

down on the employees. He never resolved any requests of the employees and has engaged in union discrimination by deterring employees from joining the Union.

2- The employees demand the company to provide wages and payment for regular work during a strike.

Jurisdiction of the Arbitration Council:

The Arbitration Council, derives its power to make this Award from Section II B of Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules which form an Annex to the same Prakas.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing, dated March 10 -11, 2004, was unsuccessful and a non-conciliation report was submitted to the Secretariat of the Arbitration Council on March 12, 2004.

Composition of the Arbitration Panel:

Arbitrator chosen by the Employer Party: **Mr. Ly Tayseng**

Arbitrator chosen by the Worker Party: **Mr. An Nan**

Chair arbitrator (chosen by the two arbitrators): **Mr. Ang Eng Thong**

Hearing and Evidence:

Date and place of hearing: March 19, 2004 at 15:00pm, at the Arbitration Council Secretariat, Phnom Penh Center (A), Sothea Rors Blvd., Sangkat TonleBasak, Phnom Penh.

Evidence that was considered by the Arbitration Panel:

- Received from employer's side:

- 1- Internal work rules of the company
- 2- Letter delegating authority to Mr. Mom Sambo, dated March 16, 2004
- 3- Letter ordering employees who went on strike to go back to work
- 4- Minute of conciliation of collective dispute dated March 11, 2004.

- **Received from employees' side:**

- 1- Letter of Cambodian Union Federation sent to the Company's Director, Number 021 SSB dated March 03, 2004 requesting the settlement of employees' demands.
- 2- Letter of Director of Labor Inspection sent to the leader of Yada Printing Union, 389/MOSALVY dated March 02, 2004 on reorganization of the leadership of the union.
- 3- A complaint letter from employees filed a complaint against Mr. Sun Kunden dated January 03, 2004.
- 4- List of names and thumbprints of employees who joined as members of the Yada Printing Union.
- 5- Certificate of registration of Yada Printing Union, number 393/MOSALVY dated August 08, 2003.
- 6- A complaint of two employees filed against their dismissal.
- 7- A complaint by Yada Printing Union that certified about the transportation of goods during a strike.

Presentation of evidence and answer of the witness of the both parties at the hearing:

Summary of the case:

Yada Printing Co. Ltd. located along National Road # 3, Ang Tror Kiet Village, Kontor Commune, Ang Snoul District, Kandal Province, hires 135 employees. On March 09, 2004 Yada Printing Union filed a complaint to the Department of Social Affairs and Labor at Kandal Province claiming as follows:

- 1- Employees who work for over or three months can become permanent employees.
- 2- The company shall allow parents and siblings to meet employees when there are important matters.
- 3- Dismiss the administration manager named Mr. Sun Kunden.
- 4- Request all employees to continue to conduct a strike until the Arbitration Council makes a decision to order them back to work.

On March 03, 2004 the President of Cambodian Union Federation wrote a letter to the Director of Printing request for conciliation of the three issues. The letter certifies that if the company does not resolve the dispute, the employees went on strike within seven days which is dated March 01, 2004. On March 10, 2004 the employees went on strike and then labor officials in Kandal province went to mediate, but the mediation did not conciliate all issues. After that the case was sent to the Arbitration Council.

The case reached the AC on March 12, 2004. The AC made an order on March 12, 2004 to reinstate the employees on March 13, 2004 while a waiting the final decision of the AC. The employees agreed to go back to work in accordance with the AC's order. The AC secretariat also invited the dispute parties to come with any necessary documents, with any interest evidence, and their demands to the AC on March 19, 2004 at 3:00pm.

At the hearing both parties agreed to binding award.

Finding of Fact:

- After checking the non-conciliation report of the dispute
- After listening to testimony of both parties
- After examining the documents as listed above.

The AC found that:

- 1- The administration manager, Mr. Sun Kunden, has actually committed misconduct as argued by the employees. "The administration manager deters the union from resolving the employee's issues; threatens employees to make them work overtime, uses obscene language and looks down on employees, is not responsible for work accident, and threatens employees not to join the union". Further, there is no objection from the employer who also recognized the dissatisfaction of the employees against that administrator.
- 2- The employees went on strike on March 11 and 12, 2004 then went back to work n March 13, after the AC issued an order to them back to work.

- 3- There was transportation of goods from Yada Printing factory to P & E Company in accordance with the complaint of the union leader named Mr. Mekh Vuthy and another two employees, Sin ANy and Mao Piprt.
- 4- There were no extra employees hired to replace with the employees who went on strike or transfer of work to another factory to be performed because the owner of the goods transported his/her goods from the workplaces owing to the strike. Then the owner afraid the company could not do the printing on time, also on the employee's side; they did not prove that this transportation of goods was to be performed by another company.

Reason for decision:

- 1- First issue: According to the facts, the Arbitration Council understands that there is a complaint from employees requesting the employer to dismiss Mr. Sun Kunden. The employees argued that the administrator has used obscene of language and has been very strict, and he has looked down on employees and not settled issues for the employees.

The award of the Arbitration Council in case Number: 04/03 (Lida Garment) found that Article 65 of the Labor Law mentions that "A labor contract establishes working relations between the worker and employer". Therefore, in general, only contracting parties, not the Arbitration Council can terminate the contract. This means hiring or terminating employees from any jobs in the company is the right of the employer, who is the contracting party. The employer can dismiss any employees who committed misconduct as stipulated in Article 83 of the Labor Law. In this case, the acting of the administrator, Mr. Sun Kunden who committed serious misconduct as stipulated in Article 83 of the Labor Law, the employees have rights to file complaints against a manager or employer, but the right to dismissal or to impose a strict disciplinary sanction is the employer's rights. Otherwise, the employer also recognized that there are lot of employees who do not really like the administration manager, it will be to the disadvantage of the company if it still provides the administrator with a job. Then the production figures of the company will go down due to the discontent on the

employee's side. The company must have sufficient reason to terminate any employment contract of an employee. The employer also argued at the hearing that they will take the request of the employees' union seriously in examining the acting of the administration manager. After that, the employer will decide in good faith and immediately because the company also does not want to keep the employees unhappy. So, the Arbitration Council finds that a reasonable time to give the employer make a decision in response to the demand of the employees is before the end of April 2004.

- 2- Second issue: Article 332 of the Labor Law stipulates that "A strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid". However, Article 334 of the Labor Law requires the employer to provide wages to employees during a strike if the employer recruited new employees to replace the striking workers during a strike (except recruitment to ensure minimum services). In this case the Arbitration Council found that the employer did not recruit new employees to replace the strikers during the strike. So, in accordance with the Arbitration Council finds that the employer has no obligation to provide wages to the employees in this case.

Based on the reasons, the facts and legal principal, the Arbitration Council decides to issue the award as follows:

Decision:

- 1- Order the employer to make a decision responding to the employees demand for the dismissal of the administration manager, Mr. Sun Kunden, before the end of April 2004.
- 2- Deny the employees demand at Yada Printing Company for payment of wage and other regular bonuses to the employees during strike.

Signatures of Members of the Arbitration Panel

Arbitrator chosen by the employer party:

Name: Mr. Ly Tayseng

Signature:.....

Arbitrator chosen by the employee party:

Name: Mr. An Nan

Signature:

Chair of Arbitrators Panel:

Name: Mr. Ang Eng Thong

Signature:

*This award is immediately binding upon the parties after the signature date
because the parties have agreed to select a binding award.*