

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**THE ARBITRATION COUNCIL**

Case: 22/04

Date of award: 07 June 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labor Law)

**Raffles Hotel le Royal**

(Employer party)

**And**

**Union of Raffles Hotel le Royal**

(Employee party)

**Detailed information of employer party:**

**Address:** #92, Daun Penh Ave, Wat Phnom commune, Daun Penh district, Phnom Penh.

**Tel:** 023 981 888

**Fax:** 023 981 168

**Representatives:**

1-	Mr. Eugene D'Cruz	Human Resource Manager
2-	Mr. Rat Sovat	Training Officer
3-	Mr. Chhit Boravuth	Attorney
4-	Mrs. Seng Vuoch Hun	Attorney

**Detailed information of employee party:**

**Address:** #14, Street 146, Toek Laak II commune, Tuol Kok district, Phnom Penh

**Tel:** 012 588 267

**Representatives:**

1-	Mr. Sao Vanthen	President of Union of Raffles Hotel le Royal
2-	Ly Koam	President of Union Federation of Cambodian Tourism

- |    |                       |                                                  |
|----|-----------------------|--------------------------------------------------|
| 3- | Mr. Pin Chhary        | Vice President of Federation of Union of Tourism |
| 4- | Mrs. Lean Choenda     | Attorney                                         |
| 5- | Mr. Sun Kak San       | Attorney                                         |
| 6- | Mrs. Sam Sela         | Advisor for Union of Raffles Hotel le Royal      |
| 7- | Mr. Moel Samnang      | Advisor for Union of Raffles Hotel le Royal      |
| 8- | Mr. Yim Sereivathanak | Advisor for Union of Raffles Hotel le Royal      |

### **ISSUES IN DISPUTE:**

#### **(In non-conciliation report)**

- 1- Employee party claims that the employer reinstate the 97 employees laid off in March 2004.
- 2- Employee party demands the hotel to maintain and pay the workers who took part in the strike from 05 March 2004 to the day they return to work, on the ground that the hotel has recruited new workers to replace them.

Upon the hearing, the employee party came up with a new issue, which they thought directly, relates to the above issues. The issue is that:

- 3- *Employees argue that the selection of the new shop stewards and the Collective Bargaining Agreement negotiation at Raffles Hotel le Royal following the April 05th 2004 strike are unlawful.*

### **JURISDICTION<sup>1</sup> OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Section II B<sup>2</sup> Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 099 of 21 April 2004), the Prakas on

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<sup>1</sup>Jurisdiction means judicial power.

<sup>2</sup> From Articles 309 to 317 of the Labor Law

the Nomination of Arbitration Council Members (No. 103 of 26 April 2004), and the Arbitration Council Procedural Rules.

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 was unsuccessful and non-conciliation report dated 30 April 2004 was submitted to the Secretariat of the Arbitration Council on 11 May 2004.

**COMPOSITION OF THE ARBITRATION PANEL :**

Arbitrator chosen by the employer party:	Mr. <b>Mar Samborana</b>
Arbitrator chosen by the worker party:	Mr. <b>Tuon Siphann</b>
Chair arbitrator (chosen by the two arbitrators):	Mr. <b>Kong Phallack</b>

**HEARING AND EVIDENCE**

***Date and place of hearing:***

On the evenings of 17, 18 and 19 May 2004 from 14h00 at Arbitration Council Secretariat.

**Witnesses:**

- 1- Four witnesses for employer party: 1- Mr. Patrick Behren, 2- Mr. Sar Samnang, 3- Mr. Kim Bora and 4- Eugene D'Cruz
- 2- Two witnesses for employee party: 1- Mr. Bun Sok La and 2- Yim Sereivathanak

**Evidence considered by the Arbitration Panel:**

**I. *Documents obtained from employer party:***

1. A letter of 17 May 2004 authorizing Attorney Chhit Boravuth and Eugene D'Cruz to represent the hotel,
2. Ministry of Commerce Certificate of Raffles Hotel le Royal (No. 452 of 25 October 1994),
3. Hotel Patent (2004),

4. Attorney Chhit Boravuth's request for an urgent hearing dated 29 April 2004,
5. Request for an urgent injunction against the strike dated 12 February 2004,
6. Request for an urgent declaration about the legitimacy of the strike dated 07 April 2004,
7. Counter-claim against the Arbitration Council award dated 09 February 2004,
8. Summon regarding an urgent matter (No. 474/09-04-04) to forbid an illegal strike or demonstration,
9. Verdicts for urgent matters dated 25 December 2003 and No. 16F of 09 April 2004,
10. Notice on the dismissal of employees of Raffles Hotel le Royal and a name list of those to be dismissed dated 19 April 2004,
11. Verdict with regards to an urgent matter (No. 09F of 25 December 2003) declaring the employees' strike illegal,
12. Verdict at the request to prevent a strike or lockout (No. 09F of 18 February 2004),
13. Verdict for an urgent matter (No. 16F of 09 April 2004) declaring the strike illegal,
14. Internal rules of the hotel registered on 03 August 2001,
15. 19 May 2004 letter against the Arbitration Council's order dated 18 May 2004 requesting witnesses and evidence before the Arbitration Council,
16. Letter and name list of witnesses confirming that the employer did not recruit new staff members during the strike,
17. Name list of the staff members of Raffles Hotel le Royal who returned to work within 48 hours after a court verdict was issued on 11 and 12 April 2004,
18. Letter dated 20 May 2004 from Raffles Grand Hotel d'Angkor on the training for seven employees, one of whom was a casual worker,
19. Six labor contracts of Han Salan, Nut Sokhan, Kongkea, Chea Bonthan, Meach Vannom and Rors Nimol from Raffles Grand Hotel d'Angkor,
20. E-mail of request for a traineeship by Regent Business School's students,
21. Responding letter from the hotel allowing the trainees,
22. Two contracts of M. Ly Vina and Mr. Chim Chamreun of Raffles Hotel le Royal,
23. Photos of strikers' activities on 16 and 19 April 2004, and

24. Name list of those who came to work between 05 and 13 April 2004.

**II. Documents obtained from employee party:**

1. Letter from the nine federations to the Minister of Social Affairs, Labor, Vocational Training and Youth Rehabilitation, dated 13 February 2004.
2. Letter of Federation of Union of Cambodian Workers in Tourism and Service dated 19 February 2004 on the temporary suspension of the strike,
3. Letter No. 016/2004 of 14 March 2004 from the Federation of Union of Cambodian Workers in Tourism and Service,
4. Letter dated 23 May 2003 requesting the registration of Raffles Hotel le Royal and Certificate of registration (No. 462 of 23 May 2003),
5. Rules of the Union of Raffles Hotel le Royal dated 30 December 2003,
6. Certificate of the most representation of the Union of Raffles Hotel le Royal dated 30 December 2003,
7. Collective declaration of the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation and the Ministry of Tourism dated 18 March 2004,
8. Letter dated 13 April 2004 not allowing the strikers to return to work on 13, 14 and 15 April 2004,
9. Joint letter of the Ministry of Tourism and MoSALVY dated 05 April 2004,
10. Letter from Court Clerk Sing Sopheak making it clear about the approach of Attorney Lean Choenda and four other representatives to the Phnom Penh Municipal Court to ask that the workers would be allowed to get back to work on 12 April 2004, and
11. Copy of the Collective Bargaining Agreement between the delegation committee of Raffles Hotel le Royal and Raffles Hotel le Royal dated 24 May 2004.

**III. Documents obtained from the Ministry of Social Affairs, Labor, Vocational Training, and Youth Rehabilitation:**

1. Non-conciliation report of the Ministry of Social Affairs dated 30 April 2004,
2. Instruction of the Ministry of Social Affairs dated 30 April 2004,

3. Bordereau of the Ministry of Social Affairs dated 30 April 2004, and
4. Letter of the ministry dated 11 May 2004 calling on the Arbitration Council to resolve the labor disputes at Raffles Hotel le Royal.

#### **IV. *Presentation by employee and employer parties in the hearing***

The two parties decided in the hearing that: ***this award is not immediately binding.***

#### **CASE SUMMARY**

Raffles Hotel le Royal employs 219 people. Some of them started to go on strike on 05 April 2004 in order to ask the employer to recommence the collection of the service charge. The employer, through a letter dated 19 April 2004, issued a notice of a collective dismissal of 97 striking workers.

Following approval from the Minister of Social Affairs on 23 April 2004, Mr. In Khemra, Deputy Head of the Department of Labor Inspection, helped resolve the dispute regarding the two issues listed as Issue 01 and 02 above through until 30 April 2004. However, the conciliation was not successful in any issue.

On 11 May 2004, the Arbitration Council received the case from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation.

#### **Presentation by employee party:**

Employees started the strike on 05 April 2004. Prior to the strike, they had already arranged for minimum service, with over 100 employees working regularly to fulfill the minimum service necessary for the hotel. During the strike, the employer selected new workers to replace the striking workers. The workers informed the Ministry of Social Affairs and all of the hotels of the strike on 13 February 2004.

The employer dismissed the 97 striking employees by letter dated 19 April 2004. The employees said the layoff of the 97 workers was illegal for the following reasons:

- Their strike was lawful,
- The employer's notice of termination did not comply with the procedures and was not issued in time, and
- The employer used the MPA security forces to prevent the workers from returning to work as they attempted to re-enter the workplace on the mornings of 12 and 13 April 2004.

On 26 April 2004, the Ministry of Social Affairs met with both the employee and employer parties and it asked the employer party to recommence the collection of service charge. The employer party refused to do so. On 14 March 2004, the employees gave further notice of their intention to strike. The notice was sent to all concerned institutions, just as before. The employer was really informed of the strike because they called the workers' representatives to talk and avoid a strike on 3 March 2004. At the Ministry of Social Affairs, Mr. Ly Koam, President of Union Federation of Cambodian Tourism, verbally told Mr. Stefan, the Director of Raffles Hotel le Royal, on 02 April 2004 about the strikes at its other member hotels including Raffles Hotel le Royal (in the presence of Mr. Sao Vanthen, President of Union of Raffles Hotel le Royal). Two or three days prior to the April 05 2004 strike, the employees wrote a note setting 05 April 2004 as the starting date of the strike and posted it on the union's bulletin board at the back of Raffles Hotel le Royal.

Mr. Yim Sereivathanak presented that on 07 or 08 April 2004, he called three friends, a woman and two men, who were working inside the hotel and that they told him that on 06, 07 and 08 April 2004, the hotel took approximately ten workers or so from Raffles Grand Hotel d'Angkor.

The employee party claimed that the hotel selected new shop stewards and made another collective bargaining agreement with them without the participation of the old union. This was also published in *The Cambodia Daily* issued on 17 May 2004.

**Presentation by employer party:**

The employer dismissed 97 of the striking workers on 19 April 2004 through a letter dated 19 April 2004 sent to the union and the Labor Inspectorate of the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation; meanwhile, the employer also, through the post office, sent letters of dismissal to the individual striking workers (by certified mail). The employer said the reasons why the 97 workers were dismissed were that they failed to return to work 48 hours after the issuance of a verdict in an urgent matter (No.16F of 09 April 2004) declaring the 05 April 2004 strike illegal. The employer prepared security forces to register those striking employees who wished to return to work within 48 hours, but no one, except two of them, did. Therefore, the employer decided to lay off the 97 workers and refused to reinstate them.

The employer said that the employees did not formally inform them about either the starting date of the 05 April 2004 strike nor the ending date. The employer claimed that no new employees were recruited from 05 April 2004 up to now. However, certain trainees from educational institutions were allowed to train work at the hotel. No workers were transferred from Siem Reap, but some were really taken from Siem Reap just for training. Because the employer did not have the documents in their hand, they undertook to give the actual number of trainees and apprentices and the exact length of time the training would take. After such traineeship were constantly conducted.

Kim Bora, a witness for the employer party, claimed that he knew that the employer had replaced the strikers with 20 employees from Siem Reap and a certain new number of workers during the strike which started on 05 April 2004.

The employer refused to consider the issues regarding the election for the new shop stewards and the signing of the new collective bargaining agreement because the issue was not stated in the non-conciliation report dated 30 April 2004. In addition, the employer was not prepared to present the documents regarding the new shop steward committee and the new collective bargaining agreement they made with the new shop stewards and even walked out of the hearing as the Arbitration Council decided to consider this issue. Kim Bora said that during the strike, he neither

went to work nor took part in the strike because he thought that if had participated in the strike, he would have not been allowed to return to work by the employer. He confirmed that seven (7) or eight (8) shop stewards were selected in April and May 2004.

**FINDINGS OF FACT:**

- After having reviewed the non-conciliation report of the labor dispute,
- After having heard the presentation of the company and employees as described above and in the hearing records,
- After having reviewed documents as described above.

**We find that:**

On 12 February 2004, the employer party lodged a complaint asking the court to issue a verdict upon request and the Phnom Penh Municipal Court issued a verdict for an injunction against a strike or lockout (No. 09 of 12 February 2004).

On 13 February 200[4], nine unions of tourism sector wrote a letter to the Minister of Social Affairs, Labor, Vocational Training and Youth Rehabilitation in respect of a strike relating to their demand for the employers to resume collecting service charges.

On 14 March 2004, the employees again notified all concerned institutions of a strike. The employer party knew about the strike unofficially and on 03 April 2004, the employer met with the worker representatives to find ways of avoiding the strike. At the Ministry of Social Affairs, Mr. Ly Koam, President of Union Federation of Cambodian Tourism, verbally told Mr. Stefan, the Director, on 02 April 2004, of Raffles Hotel le Royal, (in the presence of Mr. Sao Vanthen, President of Union of Raffles Hotel le Royal) about the strikes at its other member hotels including Raffles Hotel le Royal.

It was not until 05 April 2004 that approximately 97 workers started to go on non-violent strike after the two sides to the dispute and the Ministry of Social Affairs had met several times to resolve the dispute without any solution, because the employer party kept refusing to recommence the collection of the service charges.

On the same day, 05 April 2004, the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation and the Ministry of Tourism issued a joint instrument, asking the hotels involved in the dispute to recommence the collection of the ten percent service charge and distributed it to the workers in accordance with customary practices. However, none of the hotels agreed to comply with the instruction of the two ministries.

On 07 April 2004, the employer filed a complaint asking the Phnom Penh Municipal Court to decide on an urgent matter with respect to the legitimacy of the strike conducted by the Union of Raffles Hotel le Royal from 05 April 2004. The Phnom Penh Municipal Court summoned Sao Vanthen, the union president, in order to hear an urgent matter and it declared the strike illegal. Telling the strikers they were motor-taxi drivers, justice policemen for the Phnom Penh Municipal Court delivered the verdict to the strikers on 09 April 2004, but the strikers at Raffles Hotel le Royal refused to take it.

While a number of workers were going on strike, others of them were working in the hotel as normal. The employer took some people from Raffles Grand Hotel d'Angkor and students from Regent School of Business to work in Raffles Hotel le Royal. The employees, on 13 February 2004, notified the Ministry of Social Affairs and at least six luxury hotels in Phnom Penh of the strike.

On 26 April 2004, the Ministry of Social Affairs met with both the employer and employee parties and asked the employee party to resume collecting the service charges. The employer party refused to obey this request.

On 14 March 2004, the employees, as they did before, sent notice of their strike to all institutions. The employer party informally learnt about the strike and on 03 April 2004, they met with the worker representatives to find ways of avoiding the strike. On 02 April 2004, At the Ministry of Social Affairs, Mr. Ly Koam, President of Union Federation of Cambodian Tourism, verbally told Mr. Stefan, the Director of Raffles Hotel le Royal, (in the presence of Mr. Sao Vanthen, President of Union of Raffles Hotel le Royal) about the strikes at its member hotels including Raffles Hotel le Royal.

The employees failed to formally inform the employer of the starting and ending date of the 05 April 2004 strike. Of those who were allowed by the employer to go to work after 05 April 2004, some may have been trainees and others may have been to replace the strikers.

Regarding the [issues of the] election for the new shop stewards and the making of the new collective bargaining agreement, the Arbitration Council found that eight new shop stewards were elected and a new collective agreement containing 21 articles was made for a validity of one year, from 01 May 2004 to 30 May 2005. The Arbitration Council received this document on 24 May 2004 at 11h30[AM]. The new collective agreement was signed by Mr. Stefan Gnagi (Hotel Manager), Mr. Eugene D'Cruz (Human Resources Manager), and Mr. Hann Juan Han (Human Resources Manager of Raffles Hotel & Resort) in the name of the hotel and Ya Kanhol (President) Kheiu Ratana (Vice President), Tep Bunratana (Secretary), Thy Sok Mony (Financier), Leng Nara (Advisor), Lieng Dara (Advisors), Ly Bunlieng (Advisor), and Riem Sython (Advisor) on behalf of the new Shop Steward Committee.

## **REASONS FOR DECISION**

### ***Issue #1:***

Article 337 of the Labor Law provides that:

"The Labour Courts or, in the absence of the Labour Courts, the common courts, have sole jurisdiction to determine the legality or illegality of a strike.

If the strike is declared illegal, the strikers must return to work within **forty-eight hours from the time when this declaration is given out**. A worker who, without valid reason, fails to return to work by the end of this period is considered guilty of serious misconduct."

Thus in order to decide if the strikers committed acts of serious misconduct in terms of Article 337 the Arbitration Council must consider the following points:

- Was the strike declared illegal?
- Did the striking workers return to work within 48 hours?; and
- Did the workers have a valid reason if they did not return to work within 48 hours?

The Phnom Penh Municipal Court issued emergency injunction #09.Ch on 9 April 2003 declaring that the strike which started on 5 April 2004 at the Raffles Hotel le Royal was illegal. Even though the workers raised substantial arguments to suggest that the emergency interim injunction declaring the strike illegal was not correct, this emergency injunction of the Phnom Penh Municipal Court is still a declaration with regard to the legality of a strike in the sense of Article 337 and the Arbitration Council does not have the jurisdiction to assess the correctness of this decision.<sup>3</sup>

Article 337 of the Labor Law is clear that the 48 hour period is calculated from the time (hour and day) when the Court **issues** a decision with regard to the legality of a strike and not the time at which the decision as regards the legality of the strike is actually taken to or served upon the worker party.

The emergency injunction of the Phnom Penh Municipal Court was issued on 9 April 2004 at approximately 2.00 pm. Thus, the 48 hours must be calculated starting from 9 April at approximately 2.00 pm. Accordingly, if the workers did not return to work in accordance with that injunction before 11 April 2004 at approximately 2.00 pm without a valid reason, they would be considered to have committed acts of serious misconduct. However, officials of the Phnom Penh

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<sup>3</sup> The Council is willing to accept this *deka kec ka pranhap* as a declaration in terms of Article 337 of the law as it is a final decision of the Court. It is interesting to note that the same rule may not apply to *deka taam*

Court did not post the injunction on the walls of the Hotel in order to inform the workers of the decision until 2.00 pm on 10 April 2004. Thus, the fact that the workers did not know about the decision of the Court for 24 hours after it was issued provides a valid reason for their not returning to work until 2.00 pm on 12 April 2004.

The workers claimed that on 11, 12 & 13 April 2004, they tried to return to work but the MPA security guards at the Hotel did not allow them to do so but rather required them to first sign an agreement that they would return to work and promise not to participate in any further strike. A witness for the employer, Mr Sa Samnang, gave evidence that he received instructions from the employer party that he should register the names of workers who agreed to return to work on a form prepared by the hotel starting from 11 April 2004. This form was a registration list which was headed "The worker agrees to return to work and promises not to participate in any further strike." Mr Sa Samnang explained that on 11 April 2004 representatives of his security team let it be known to a number of workers who showed a desire to return to work that they could register their names on the list but that those workers refused to register saying that they did not know what sort of new tricks the employer was up to. The president of the union, Mr Sao Vanthen and other workers who gave evidence claimed that workers tried to go back to work on 11, 12 and 13 April 2004 but that some of these workers refused to sign their names on the register and some others did not know about the requirement to sign the register. Thus, on 11 April 2004 after refusing to sign the register, the workers continued to protest peacefully outside the hotel. On 12 April 2004, representatives of the workers and their lawyer went together to the Phnom Penh Municipal Court to ask the Court to intervene to assist the workers to return to work, as is evidenced by the letter of the clerk of the court, Seng Sopheaknaa dated 19 May 2004 which states that "on 12 April 2004 at 10.00, Lean Chenda, lawyer, and 5 representatives of the workers indeed came to the Court to request the Court to contact the employer (hotel) in order to facilitate a return to work for the workers." On 13 April 2004, the workers went together to meet the Wat Phnom commune chief in order to make a statement as to their desire to return to work.

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*peak som* which are interim ex parte orders which may be opposed by application to the Court of first

Based on the evidence and claims of the above witnesses, the Arbitration Council finds that the workers did indeed try to return to work on 11, 12 and 13 April 2004 but that they did not agree to register and sign their names on the register prepared by the employer. The Arbitration Council finds that the requirement that the workers register their names and promise not to participate in any further strike was not reasonable because the workers have the right to strike legally in accordance with the Constitution and the Labor Law (1997). On this basis, the Arbitration Council finds that the workers had a valid reason in accordance with Article 337 of the Labor Law for not returning to work within 48 hours of the Court decision.

The Arbitration Council finds that the employer could have applied Article 337 of the Labor Law in accordance with the law if he had announced broadly to all workers that they were required to return to work within 48 hours of the issuance of the court decision without applying unreasonable conditions.

For these reasons, the 97 workers of the Raffles Hotel le Royal did not commit acts of serious misconduct within the meaning of Article 337 of the Labor Law, of which the employer accused them and which the employer used as the basis for their dismissals.

Having found that the dismissals of the 97 workers of the Raffles Hotel le Royal was not in accordance with the law, the Arbitration Council finds that the Raffles Hotel le Royal must accept all of these 97 workers back to work with their salaries preserved back-dated to 11 April 2004.

***Issue #2:***

The workers claim for the employer to pay their salaries for the period of the strike because the Hotel hired new workers during the strike in contravention of Article 334 of the Labor Law.

Supporting this claim, the workers produced a summary table for dates 18 – 24 April 2004 that they said shows that the employer employed a number of new staff during this period. However, the

Arbitration Council thinks that period was when the employees had already ended their strike. Mr Kim Bora, a witness called by the employer, claimed that he saw a number of new staff come to work at the hotel during the strike; some as trainees and some from the Raffles Grand Hotel d'Angkor (Siem Riep). Mr de Cruz, representing the employer, gave evidence that a number of staff (6 persons) and one casual worker were sent from the Raffles Grand Hotel d'Angkor for training during the period 17 – 26 April 2004. This evidence was provided by way of letter from the Grand Hotel to the Arbitration Council dated 20 May 2004. Mr de Cruz also explained that the Hotel took on 9 trainees from Regent School of Business in order for them to get experience at the hotel. These trainees were placed at Front Office (2); house-keeping (4); Spa (1); Engineering (1); and Food & Beverage (1) and were placed as requested by the school in a letter dated 19 March 2004, in which the school requested that they be placed for training starting from 26 April 2004 for a period of three months, during which each of them would receive an allowance of US\$30 per month.

Based on the above evidence, the Arbitration Council finds that the Hotel's placing of students and staff from their partner hotel for the purposes of training during the above mentioned times should not be considered as hiring new staff during a strike as:

1. these activities only occurred after the workers tried to return to work on 11 April 2003; and
2. the Arbitration Council accepts that the engagement of trainees and transfer to staff from its partner hotel in Siem Reap were preplanned activities which were not related to the strike.

For these reasons in accordance with Article 332 of the Labor Law, the workers of the Raffles Hotel le Royal do not have a right to receive wages during the period of the strike from 5 through 11 April 2004.

***Issue #3:***

Only the two above issues are set out in the report of non-conciliation. The third issue which relates to the selection of new worker delegates and the signing of a collective bargaining agreement was raised by the worker party during the hearing and put to the Arbitration Council to consider and decide as part of this case.

According to Article 312 of the Labor Law, the Arbitration Council has the power to decide two types of issues, namely:

1. issues which are included in the non-conciliation report of MoSALVY; and
2. issues which arise subsequent to this report which are a direct consequence of the dispute.

During the hearing, the workers claimed that the choosing of new worker delegates and the signing of a collective bargaining agreement fall under point two of the previous paragraph. On 18 May 2004, the Arbitration Council issued an order stating that this issue raised by the worker party *could* be within the jurisdiction of the Council pursuant to Article 312 of the Labor Law.

For this reason, the Arbitration Council ordered that the employer party provide further evidence with regard to these issues. However, the employer objected to the order of the Arbitration Council, maintaining that the issue was not within the jurisdiction of the Arbitration Council. The Arbitration Council explained to the employer party that the objection procedure applies only to the final award of the Council and not to the orders which the Council makes with regard to its own proceedings.<sup>4</sup> Nevertheless, the employer refused to provide any evidence with regard to this point and, together with their lawyer abandoned the hearing, when the Council began to consider this issue.<sup>5</sup> Accordingly, the Arbitration Council is mandated to proceed to decide the dispute in the absence of the employer and on the basis of the evidence provided to it by the worker party.<sup>6</sup>

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<sup>4</sup> The Arbitration Council has the power to issue such orders according to Rule 4.3 of the Arbitration Council Procedural Rules (Annexed to the Prakas on the Arbitration Council (#099/2004 MOSALVY) which provide the Arbitration Council with the full power to issue orders relevant to the preparation of the dispute for adjudication or which relate to any aspect of a hearing. Furthermore, Article 312 of the Labor Law provides the Arbitration Council with the power to require the parties to a dispute to provide any documents which may be useful in carrying out its duties.

With regard to the documents and evidence referred to above, the Arbitration Council finds that this issue 03 is within its jurisdiction because:

1. The Arbitration Council accepts the uncontested evidence of the worker party that although the worker delegates were elected on 29 April 2004, the dispute with regard to the choosing of new worker delegates occurred only after those delegates had signed the collective bargaining agreement on 1 May 2004, which was after the date of the non-conciliation report (30 April 2004);
2. The choosing of new worker delegates and the signing of the collective bargaining agreement occurred during the period when there was a dispute with the Union of the Raffles Hotel le Royal, which had most representative status at the hotel;
3. The Arbitration Council accepts the argument of the worker party that the employer organized the selection of new worker delegates in order to replace the union leadership, whose dismissal is the subject of the current dispute, in the negotiation of a collective bargaining agreement.

With regard to the election of new worker delegates, Article 288 of the Labor Law provides that worker delegates must be chosen from among candidates nominated by unions which have representative status in the enterprise. On this point, the Union of Raffles Hotel le Royal has representative status based on its certificate [of most representative status] (#575) issued by MOSALVY which has a term of two years running through 30 December 2005. In these circumstances, the hotel had an obligation to consult with the union before the choosing of new worker delegates. During the hearing, the President of the Union gave evidence that the employer did not comply with this obligation. Thus, the election of the new worker delegates must be considered illegal.

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<sup>5</sup> To leave the hearing in this fashion was in violation of Article 20 of the Prakas on the Arbitration Council which requires that the parties must attend all meetings to which the arbitration panel calls them.

<sup>6</sup> See Article 21 of the Prakas on the Arbitration Council.

With regard to the negotiation and signing of the collective bargaining agreement, Article 96(2) of the Labor Law provides that collective bargaining agreements are written agreements which are made by agreement between:

1. On the one hand an employer, a group of employers, or professional associations representing employers; and
2. On the other hand one or more unions representing workers. In derogation from the above, however, in circumstances where there is no union representing workers in an enterprise, a collective bargaining agreement can be made by agreement between an employer and worker delegates who have been properly elected in accordance with the procedures set out in Part III of Chapter 11 of the Labor Law.

In this case, only the Union of the Raffles Hotel le Royal, which had been registered since 23 May 2003 and had most representative status, was entitled to sign the collective bargaining agreement. But the employer party did not follow the proper procedures but rather entered into an agreement with the new worker delegates who were themselves chosen illegally.

In summary, the Arbitration Council finds that within two weeks of improperly dismissing 97 union members, including all of the union leadership, the Raffles Hotel le Royal organized an unlawful election of worker delegates and entered into a collective bargaining agreement with this group. These actions reveal a clear intent on behalf of the ownership and management of the Raffles Hotel le Royal to bypass the union, which had the sole right to represent workers in the collective bargaining process. In pursuing this strategy, the employer party has shown a flagrant disregard for the right to freedom of association and the right to bargain collectively, as provided for by the Constitution and laws of the Kingdom of Cambodia, not to mention ILO Conventions on *Freedom of Association and Protection of the Right to Organise Convention (C87)* and the *Right to Organise and Collective Bargaining (C98)* which Cambodia has ratified.

Accordingly, the Arbitration Council is required to make orders, which protect the union's right to bargain.

Based on the above reasoning, the evidence and the law stated above, the Arbitration Council decides as follows:

**DECISIONS AND ORDERS :**

1. *Order the employer party to accept the 97 workers back to work starting from the day on which this order comes into force. The employer shall pay salaries to all of these workers in full for the period starting 11 April 2004 through to the date on which they recommence work.*
2. *Reject the claim of the workers for the 97 strikers to be paid for the period of their strike;*
3. *Prohibit the employer from negotiating or otherwise resolving any disputes with the new workers' delegates as representatives of the workers of the Hotel Raffles le Royal;*
4. *Suspend the collective bargaining agreement which the employer made with the new workers' delegates unless there is agreement from the union which has representative status at the hotel.*

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

Arbitrator chosen by the employer party:

Name: **Mar Samborana** (See the dissent attached in the Annex)

Signature: .....

Arbitrator chosen by the employee party:

Name: **Tuon Siphann**

Signature: .....

Chair of Arbitration Panel:

Name: **Kong Phallack**

Signature: .....

*This award will become binding after 8 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 parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*