c) in case the company does not have sufficient work or no work to do for many days for a period not longer than 2 months, the company will follow the legal procedure mentioned in Article 11, paragraph 11, of the Labour Law...
- Representatives of C.CAWDU states that there are 80 workers who demand the company to pay 100 percent of wages during the period of no work in the past but they are unable to tell whether the demand for the period of no work in August, September, October or November 2008.
- The worker party provides a list of names of 101 workers. The Arbitration Council advised that the employer party could make an objection letter to the list if it found the list to be incorrect. However, the employer stated that the company would not object to it and requested that the Arbitration Council decide on that because the company has some difficulties in looking for an administration officer and accountants as the company may close down.

REASONS FOR DECISION

Issue 3: The workers demand that the company reinstate Ms. Nat Leang Seap, President of local union.

Article 293 of the Labour Law states "*The dismissal of a steward or a candidate for steward can take place only after authorisation from the Labour Inspector. The same procedure applies to former stewards during the three months that follow the end of their terms, as well as to the losing candidates within the three months following the ballot. Any transfer that would end the steward's term is subject to the same procedure.*

The Labour Inspector, who has been referred a request to authorise the dismissal of

a worker covered by the present article, shall give his decision to the employer and to the worker in question as well as to the union organisation to which the worker belongs, within one month at the latest upon receipt of the case.

On receipt of the decision, the employer, the worker in question, or the union organisation to which he belongs has a period of two months to appeal to the Minister in charge of Labour. The Minister in charge of Labour can cancel or reverse the decision of the Labour Inspector.

If there is no notification of the Labour Inspector's decision within the allotted time, or if there is no notification or the decision of the Minister in charge of Labour within two months upon receipt of the appeal, the case and the appeal are considered to be rejected."

Clause 4 of Prakas 305 SKBY, dated 22 November 2001 by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states that *"...the protection will be granted to 3 union leaders in terms set out in articles 282 and 293 of labour law."*

Based on the contents of Article 293 of the Labour Law and Clause 4 of Prakas 305 SKBY dated 22 November 2001 above, the Arbitration Council considers that three union leaders under the conditions as mentioned in Article 282 and 293 of the Labour Law are protected by the law and the termination of these three union leaders need to have permission from the Labour Inspector or, in other words, the Labour Inspector has a duty to research and decide to give permission or reject the employer's request for the termination of the union leaders.

In this case, the employer mentioned in the hearing that the company submitted the request for termination of the union leader, Ms. Nat Leang Seap, to the Department of Labour Disputes but then decided to withdraw it due to the fact that the process involved [] expenses. From 4 October 2008 (the date Ms. Nat Leang Seap was officially terminated) to the date of the hearing, the employer has not submitted any request regarding the termination of the union leader and the Labour Inspector has not made any decision regarding Ms. Nat Leang Seap. Thus, the Arbitration Council considers that the employer should reinstate Ms. Nat Leang Seap to work until it obtains permission from the Labour Inspector in accordance with Article 293 of the Labour Law should the employer file a new request to the Ministry of Labour.

In relation to the unfair termination of Ms. Nat Leang Seap, the worker party (Ms. Nat Leang Seap) demands that the company should pay her wages from the date the company decided to terminate her officially to the date the company reinstates her. The Arbitration Council will consider this demand as follows:

Clause 34 of Prakas 099 SKBY, dated 21 April 2004, regarding the Arbitration Council states, *"In matters referred to the arbitration panel, the panel shall have the power*

and authority to fully remedy any violation of provisions provided in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee...”

Based on the contents of Article 34 of Prakas 099 SKBY, dated 21 April 2004, regarding the Arbitration Council, the Arbitration Council considers that the Arbitration Council has sufficient authority to order the employer provide full compensation to Ms. Nat Leang Seap for the fact that the employer did not follow the procedure to terminate the worker.

In previous cases, the Arbitration Council ordered the employer to pay back the full wage to the workers for the period the employer terminated their employment contracts not in accordance with the Labour Law. (See *Arbitral Awards 10/03-Jaqsintex, issue 4; 07/06-Dai Young, issue 1; 73/06-F Y*). In this case, the Arbitration Council agrees with the decision made by the Arbitrators in previous cases.

Therefore, the Arbitration Council decides to accept the workers' demand and order the employer to reinstate Ms. Nat Leang Seap and pay back her wages from the date she was terminated to the date of reinstatement.

Issue 4: The workers demand that the company pay for medical expenses (wages during sick leave and the cost of treatment of work-related sickness)

In this case, the workers demand that the company pay for medical expenses (wages during sick leave and the cost of treatment of work-related sickness). The Arbitration Council will consider this issue as follows:

1. Demand for wages during sick leave

The workers demand that the employer provide wages to Ms. Nat Leang Sepa who took sick leave from 8 August 2008 to 8 September 2008 based on Clause 8, point 8-6, of the Internal Work Rules, visaed on 24 April 2008. The employer objected to this claim stating that it was based on point 2.1/D1 of the agreement dated 24 May 2008 which states “...E: sick leave with permission for treatment of illness ... for a period longer than 7 consecutive days per year, the company will pay the workers as follows: (1) unpaid suspension of the workers' employment contract...”

Hence, the Arbitration Council will consider whether Ms. Nat Leang Seap's case is in accordance with Clause 8, point 8-6, of the Internal Work Rules, visaed on 24 April 2008.

Clause 8, point 8-6, of the Internal Work Rules of the Flying Dragon Company, visaed on 24 April 2008 regarding sick leave states, “Sick leave is permitted by the company for a reason of chronic or infectious disease with proper certification from private or state hospital with additional certification by the company's doctor. The company will pay full wages to the

worker for the first month of leave, 60 percent for the second and third months, and no payment from the fourth to sixth months but position will be maintained. From month sixth onwards, the company will consider termination from work.” The Arbitration Council considers that Clause 8, point 8-6, of this Internal Work Rules means that the workers are entitled to full wages during the first month of sick leave due to chronic or infectious disease with proper certification from private or state hospital with further certification from the company’s doctor.

The Arbitration Council in previous cases decided that the worker party has the burden of proof to support their demand (See *Arbitral Awards 94/07-Fortune Garment, issue 6 and 8; 74/07-Global Apparel, issue 2; 41/07-M & V 3, issue 1*).

In this case, the Arbitration Council also agrees that the claimant party has the burden of proof to support the demand that the worker’s sickness was chronic or contagious illness that she should be entitled to wages as mentioned in the company’s Internal Work Rules. In this case, Ms. Nat Leang Seap mentions in the hearing that she took sick leave to receive treatment for her heart disease, lung disease, liver disease, woman’s disease and surgery on her goiter. However, in this case the worker party does not provide evidence to prove that her sickness was the type of chronic or contagious sickness. In addition, the worker party did not provide any medical reason to the Arbitration Council to use as the basis for consideration in relation to this demand. Therefore, the workers did not fulfill the burden to provide sufficient evidence to support the demand and did not provide any technical witness to prove that the type of sickness she had was chronic or contagious. Moreover, the worker party provided some documents such as receipt, health consultation letter, diagnosis, some of which do not have clear dates and are in a foreign language. Thus, the Arbitration Council does not consider the document as Clause 23 of Prakas 099 SKBY, dated 21 April 2004, states, “*The language to be used during the arbitral proceedings shall be in Khmer*”. Therefore, parties who bring a dispute to the Arbitration Council have an obligation to provide documents in the Khmer language.

Based on the above reasons, the Arbitration Council considers that the provision of full wages during the first month of sick leave due to chronic or contagious diseases as mentioned in Clause 8, point 8-6 of the company’s Internal Work Rules is not applicable in the case of Ms. Nat Leang Seap.

The Arbitration Council considers that it is not necessary to [] consider further the agreement mentioned by the employer.

Therefore, the Arbitration Council decides to reject the demand of the worker (Ms. Nat Leang Seap) for the employer to provide her wages during sick leave.

2. Demand for medical expenses for work-related accidents

Article 248 of the Labour Law states, *“An accident is considered to be work related, regardless of the cause, if it happens to a worker working or during the working hours, whether or not the worker was at fault; it is the accident inflicted on the body of the worker or on an apprentice with or without wage, who is working in whatever capacity or whatever place for an employer or a manager of an enterprise.”*

Equally, accidents happening to the worker during the direct commute from his residence to the work place and home are also considered to be work-related accidents as long as the trip was not interrupted nor a detour made for a personal or non-work-related reason.

All occupational illness, as defined by law, shall be considered as a work-related accident and shall be remedied in the same manner.”

If we look at Article 248, cited in previous Arbitral Awards, the Arbitration Council explains that a work-related accident can occur in three cases: (1) *the accident occurs when a worker is performing work or in working hours for whatever reason and even if it is the worker’s mistake, (2) the accident occurs when a worker travels from and to home without stopping or without going to another place for personal interest or outside where the work requires, and (3) all illnesses caused by their occupation. (See Arbitral Award 85/07-Vivatino Design, issue 1).*

In this case, based on the findings of fact, the Arbitration Council considers that Ms. Nat Leang Seap’s case is not the type of accident that occurs when the worker is performing work or in working hours or that occurs when a worker travels from and to home without stopping. Therefore, the Arbitration Council will consider whether this case can be considered as an occupational illness.

In this case, the Arbitration Council does not find the definition of the term occupational illness in any particular law in Cambodia; this means that up to now there has not been a Prakas or legal regulation that determines the definition of occupational illness or the type of occupational illness as mentioned in Article 248 of the Labour Law.

However, the Arbitration Council found that the ILO’s P155 Protocol of 2002 to the Occupational Safety and Health Convention, 1981, by the International Labour Organization, Article 1(b), define the terms occupational illness as follows: **“occupational disease covers any disease contracted as a result of an exposure to risk factors arising from work activity”**; Cambodia has not ratified the ILO’s C155 Occupational Safety and Health Convention, 1981, and P155 of 2002 to the Occupational Safety and Health Convention, 1981. For this reason the Protocols are not binding for Cambodia.

In this case, the worker party (Ms. Nat Leang Seap) does not provide specific evidence to prove that her sickness (heart disease, liver disease, woman’s disease and

surgery on her goiter) was due to conditions or factors rendering from her workplace. Therefore, the Arbitration Council does not have sufficient legal grounds and evidence to require the employer to pay for medical expenses.

In conclusion, the Arbitration Council rejects the workers' demand for the employer to pay for the medical expenses for Ms. Nat Leang Seap.

Issue 6: The workers demand that the company pay 100 percent of wage for the period the company did not have work for them to do in previous months (August, September, October and November)

The Arbitration Council will consider whether *the suspension of employment for four months was legal one.*

Clause 11 of Article 71 of the Labour Law provides that “*...When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months. This suspension shall be under the control of the Labour Inspector.*”

According to Clause 11 of Article 71 of the Labour Law above it means that it is required that the employer is genuinely under economic difficulty in order to suspend employment contract and this suspension must be under the control of the Labour Inspector.

What does it mean by suspension of employment contract under control of the Labour Inspector?

According to Arbitral Award 22/05-Ocean, issue 2, “*suspension of employment contract requires notification to and permission from the Labour Inspector.*” (See Arbitral Awards 22/05-Ocean, issue 2; 72/05-North Gaiety, issue 1).

In this case, the Arbitration Council agrees with the above interpretation that the suspension of employment contract needs to be notified and [] permitted by the Labour Inspector. Based on the findings of fact, the company did not notify the Labour Inspector.

Therefore, the Arbitration Council considers that the suspension of employment contract by the company is not valid in accordance with Clause 11 of Article 71.

Paragraph 1 of Article 72 of the Labour Law states, “*The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.*”

Based on paragraph 1 of Article 72 of the Labour Law above, the Arbitration Council considers that when an employment contract is suspended in accordance with the Labour Law, it means that the employment is suspended and the main obligations are affected which means that the workers do not have an obligation to work for the employer while the

employer does not have an obligation to pay the workers except where there is a provision to the contrary.

In this factory, when the company has no work for the workers to do, the company used to require that the workers come to punch-in normally and provide the workers with 50 percent of wages; the company did not ask permission from the Ministry of Labour as this is based on the agreement dated 24 May 2008. In this case, 101 workers are making a complaint against this practice that provides the workers 50 percent of their wages for the period of no work.

Article 13(1) of the Labour Law states, *"The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void."*

Based on Article 13 above, the agreement between the company [and the workers] provides less benefit to the workers than what is provided by the Law.

Therefore, the Arbitration Council considers that the 101 workers are entitled to 100 percent of wages when the company does not have work for them to do; the Arbitration Council decides to order the company to pay an additional 50 percent of wages to the 101 workers.

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

DECISION AND ORDER

Issue 3: Order the company to reinstate Ms. Nat Leang Seap, President of local union, and pay her wages from 4 October 2008, after this Arbitral Award enters into effect.

Issue 4: Reject the demand for the employer to pay wages to Ms. Nat Leang Seap for the period she took sick leave.

Reject the demand for the employer to reimburse medical expenses for Ms. Nat Leang Seap.

Issue 6: Order the company to pay full wages for the period there was no work (August, September, October and November) to 101 workers whose names are mentioned in the list as claimants.

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:

Annex to Arbitral Award 154/08- Flying Dragon**Dissenting Opinion on Issue 4 (1)****by Arbitrator An Nan**

According to Clause 37 of Prakas 099 SKBY, dated 21 April 2004, of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation, I, Arbitrator, **An Nan**, do not agree with the decision made by the other two Arbitrators in this case to reject the workers' demand on **issue 4 (1) that workers demand the company to maintain wages during sick leave for Ms. Nat Leang Seap from 8 August 2008 to 4 October 2008.** I will present my arguments as follows:

- **The workers' demand has a proper basis in the Internal Work Rules of the company**

Clause 8, Point 8-6 of the Internal Work Rules of the company that was visaed by the Labour Inspector on 24 April 2008 states, ***"Sick leave is a leave that is permitted by the company for a reason of chronic or infectious disease with proper certification from a private or state hospital with an additional certification by the company's doctor. The company will pay full wages to the worker for the first month of leave, 60 percent for second and third months, and no payment from fourth to sixth months but the position will be maintained. From month six onwards, the company will consider termination from work."***

Base on the facts and evidence that the Arbitration Council has received, it is clearly shown that the worker whose name is Ms. **Nat Leang Seap** had, indeed, fainted and was unconscious during working hours on 8 August 2008 and she provided a proper certificate from a state hospital while taking sick leave. The other two Arbitrators also accept this fact.

Clause 9 of the same Internal Work Rules states, ***"Workers who want to take personal commitment leave shall request for permission in writing form from the company at least one day before. In case of emergency or serious illness that causes the workers not be able to go to work, the sick workers who are not able to go to work can ask for permission from their representative or by informing through mobile phone to the administrative office; however, the sick workers must submit a letter requesting for permission from the company within two days at the latest after taking leave..."*** Base on the facts, Ms. **Nat Leang Seap** already made a proper request in accordance with the procedure as stipulated in the Internal Work Rules of the company. The employer, on the other hand, did not give permission to Ms. **Nat Leang Seap** and violated his own Internal Work Rules. Therefore, because the worker has sufficient evidence showing

that she has [] abided by the practice as stipulated in the Internal Work Rules, I believe that the demand for ordering the employer to provide wages during sick leave has a proper basis that complies with the Internal Work Rules.

The Arbitrators decided that Ms. **Nat Leang Seap** was not entitled to get wages during sick leave because of having no evidence showing that she had a chronic or infectious disease. However, base on the facts, Ms. **Nat Leang Seap** provided a proper certificate from a state hospital and she also stated that the doctor told her that she had heart disease, liver disease, gall bladder disease, woman’s disease and needs surgery on her goiter. The company did not reject her claim and she was truly sick. I believe that this evidence is sufficient to make a judgement that this sickness is a kind of chronic and infectious disease. In general, no doctor will tell whether this type of sickness is a chronic or infectious disease. The doctor just clarifies the type of sickness like diabetes or liver disease as an example.

Regarding the other two Arbitrators’ interpretation on the Internal Work Rules, I find that it does not follow the real meaning of the Internal Work Rules. Even though it is a long period of sick leave, it is with a proper certificate from a state hospital and if we make such an interpretation about the worker who takes sick leave, it will cause all such workers not to receive wages during sick leave.

Therefore, in order to comply with the Internal Work Rules of the company, the employer shall provide full wages to Ms. **Nat Leang Seap** in the first month and 60% of wages in the second month during the period of sick leave from 8 August 2008 to 4 October 2008.

Signature of Arbitrator

Name: **An Nan**

Signature.....