

**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 16/05

Date of award: 8 April 2005

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**New Point World Trade Cambodia Company**

(Employer party)

**AND**

**Khmer Youth Federation of Trade Union (KYFTU) and Khmer Youth Union at New  
Point World Trade Company**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representatives:** 1- Mr. Chao Pheng, Chief of products at New Point World Trade Cambodia;  
2- Mr. Eang Vannak, Advisor to New Point World Trade Company;  
3- Mr. Hong Sokha, Administration manager at New Point World Trade Cambodia.

**Address:** #7, National road number 5, Resey Keo commune, Resey Keo district, Phnom Penh.

**Tel:** 023 426 261 / 030                      Fax: 023 360 088.

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Mr. Long Sophat, Official from KYFTU;  
2- Mr. Nang Samnang, Official from KYFTU;  
3- Chhey Kimheang, President of the union at New Point;  
4- Lim Sina, Secretary of KYFTU at New point;  
5- Lor Seung, Advisor to KYFTU at New Point;  
6. Kim Kongkea, Official from KYFTU;  
7- El Rany, Committee member at KYFTU;  
8- Orn Davy, Vice president of union at New Point;  
9- Yon Rithy, President of KYFTU.

**Address:** #834, National road number 5, Methapheap Villege, Resey Keo district, Phnom Penh.

**Tel:** 012 868 352.

### **ISSUES IN DISPUTE:**

(In non-conciliation report)

- 1- The workers demand that the company compensate their medical check costs of 10,100 riel per worker.
- 2- The workers demand that the company compensate employment card costs [for the amount the company charged over the required amount] (US\$3 per worker).
- 3- The workers demand that the company authorize permission according to the specific facts.
- 4- The workers demand that the company accept temporary workers who have worked for two months as permanent workers.
- 5- The workers demand that the company organize a dining place.
- 6- The workers demand that the company pay wages each month to female workers who have given birth.
- 7- The workers demand that the floating workers or temporary workers who have worked for two months be converted to permanent workers.
- 8- The workers demand that the company not force workers who cannot sew fast [enough] according to [the company's requirements] to work overtime.
- 9- The workers demand that the company pay full wages to Orn Davy, who the company authorized to take leave.
- 10- The workers demand that the company arrange to have a comfortable toilet and to have soap permanently.
- 11- The workers demand that the company deduct a union contribution of 1,000 riel from the workers' wages who have joined the KYFTU.
- 12- The workers demand that the company reinstate the worker Orn Davy, who is Vice President of KYFTU at New Point World Trade Cambodia Company.

### **JURISDICTION OF THE ARBITRATION COUNCIL:**

The Arbitration Council derives its power to make this Award from Section II (Article 309 to 317) of Chapter 12 of the Labour Law (1997); the Prakas on the Arbitration Council 99/04; the Prakas on the Nomination of Arbitrators 103/04 and 265/04 and the Arbitration Council Procedural Rules (which form an Annex to Prakas 99/04).

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 Labour Law. But at that conciliation, the parties did not reach an agreement and the non-conciliation report number 367/MoLVT/AK dated 11 March 2005 was submitted to the Secretariat of the Arbitration Council on 21 March 2005.

**COMPOSITION OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:	<b>Mr. Ou Ry</b>
Arbitrator chosen by the worker party:	<b>Mr. Liv Sovanna</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Kong Phallack</b>

**HEARING AND EVIDENCE:**

**Date and place of hearing:** 25 March 2005 at 8:00 a.m. at the Secretariat of the Arbitration Council.

**Witnesses and Experts:** N/A

**EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS BELOW:**

**A- Documents provided by the employer party:**

- 1- Letter delegating power dated 23 March 2005;
- 2- Internal Work Rules of the company dated 13 February 2001;
- 3- Sample of the labour contract;
- 4- Certificate of registration dated 29 November 2001 of the Cambodian Labour Union;
- 5- Certificate identifying most representative status of the Cambodian Labour Union dated 17 November 2003;
- 6- Minutes of the conciliation of the collective labour dispute dated 18 August 2004;
- 7- Attendance list of workers' representatives of the New Point Trade Cambodia Company who joined the meeting to conciliate the issues on 18 August 2004.
- 8- Letter from the Cambodian Labour Union dated 12 December 2003 on conciliating the collective labour dispute.
- 9- Minutes of the conciliation of the collective labour dispute dated 24 December 2004.
- 10- Attendance list of workers' representatives of New Point World Trade Cambodia who joined a meeting for conciliation on 24 December 2004.
- 11- Agreement between the employer and union to settle collective labour disputes at New Point Trade Cambodia dated 6 January 2005.
- 12- Contract of Ms. Orn Davy dated 21 October 2004, which relates to [the company's] Internal Work Rules.

- 13- Contract of Ms. Orn Davy dated 2 March 2005, which relates to [the company's] Internal Work Rules.
- 14- Minutes and attendance list of the people who participated in resolving Ms. Orn Davy's case dated 7 March 2005.
- 15- Minutes on questioning information from the employer of New Point Trade Cambodia Co., Ltd. dated 17 March 2005.
- 16- Receipt of wages [given by] New Point Trade Cambodia [upon the] dismissal of Ms. Orn Davy on 17 March 2005.
- 17- Letter refusing to take part in the settlement of Ms. Orn Davy case number 16/05- dated 23 March 2005 from the company sent to the Arbitration Council.
- 18- Letter from the Director of the Labour Inspection Department dated 22 September 2004 on the election for worker delegates for the third term.
- 19- Letter of refusal to acknowledge KYFTU dated 12 January 2005.
- 20- Attendance list of workers who took leave and table of pay rolls in January, February and March 2005.

**B- Documents provided by the employee party:**

- 1- Letter number 533/KYFTU sent to the company dated 24 December 2004 on the establishment of the union.
- 2- Receipt of the case registration dated 30 December 2004.
- 3- Letter number 68/KYFTU dated 24 December 2004.
- 4- Letter from workers' representative dated 28 January 2005 on the intervention from KYFTU to help settle disputes.
- 5- Letter number 73 from KYFTU dated 31 January 2005 on a request to the Labour Inspector to intervene in the disputes.
- 6- Letter number 68/KYFTU dated 2 February 2005 on a request to meet with the company to resolve the disputes.
- 7- Letter number 185/KYFTU dated 23 March 2005 on a request to allow the workers to appear in the hearing of the Arbitration Council process.
- 8- List of names of the New Point Trade Cambodia workers who have worked more than two months and have not yet been considered as regular workers dated 25 March 2005.
- 9- List of names of the workers who are members of KYFTU and who volunteer to agree to the union contribution of 1,000 riel to KYFTU.

**C- Document received from MoLVT:**

- 1- Letter to ask for resolution of a collective labour dispute of New Point Trade Cambodia number 374/MoLVT from H.E Nhep Bunchin, Minister of the Ministry of Labour and Vocational Training dated 18 March 2005.

- 2- Report on the resolution of a collective labour dispute of New Point Trade Cambodia number 367/MoLVT dated 11 March 2005 from Mr. Hout Chanthy, Director of the Labour Inspection Department.
- 3- Minutes of a collective labour dispute dated 7 March 2005.

**D- Documents received from the Secretariat of the Arbitration Council:**

Letter to invite the parties to take part in the hearing dated 21 March 2005.

**E- Evidence and testimonial answers from both parties at the hearing.**

**F- Both parties agreed at the hearing to a non-binding award.**

**CASE SUMMARY:**

New Point Trade Cambodia Company is located at #7, National Road Number 5, Resey Keo commune, Resey Keo district, Phnom Penh and employs approximately 700 workers. In the factory there are two unions, the Union of Workers [affiliated with the Cambodian Labour Union Federation] with Most Representative Status, and Khmer Youth Federation Trade Union, which does not have a registration certificate yet.

On 14 February 2005, the Labour Inspection Department in the Resey Keo district received a complaint from the workers [demanding that] the company respect working conditions properly in accordance with the Labour Law. After receiving the complaint on 6 and 7 March 2005 the Labour Inspectors from the Resey Keo district went to settle the disputes. But the parties did not successfully conciliate the 12 workers' demands. The 12 demands are described in the Issues in Dispute section above. This case was sent to the Arbitration Council on 21 March 2005 at 2:00 p.m.

In the hearing of the Arbitration Council, the parties reached an agreement on seven of the 12 non-conciliation issues. The seven conciliated issues are issues three, four, five, six, seven, and eight. The five non-conciliated issues are one, two, nine, eleven and twelve which will be considered by the Arbitration Council as follows:

**FINDINGS OF FACT:**

- Having examined the non conciliation report of the collective labour dispute
- Having listened to the parties
- Having checked documents as described above.

**We find that:**

**1. *First and second issues related to medical checks and employment cards***

- The union of workers at New Point that has most representative status signed an agreement with the employer on 6 April 2005 to settle an issue related to medical checks and employment cards. The agreement is provided below:

- A- The workers agreed to receive an amount of 5,000 riel for their medical check cost instead of 10,100 riel.
  - B- The company agreed to provide 5,000 riel to the workers on 10 February 2005.
  - C- The workers agreed that in order to stop their demand the company would pay back an amount of US\$3 for the employment card. Both parties agreed to comply with Article 32 of the Labour Law.
- The employer and workers entered into the agreement in order to resolve a collective dispute regarding the cost of medical checks and employment books.
  - Both parties agreed that the company has already paid [an amount of money] to the workers on 10 February 2005 in accordance with the agreement.

## **2. Ninth issue and twelfth issue related to Orn Davy**

- Ms. Orn Davy is Vice President of KYFTU of the New Point factory and was elected on 24 December 2004.
- The Company suspended Ms. Orn Davy once with another worker from December to January 2005 because there was no work in the factory. The Company reinstated her for only three days; then there was no work [again] from that time.
- The Company had warned Ms. Orn Davy three times:
  - a. The first warning on 21 October 2004. Ms. Orn Davy committed misconduct by not respecting the Internal Work Rules (IWR). She caused trouble with her colleagues and the security guard; Ms. Orn Davy made a thumbprint acknowledging her mistake.
  - b. The second warning on 2 March 2005. Ms. Orn Davy committed misconduct by not respecting the (IWR). She walked around during working hours, and she also made a thumbprint acknowledging her misconduct.
  - c. The third warning on 7 March 2005. Ms. Orn Davy committed misconduct by not respecting the (IWR), because she did not change her attitude. At this time Ms. Orn Davy refused to put her thumbprint [to acknowledge her misconduct], but the shop stewards and the CLUF [union] with most representative status in the factory were present.
- The Company dismissed Ms. Orn Davy on 7 March 2005 because of misconduct as mentioned in the (IWR), clause 2, point 7 and clause 10, without informing the Labour Inspector. Clause 2, point 7 of the IWR states that *"During working hours the workers are not allowed to work for their own benefit."* And clause 10 of the IWR states that *"First light misconduct must be informed orally and registered in the files. If there is repeated misconduct, on the second time [the employee] will receive a written warning. In the case of repeated [misconduct], on the third time [the employee] will be dismissed."*
- Ms. Orn Davy alleged that the reason the company dismissed her was because she did not resign from KYFTU, but she did not produce any evidence [to support this]. The company

denied her reasons; the company said that there was no such reason and the company followed the IWR.

- The Company paid severance pay in accordance with the Labour Law, including her last month's wage, compensation for notice, indemnity for dismissal, damages and money for annual leave compensation, in an amount totaling US\$274. But Ms. Orn Davy accepted only her last month's wage of US\$53.58 according to a letter dated 17 March 2005.

### **3. Eleventh issue related to 1,000 riel union contribution**

- KYFTU was established on 24 December 2004 and submitted its application for registration on 30 December 2004. KYFTU had not received an official certificate of registration from the Ministry of Labour before the date of the hearing.

- CLUF has a certificate of registration and also has a certificate identifying it as [the union with the] most representative status (MRS) from the Ministry of Labour and Vocational Training.

- The company had deducted 1,000 riel of union contribution for CLUF. However, the company declined to deduct 1,000 riel of union contribution for KYFTU because KYFTU does not have a certificate of registration recognized by the MoLVT. The company is concerned that if the company deducted the money, the workers would disapprove about their loss of wages.

#### **REASONS FOR DECISION:**

##### **1. First and second issues related to medical checks and employment cards**

Article 247 of the Labour Law provides that "The Ministry in charge of Labour shall issue a Prakas to determine: (c) - the conditions under which employers are required to establish and provide at their expense: (4) - the medical exams of workers as stipulated in point (a) of this Article."

In prior cases, the Arbitration Council has interpreted Article 247(c) of the Labour Law to mean that employers are responsible for the costs of medical check fees (see 02/03-Lida, 21/03-Loyal, 19/04-Kbal Kosh 2, 53/04-Kong Hong, 60/04-United Arts, 64/04-Mecury, 78/04-AIA, 106/04-Suit Way, 107/04-Jacqsintex, 05/05-G.H.G).

Article 32 of the Labour Law states that "Every person of Cambodian nationality working as a worker for any employer is required to possess an employment card."

In prior cases, the Arbitration Council has interpreted Article 32 to mean an employment card is the property of the worker who must possess it in order to be employed. The Arbitration Council has ruled that individual workers are responsible for the cost of the card, but only up to the amount of the cost set by the government (see 21/03-Loyal Cambodia). In prior cases, the Arbitration Council has ordered the employer to reimburse some of the amounts in

excess of the official fees which the employer deducted from employees' salaries for issuance work books.(see 106/04-Suit Way and 05/05-G.H.G).

Article 120 of the Labour Law states that "the statute of limitation for a lawsuit for the payment of wages is three years from the date the wage was due."

In this case, the workers alleged that the agreement made on 6 April 2005 between CLUF and the employer was under the law; thus, this agreement must be null and void according to Article 13 of the Labour Law. Article 13 states that "The provisions of this law are of the nature of public order, excepting decorations 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."

The Arbitration Council finds that the agreement signed on 6 April 2005 does not violate Article 13 of the Labour Law. The Arbitration Council finds that the agreement signed on 6 April was [made] to resolve the dispute in the past. The agreement on 6 April 2005 does not bind the employer and the employees in the future because this agreement was made to resolve the past disputes. However, if the agreement determined that the employer can deduct the cost of medical checks from employees' wages and can deduct more than the costs of employment cards from the employees' wages in the future, the Arbitration Council may consider that this agreement would contradict the meaning of public order, which will be null and void pursuant to Article 13 of the Labour Law. In addition, the Arbitration Council finds that the terms of agreement signed on 6 April 2005, when read together, do not contradict the public order. The employer agreed to pay 5,000 riel to all employees without identifying the category of worker or when they began working for the company. All employees of the factory received 5,000 riel from the employer in accordance with the agreement. The employees were not required to prove that the employer had deducted any amount of money from their wages, and the employees received 5,000 riel from the employer even if the three-year statute of limitations had expired regarding their individual claim.

In conclusion, the substance of the agreement of 6 April 2005 means that the purpose of negotiation of a collective labour dispute is to avoid periods of long-term dispute and to protect the benefits of both parties. Both parties agreed in good faith and without force to enter into the agreement to resolve their collective labour dispute. Therefore, because the Arbitration Council finds that the agreement dated 6 April 2005 is not in violation of the law, the Arbitration Council rejects the demands of KYFTU.

In the hearing, KYFTU's representative said that the Arbitration Council had issued an arbitral award to deny the agreement of the CLUF with the employer in 60/04-United Art, by saying that this agreement is under the law. In this case, the Arbitration Council finds as follows: (1) The agreement that was made in the case of United Art is not the subject of the hearing in this case; (2) KYFTU's representative failed to provide the agreement that was made in the case of 60/04-United Art; (3) It is not known whether or not the agreement in United Art was to resolve a past dispute or to set a policy for the future; (4) The facts in United Art regarding that agreement are distinguishable from the facts of the agreement in this case. For example, the union (CLUF) that made the agreement in this case has most representative status and this agreement had also already been implemented. As for the agreement in United Art, the union that made the agreement did not have most representative status and the agreement has not yet been implemented.

Therefore the Arbitration Council rejects the demand in respect of the first and second issue.

## **2. Ninth issue and twelfth issue related to the demand for Ms. Orn Davy for full wages and reinstatement**

Article 293 of the Labour Law states "*A dismissal of a shop steward or candidate for shop steward can take place only after authorization from the labour inspector,*"

Prakas 305/2001, clause 4(2) states that "*Beyond the date specified in the preceding paragraph, this protection shall cover, under the conditions specified in Articles 282 and 293 of the Labour Code, three union leaders and, for unions with more than 200 members, one worker for each additional 200 members of the union. Better protection may be obtained through a collective bargaining agreement. For purposes of this protection, the union shall communicate to the employer by any reliable means the names of the individuals to be protected. A copy of this communication must be sent to the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.*"

To decide this issue, the Arbitration Council needs to determine whether or not the dismissal of the employee, Ms. Orn Davy, who is a union leader entitled to legal protection, was approved by the Labour Inspector.

In this case, the company said that it did not know that Ms. Orn Davy was officially recognized by the law as a union leader. According to the facts, the KYFTU at New Point Company held an election on 24 December 2004. The union said that it attempted to inform

the employer about the establishment of the new union through its letter dated 24 December 2004 of the KYFTU, but the employer refused to [acknowledge its establishment].

According to the facts received by the Arbitration Council, the company prepared a letter to the Ministry of Labour and Vocational Training on 12 January 2005 rejecting the committee of the new union because the union leader from this union had incited the workers and led the strike in the factory. This letter shows that the company knew that the committee of the new union was in the process of registration, and that the union is protected by the law if there is any dismissal. Under the law the employer must receive approval from the Labour Inspector before dismissing union leaders. In this case the company failed to inform or obtain approval from the Labour Inspectors. The employer said that Ms. Orn Davy had been informed and warned three times in accordance with clause 10 of the Internal Work Rules of the company.

The employer argued that the Arbitration Council should agree to the dismissal of any workers who are not union leaders (normal workers who do not have positions in the union leadership) [whose dismissal is made] according to the Internal Work Rules of the company. However, in this case the Arbitration Council found that Ms. Orn Davy is a Vice President of the KYFTU thus the Arbitration Council finds that the employer's dismissal of Ms. Orn Davy is in contradiction with the procedures of the Labour Law, which provides that the dismissal of union leaders can take place only after authorisation from the Labour Inspector. (Article 293 of the Labour Law and see 02/04-Cambodiana, 17/03&18/03-Ho Hing, 27/03-Standard Garment, #7/04-Chheer View, 19/04-Kbal Koh, 22/04-Raffles le Royal, 41/04-Mi Casa, 51/04-Sam Han and 05/05-G.H.G).

### **3. Eleventh issue related to the union contribution of 1000 riel:**

Article 129 of the Labour Law provides that *"Collective agreements authorizing any wage deductions other than these cases are null and void. However, the workers can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time."*

Prakas 305/01 of clause 5(5) provides that *"Any worker who belongs to a union may request in writing at least 15 days in advance that her/his union dues be withheld from her/his salary, in accordance with Article 129 of the Labour Code, and the employer shall properly comply with such requests. At the request of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, the employer shall provide certification of the number of workers who have requested that their union dues be withheld, together with the names of these [employees and] the name of the union or unions to benefit from this procedure. This certification shall constitute additional proof for purposes of determining the representativeness of the unions."*

In prior cases, the Arbitration Council has interpreted Article 129 of the Labour Law and article 5(5) of Prakas 305/01 to mean that workers can authorize the employer to deduct union dues from their wages; authorization must be in writing and may be withdrawn at any time; and once a worker authorizes the deduction of union dues, the employer must make the deduction and forward the amount to union (see 03/03-Tong Ga and 05/03-Top One).

In this case the Arbitration Council finds that the company understands the Cambodian Labour Law because the company has deducted a 1,000 riel union contribution for CLUF. In the hearing the company said that it refused to deduct 1,000 riel for KYFTU because this union did not have an official certificate of registration, and if the company deducted the money, it would result in disapproval of the employee party.

KYFTU was established on 24 December 2004 and had submitted an application for registration on 30 December 2004. Article 268 paragraph 2 of the Labour Law states that "If the Ministry in charge of Labour does not reply within two months after receipt of the registration form, the professional organization is considered to be already registered." According to this Article, KYFTU became a legal union two months after it submitted its application for registration. Therefore, the company must deduct a 1,000 riel union contribution for the newly established union, KYFTU.

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

**DECISION:**

- Reject the workers' demand in respect of the first and second issues.
- Order the company to reinstate Ms. Orn Davy in her previous position after this award comes into effect.
- Order the company to reimburse wages and other benefits to Ms. Orn Davy beginning from the date the company dismissed her until her reinstatement.
- Order the company to deduct the 1,000 riel union contribution per month from [each] employee who provides their consent in writing to the employer and who belong to KYFTU after this award comes into effect.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

**Arbitrator chosen by the employer party:**

Name: **Ouk Ry**

Signed: .....

**Arbitrator chosen by the worker party:**

Name: **Liv Sovanna**

Signed: .....

**Chair of arbitration panel:**

Name: **Kong Phallack**

Signed: .....

*This Award will become binding after eight days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.*

*This Award is immediately binding upon the parties if the parties have agreed as such in writing before the notification of the Award, or if the parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*