

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 28/06-GDM

Date of Award: 24 April 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: GDM Enterprise Co. Ltd. (GDM)

Address: Chaom Chao Street, Sangkat Chaom Chao, Khan Dangkor, Phnom Penh

Telephone: 011 262 765 / 012 325 051

Fax: 023 985 647

Representatives:

- | | |
|------------------------|--------------------------------|
| 1. Ms. Zhou Qin | Director of GDM |
| 2. Ms. Tov Vuoch Heang | Administrator of GDM |
| 3. Mr. Keo Nal | Assistant Administrator of GDM |
| 4. Mr. Cheat Khemara | Representative of GMAC |

Worker party:

Name: Khmer Youth Federation Trade Union (KYFTU)

Address: #34, Street 265, Village 13, Sangkat Tek Laak III, Khan Tuol Kork, Phnom Penh

Telephone: 011 622 963

Representatives:

- | | |
|--------------------|-----------------------------------|
| 1. Mr. Mai Vathana | Officer of KYFTU |
| 2. Mr. Chhai Mabb | President of Local Union of KYFTU |
| 3. Mr. Mao Lim | Secretary of Local Union of KYFTU |
| 4. Ms. Hun Sotha | Worker |

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 513/05 (Third 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 hearing was unsuccessful, and the non-conciliation report No. 510 KKBV/VK dated 5 April 2006 was submitted to the Secretariat of the Arbitration Council.

On 5 April 2006, the Secretariat of the Arbitration Council received 28/06-GDM and was informed at the same time that the workers of GDM were on strike. When the Secretariat of the Arbitration Council contacted the workers to select an Arbitrator, the worker party refused to select one. The Secretariat of the Arbitration Council followed the procedure provided under the Prakas on the Arbitration Council (Prakas 99/04 of the Ministry of Social Affairs, Labour, and Youth Rehabilitation) to select an Arbitrator by lot. Through the lot, Mr. An Nan was selected.

REASONS FOR DECISION

The Arbitration Council issued an Interim Order on 5 April 2006, ordering the workers to stop the strike and to return to work, awaiting the settlement of their issues by the Arbitration Council. On 7 April 2006, the Arbitration Council held a pre-hearing meeting with the parties, during which the arbitration panel warned the worker party that Arbitration Council proceedings can only take place when the workers stop their strike. However, the workers continued their strike.

The Arbitration Council issued a second return to work order on 10 April 2006. Clause 4 of the second Interim Order warned that *“In the event where the workers are still on strike, the Arbitration Council will not continue its proceedings to settle this collective labour dispute.”* The Arbitration Council also convened a second pre-hearing meeting on 11 April 2006. At the second pre-hearing meeting, the Arbitration Council warned the worker party again that the Labour Law prohibits industrial action, strikes or lockout or other actions during arbitration that may aggravate the situation. If the worker party would not comply, the Arbitration Council procedure will not go forward. Nevertheless, the workers still continued their strike.

Art. 20 of Prakas No. 99 on the Arbitration Council states that:

“During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labour Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.”

In addition, in its previous Interim Orders, the Arbitration Council has interpreted this article to mean that the Arbitration Council will not continue the arbitration process when the worker party is on strike.

For example, in case 04/04-MSI, the Arbitration Council issued a Notification, dated 29 January 2004, paragraph 4 of which states that:

“With the view that the disputing parties do not have the right to stage a strike during the Arbitration Council proceeding, the Arbitration Council cannot settle or issue an award with regard to this collective labour dispute which was referred to it. The Arbitration Council may settle this collective labour dispute again when the workers stop the strike.”

Similarly, in case 18/04 – Hotels, The Arbitration Council issued *Interim Order 2*, dated 22 April 2004, Point 9 and 11 of which reads as follows:

“Point 9-From 23 April 2004, all workers must stop strike, demonstration, or any act of disturbance within the campus of the hotels which are the party to this dispute.

...

Point 11-The Arbitration Council reserves the rights to terminate the arbitration proceedings in the event one of the parties violates any provision of this order.”

Again, in case 77/05-Franco Knitting Garment, the Arbitration Council issued *Interim Order 2*, dated 24 December 2005, and stated in point 4 *“In the event the Worker Party continues the strike, the Arbitration Council will not proceed to settle the collective labour dispute.”*

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

DECISION

- Discontinue the arbitral proceeding of 28/06-GDM.

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair of arbitration panel:

Name: **Kong Phallack**

Signature: