



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 30/08- E Garment

Date of Award: 24 March 2008

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: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **E Garment Co., Ltd (E Garment Company)**

Address: Village Number 3, Svay Rolum Commune, Saang District, Kandal Province

Telephone: 024 399 000 or 012 864 088

Fax: 024 399 0303

Representative:

- | | |
|---------------------|-----------------------------|
| 1- Mr. Siv ChivSeng | Vice-Administrative Manager |
| 2- Mr. So SokAng | Human Resource |
| 3- Mr. Liv Piseth | Administrative Staff |

Worker party:

Name: Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU)

Address: Village Number 3, Svay Rolum Commune, Saang District, Kandal Province

Telephone: 012 717 074 Fax: N/A

Representative:

- | | |
|-----------------------|---------------------------------|
| 1- Mr. EK Sopheakdkey | Secretariat of C.CAWDU |
| 2. Mr. Neoun Vuthy | President of Local C.CAWDU |
| 3. Mr. Khoun Sothy | Vice-President of Local C.CAWDU |
| 4. Mr. Chan Pov | Union Secretary (Union Advisor) |

5. Mr. Meth Sopheak	Treasurer of Union
6. Mr. Touch Both	Union Activist
7. Mr. Som Soveasna	Union Activist
8. Mr. Chet Man	Union Activist
9. Mr. Doung Tola	Union Activist
10. Mr. Young Sina	Union Activist

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company reinstate eight union leaders. The Company does not agree to the demand because their employment contracts expired.
- 2- The workers demand that the Company provide them with one hour for lunch. The Company does not agree to the demand.
- 3- The workers demand that the Company convert workers who have been working for over two months to full-right workers. The Company does not agree to the demand.
- 4- The workers demand that the Company reinstate Doung Tola, a union leader. The Company does not agree because s/he had resigned from work.

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 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 hearing was unsuccessful, and the non-conciliation report No. 110/08 K.B./KN dated 25 February 2008 was submitted to the Secretariat of the Arbitration Council on 25 February 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: 06 March 2008 (08:00am to 12:00pm)

Procedural issues:

On 5 September 2007, the Department of Labour and Vocational Training in Kandal Province assigned an officer to conciliate 12 collective disputes with the result that eight were

conciliated. Four non-conciliated issues were submitted to Secretariat of the Arbitration Council on 25 February 2008.

After the receipt of the case, Secretariat of the Arbitration Council summoned the Employer parties and the Worker parties in factory to come for the hearing and further conciliation on the four non-conciliation issues on 6 March 2007 at 8:00mins.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to seek additional information regarding the disputes, and conciliation of those four non-conciliation issues resulted in conciliation of one issue, issue 2. The remaining non-conciliation issues are issue 1, issue 3 and issue 4. The Arbitration Council considers this case based on the evidence and clarification of the parties at the hearing as follow:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Authorization letter by the Company Director to Mr. Siv Chiv Seng Deputy Administrative Manager to resolve dispute dated 04 March 2008;
2. Certificate of registration in the General System of Preferences, dated 10 May 2006;
3. Internal Work Rules of E Garment Company, No. 007/06-KBV, dated 23 May 2006;
4. Statute of E Garment Company, dated 11 October 2005;
5. Resignation letter of Duong Tola, dated 20 August 2007;
6. Employment contract for temporary worker of Mr. Duong Tola, dated 25 June 2007;
7. Job application letter of Mr. Duong Tola;
8. Letter about Mr. Duong Tola by the Company, dated 25 June 2007;
9. Attendance list of Duong Tola;
10. Personal employment contract of Duong Tola, dated 24 August 2007 by GPS Security Company Co. Ltd.;
11. Curriculum Vitae of Duong Tola;
12. Termination letter of Mr. Lin Sarak, dated 12 August 2007;
13. Employment contract for temporary worker of Mr. Lin Sarak, dated 25 June 2007;
14. Letter about Mr. Lin Sarak by the Company, dated 14 June 2007;
15. Job application letter of Mr. Lin Sarak;
16. Interview with new staff of E Garment Company with Mr. Lin Sarak;

17. Slip certifying registration for election of Mr. Lin Sarak, dated 08 October 2004;
18. Letter certifying of identity or/and age of the voter and of residency in the commune of Mr. Lin Sarak, dated 08 October 2004;
19. Letter of termination of employment of Mr. Lao Dara, dated 02 July 2007;
20. Employment contract for temporary workers of Mr. Lao Dara, dated 25 June 2007;
21. Interview with new staff of E Garment Company with Mr. Lao Dara;
22. Letter about Mr. Lao Dara by E Garment Company, dated 25 June 2007;
23. Letter certifying of identity or/and age of the voter and of residency in the commune of Mr. Lao Dara, dated 14 October 2004;
24. Termination of employment of Mr. Yon Sina, dated 23 August 2007;
25. Employment contract for temporary workers of Mr. Yon Sina, dated 25 June 2007;
26. Job application of Mr. Yon Sina;
27. Interview with new staff of E Garment Company with Mr. Yon Sina, dated 25 June 2007;
28. Letter about Mr. Yon Sina by E Garment Company, dated 25 June 2007;
29. Attendance list of Mr. Yon Sina;
30. Letter of employment resignation of Mr. Yon Leangsrin, dated 06 August 2007;
31. Employment contract for temporary workers of Mr. Yon Leangsrin, dated 25 June 2007;
32. Job application letter of Mr. Yon Leangsrin;
33. Interview with new staff of E Garment Company with Mr. Yon Leangsrin;
34. Letter about Mr. Yon Leangsrin by E Garment Company, dated 25 June 2007;
35. Letter of termination of contract of Mr. Jet Mann, dated 25 August 2007;
36. Employment contract for temporary workers of Mr. Jet Mann, dated 25 June 2007;
37. Job application letter of Mr. Jet Mann;
38. Interview with new staff of E Garment Company with Mr. Jet Mann;
39. Letter about Mr. Jet Mann by E Garment Company, dated 25 June 2007;
40. Letter of termination of employment contract of Mr. Khon Sothy, dated 16 August 2007;
41. Employment contract for temporary workers of Mr. Khon Sothy, dated 25 June 2007;
42. Job application letter of Mr. Khon Sothy;
43. Interview with new staff of E Garment Company with Mr. Khon Sothy;
44. Letter about Mr. Khon Sothy by E Garment Company, dated 25 June 2007;
45. Letter of termination of employment contract of Mr. Touch Bot, dated 17 August 2007;

46. Employment contract for temporary workers of Mr. Touch Bot, dated 19 June 2007;
47. Job application letter of Mr. Touch Bot;
48. Interview with new staff of E Garment Company with Mr. Touch Bot;
49. Letter about Mr. Touch Bot by E Garment Company, dated 19 June 2007;
50. Letter certifying identity and/or age of the voter and of residency in the commune of Mr. Touch Bot, dated 20 October 2004;
51. Letter of termination of employment contract of Mr. Som Veasna, dated 07 August 2007;
52. Employment contract for temporary workers of Mr. Som Veasna, dated 12 June 2007;
53. Job application letter of Mr. Som Veasna;
54. Letter about Mr. Som Veasna by E Garment Company, dated 19 June 2007.

Provided by the worker party:

1. Request letter for union registration of the local union of C.CAWDU at E Garment Factory, dated 03 August 2007;
2. Minutes of the election to establish the local union of C.CAWDU at E Garment Factory, dated 03 August 2007;
3. Letter No. 061/07 SBKK, regarding notification about the election to establish a new union at E Garment Factory, dated 31 July 2007;
4. Letter No. 083/07 SBK, regarding Notification about the result of the election of the local union of C.CAWDU at E Garment Factory, dated 06 August 2007;
5. List of participants in the election to establish a union at E Garment Factory on 03 August 2007;
6. Receipt of registration of the local union of C.CAWDU at E Garment Factory, dated 15 August 2007;
7. Summary statement of the demand by the local union of C.CAWDU at E Garment Factory, dated 11 March 2008.

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

1. Report of collective labour dispute resolution at E Garment Factory, No. 110/08 KB/KN, dated 25 February 2008;
2. Minutes of collective dispute resolution in E Garment Factory, dated 05 September 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 157 KB/AK/VK/LKA dated 27 February 2008 to invite the workers to attend the hearing.
2. Invitation letter No. 156 KB/AK/VK/LKA dated 27 February 2008 to invite the employer to attend the hearing.

FACTS

- Having examined the documents the parties submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by representatives of the workers and the employer

The Arbitration Council finds that:

- E Garment Company employs approximately 2,342 workers.
- The local union of C.CAWDU at E Garment Company stated in the hearing that up to the hearing date the union has approximately 200 workers as its members. The local union of C.CAWDU does not have a certificate of registration recognized by the Ministry of Labour.
- The local union of C.CAWDU at E Garment factory notified the employer on 31 July 2007 about the election and held the election on 3 August 2007. In the election there were 32 candidates for union leaders.
- On 06 August 2007, the union notified to the Company about the result of the election with a list of names of 44 union leaders and members.
- The Company acknowledges receipt of the notification about the election and the result of the election through a security guard named Em Sam Art.

Issue 1: Workers demand the company to reinstate eight workers whom the company terminated

- Workers stated that the facts regarding the dismissal of eight workers in this case 30/08 are the same those in case 123/07 where the Company terminated 28 workers.
- Workers demand that the company reinstate eight workers who were dismissed because the workers were candidates for the union election.
- The Arbitration Council found the following facts related to the eight workers:

No	Name	Date of the first contract	Date contract last signed	Expiration date of the contract	Date of termination (Workers' testimony)	Date of termination (Employer's testimony)
1	Khon Sothy (Vice-President)	19-04-07	25-06-07	Two months after 25-06-07, at the latest	06-08-07	16-08-07 (Contract expired)
2	Som Soveasna		12-06-07	Two months after 12-06-07, at the latest	06-08-07	07-08-07 (Contract expired)
3	Touch Bot		19-06-07	Two months after 19-06-07, at the latest	06-08-07	17-08-07 (Contract expired)
4	Jet Mann		25-06-07	Two months after 25-06-07, at the latest	06-08-07	25-08-07 (Contract expired)
5	Yon Leangsrin (absent)		25-06-07	Two months after 25-06-07, at the latest	06-08-07	06-08-07 (Contract expired)
6	Yon Sina		25-06-07	Two months after 25-06-07, at the latest	06-08-07	23-08-07 (Contract expired)
7	Lin Sarak (absent)		14-06-07	Two months after 25-06-07, at the latest	06-08-07	12-08-07 (Contract expired)
8	Lao Sara		25-06-07	Two months after 25-06-07, at the latest	06-08-07	02-07-07 (Contract expired)

- The employer stated that the company terminated the eight workers although they had not worked for [the full] two months from the date the contract was signed for the reason that the workers' contracts are casual contracts. The Company stated that this dismissal does not base on discrimination.
- The workers and the employer parties stated that workers who have casual contract work full time like regular workers means 8 hours per day and 26 days per months.
- The workers do not want to receive the severance pay while demanding the company to reinstate them to work because this dismissal happened after the notification of the election and result of the election as in case 123/07- E Garment.

Issue 3: Workers demand the company to convert workers who have worked from 2 months up to regular workers

- Workers demand the company to convert workers who have worked two months or more to regular workers. This demand is for all workers.
- Normally, the company and workers signed contracts for casual workers (temporary workers) and each contract is at least for two months; probationary workers hold at least three months contract and fixed duration contracts are for six months each.
- Workers mentioned in the hearing that regarding workers who hold casual workers contracts on expiration of the contract the company will provide payments required by law and the company tells workers to take a day-off of one to three days, then the company will sign a contract which is a casual workers contract that lasts only two months with the workers again. A worker named Khon Sothy testified in the hearing that he entered into the casual worker contract for a duration of two months twice. At the expiration of the first contract, he had only a one-day break before making another casual contract for two months with the Company again.
- Workers and employers stated in the hearing that casual workers work the same as regular workers; that is, [they work] eight hours per day and 26 days per month, with the same wages and benefits as regular workers.
- In the hearing, the employer stated that the Company renews casual contract for less than 10 percent of all workers and that the number of times (many or few) it renews casual contracts depends on the season and orders from buyers. The workers do not object to the statement by the Company.
- The employer mentioned in the hearing that currently, there are no two-month casual worker contracts because the company terminated all those workers. However, if there are more buyers the company will use casual workers contract again in accordance with the law.
- Workers stated in the hearing that they do not know how many workers hold casual worker contracts of two months duration and how many do not.

Issue 4: Workers demand the company to reinstate Mr. Doung Tola whom the company dismissed.

- Mr. Doung Tola who is a knitting worker commenced his work on 10 October 2006 as a casual worker whose contract was for approximately 2 months.
- Mr. Doung Tola signed casual worker contracts with the company continuously until the company terminated his last contract on 20 August 2007.

- Workers' demand the company reinstate Mr. Doung Tola for the reason that the termination was based on union discrimination because he was one of the union leaders.
- Employer stated in the hearing that the company terminated Mr. Doung Tola's contract because Mr. Doung Tola abandoned his work.
- Mr. Doung Tola stated in the hearing :
 - On 17 August 2007 the chief of knitting called workers to receive his wages but he refused to go to accept it.
 - On 18 August 2007 the chief of knitting told workers that the company said they were not going to provide piece work to male workers.
 - On 20 August 2007 at 7:00 a.m., he went to get [] work but the company did not give [] work to him and he went to his house without providing any notice to the chief of knitting or the company representative about a reason for that leave.
 - On 25 August 2007 the company called to him to receive his wages; but if the date was past the 25th when he came to accept it the company would regard the wages as being abandoned.
- Mr. Doung Tola stated in the hearing that he did not receive any information regarding dismissal from the company because he went to his house directly after he went to receive [] work and the company did not have work for him to perform. Now he works at GSP factory in the security section.

REASONS FOR DECISION

Based on the above facts, the Arbitration Council finds that C.CAWDU received a receipt to acknowledge [union] registration but the Ministry of Labour [later] rejected the documents submitted by the union (Case 123/07-E Garment) and the union has not received permission or recognition from the Ministry yet. But six of 8 workers who are the claimants in this case participated the hearing to defend their claim. So the Arbitration Council shall consider as follows:

Article 268 of Labour Law states *"In order for their professional organisation to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of Labour for registration."*

The Arbitration Council considers that Article above means a professional organisation is entitled to rights and interests in accordance with the Labour Law when such professional organisation holds a registration certificate and is recognised by the Ministry of Labour.

The Arbitration Council also considers that these rights and interests include the right to represent union members in the resolution of disputes before the Arbitration Council. (See Arbitral Award 62/06-Quick Sew, issue 2 and 31/08-South Bay, issue1)

In this case, C.CAWDU received a receipt for [union] registration from the Ministry of Labour and Vocational Training on 15 August 2007. However, up to the hearing date the Arbitration Council finds this union has not received the certificate of registration from the Ministry of Labour and Vocational Training. Thus, according to Article 268 as mentioned above, the union does not have the rights and benefits according to the Labour Law. This means that the local union of C.CAWDU does not have legal right to bring dispute for a solution in front of the Arbitration Council on behalf of all of its members.

Therefore, the Arbitration Council considers that the Arbitration Council has rights to resolve the dispute for only [eight] workers who are the complaints.

Issue 1: Workers demand the company to reinstate 8 workers

The Arbitration Council finds that the company terminated the casual work contracts of approximately two months duration before their expiration dates. The company also provided severance pay as stated in the law; that is, the company provides the severance pay in respect of the full 2 months.

The Arbitration Council will consider whether or not the employer is entitled to terminate the eight workers before the expiration date?

Article 67 Clause 7 of the Labour Law states, "*Contracts of a fixed duration must be in writing. If not, it is redefined as a labor contract of undetermined duration.*"

In this case the Arbitration Council finds that eight workers have fixed duration contracts for two months with the company. So the Arbitration Council finds that those eight workers have fixed duration contracts with the company.

Article 73 of the Labour Law states, "*A labor contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement and if it is stated in writing in the presence of a Labor Inspector and signed by the two parties to the contract.*

If the parties do not agree, a contract of specified duration cannot be cancelled before its termination date except for serious misconduct or force majeure.

The premature termination of the contract by the employer for reasons other than those mentioned in paragraphs 1 and 2 of the present Article gives the employee the right to recompense in an amount at least equal to the remuneration he would have received until the normal termination of the contract."

Based on the meaning of Article 67 clause 3 of the Labour Law, the Arbitration Council considers that a fixed duration contract can be terminated by the employer before

the expiration, for reasons other than those stated in clause 1 and 2 of that Article, entitles workers to damages which is equal to the wages that the worker would have received until the normal expiration.

But in this case workers do not demand to receive the severance pay; instead workers demand the company to reinstate them on the basis that the company dismissed candidates who stood for the election.

The Arbitration Council shall consider whether or not this dismissal of eight workers is legitimate or not? And whether or not this dismissal was discriminatory?

1. Did the employer apply the law when it dismissed the 8 workers?

Labour Law Article 293 *“The dismissal of a steward or a candidate for steward can take place only after authorization from the Labor 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.”*

Clause 3, Paragraph 1 of Prakas 305 SKBY, dated 22 November 2001, states, *“All workers who are candidates for election as union leader shall also receive protection from work dismissal like worker delegates. This protection lasts for 45 days prior to the election and ends 45 days after the election if these candidates are not selected. The union shall notify the employers about this candidacy through all reliable means. Employers shall apply this provision once only at every election of union leaders.”*

Additionally, Clause 4, Paragraph 1 of Prakas 305 SKBY, dated 22 November 2001, states, *“From the time of applying for registration of unions, all workers and employees that are founders or all workers and employees that are voluntary members of the union while applying for registration also receive protection like worker delegates. This protection lasts for 30 days after the date of registration of the union.”*

Based on the content of Clause 3, Paragraph 3 and Clause 4, Paragraph 1 of Prakas 305, SKBY, dated 22 November 2001, as mentioned above, the Arbitration Council considers that union leaders who are founders of the union or workers who volunteer to be union members during the application for union registration are protected from termination of employment.

In previous cases, the Arbitration Council interpreted Clause 3 and 4 of Prakas 305 SKBY, dated 22 November 2001, to mean that the workers are protected if: (1) workers are type of workers who entitles for special protection (2) termination occurs during the [period of] special protection (3) union has notified the employer about the protected candidates through all reliable means. (See Arbitral Awards 07/06-Dai Young, issue 1; 09/06-Grand Diamond City, issue 1 and 148/07-Pay Her, issue 1).

In this case the Arbitration Council found that union has fulfilled the above requirements:

The first condition has been satisfied because the Arbitration Council finds that seven workers were candidates who stood for the union election and are entitled to special protection based on Clause 3 Paragraph 3 of Prakas 305 SKBY dated 22 November 2001.

The second condition has been satisfied as the employer dismissed those seven workers when they were under special protection. It means seven workers who were candidates standing for election and seven workers were dismissed on 02 July 2007 and 06, 07, 16, 17, 23, 25 August 2007 which is period that workers entitle to special protection base on the meaning of Clause 3 and Clause 4 of Prakas 305 SKBY dated 22 November 2001. (See Arbitral Award 07/06- Dai Young, issue 1 and 148/08-Pay Her, issue1)

The third condition has also been satisfied as the union notified the employer about the candidates who are entitled to special protection by all reliable means. It means that C.CAWDU gave notice to the employer about the new election and the election candidates on 31 August 2007, which the security guard of the company signed on receiving these documents. Additionally, the union also notified to the employer about the result of the election on 06 August 2007 and the company security guard also signed to receive that document which indicated Mr. Koun Sothy won as vice-president and other seven workers won as union activists and the company dismissed all eight of them.

Separately, Mr. Len Sarak is a union activist in the election result list. The Arbitration Council found that Mr. Len Sarak was not a candidate standing for the election according to the list of candidates standing for the election on 31 August 2007 which the union submitted to the Arbitration Council. Moreover, in accordance with Clause 4, Paragraph 1 of Prakas 305 SKBY dated 22 November 2001, the Arbitration Council finds that Mr. Len Sarak is not entitled to special protection as a founder [(those who originally founded the union or volunteered to join the union during the application period for union registration)] because the company dismissed him on 12 August 2007 and the date that the union submitted the application on 15 August 2007. This means that he was dismissed three days before the registration.

Based on the explanation above the Arbitration Council considers that those seven workers have satisfied the conditions for the the special protection as stated in Paragraph 3 of Clause 3 of Prakas 305 SKBY dated 22 November 2001; but not the worker Len Sarak.

The Arbitration Council considers that the employer must obtain the permission from labour inspector regarding the termination of those seven workers because they are afforded the special protections as union election candidates according to Clause 3 of Prakas 305 dated 22 November 2001. In addition the Arbitration Council does not find any evidence to

prove that the employer obtained the permission from the labour inspector because the company considered that workers whom the company dismissed were casual worker.

So the Arbitration Council considers that the employer's termination of the seven workers was not in accordance with the law.

2. Whether or not the dismissal of eight workers was based on union discrimination?

The Arbitration Council finds that the list of candidates for the union election, as well as the notification letter to the company about the results of the union election, include the names of approximately 44 members for [the positions of] union leaders and activists. Among those workers are those who worked in the ironing section, approximately 28 workers, who were terminated by the company and the subject of case 123/07-E Garment. The Arbitration Council issued an arbitral award on 13 December 2007 in issue¹ which directed the employer to reinstate the 28 workers because of union discrimination. In this case 30/08 - E Garment the company terminated eight more workers in the same union list. So the Arbitration Council will consider this demand, as below.

The Arbitration Council considers that the seven workers have special protection in accordance with Clause 4 paragraph 1 of Prakas 305 SKBY dated 22 November 2001; Mr. Lin Sarak, on the other hand, is not under special protection. So the Arbitration Council will consider that whether the terminations of the seven workers and Mr. Lin Sarak were on the grounds of union discrimination or not?

The Arbitration Council finds that Mr. Lin Sarak was elected as union activist based on the notification of the election result dated 06 August 2007 and the company terminated him on 12 August 2007.

Article 266 Paragraph 1 of Labour Law states "*Workers and employers, without distinction whatsoever, have the right, without previous authorization, to form professional organizations of their own choosing. The purpose of these organizations is to study, promote, and defend the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by their charters.*"

Based on this Article the Arbitration Council considers that workers have the right to establish professional organization for the purpose of studying, promoting, and defending their rights, as well as for moral and material interests.

Article 12 of the Labour Law states "*Except as otherwise provided in this Labor Code, or any other legislation or regulation protecting women and children, as well as provisions regarding the entry and stay of foreigners, no employer shall take into consideration the race, color, sex, beliefs, religion, political opinion, ancestry, social origin, or union membership or activity of employees with respect to hiring, the conduct and assignment of work,*

occupational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of the employment contract. “

Article 279 of the Labour Law states “*Employers are forbidden to take into consideration union affiliation or union activities when making decisions concerning hiring, the performance and distribution of work, promotion, remuneration and granting of benefits, disciplinary measures, or dismissal.*”

Based on the meaning of Article 12 and 279 of the Labour Law in previous cases the Arbitration Council ordered the employer to reinstate workers back to work since termination based on union discrimination violates Articles 12 and 279 of the Labour Law which prohibit the employer to hire or discipline or terminate the contract of workers on the grounds of union membership or activism. (See Arbitral Awards 28/07- Dae Kwang, issue 3; 123/07- E Garment, issue 1; and 148/07- Pay, issue 1)

Regarding the grounds of union discrimination the Arbitration Council generally considers the testimony at the hearing and examines the evidence related to the case to determine whether or not union discrimination was a reason to dismiss the workers or not. (See Arbitral Awards 03/03- Tonga, issue 1; 10/03- Jacqsintex, issue 4; 19/04- Kbal Koh, issue 1; 17/07- Charm textile, issue 1; and 148/08- Pay Her, issue 1)

In this case the Arbitration Council considers that the company dismissed the workers over a continuous period in one section, the ironing section, who were organising a union. Furthermore, the company dismissed those workers in the ironing section indicated in the name list for the union election dated 31 August 2007 and the list of the election results dated 06 August 2007 which the workers provided as notification to the company. For the workers whose contracts had not yet expired, the company paid for the period of the entire contract term. So the Arbitration Council considers that the employer dismissed those seven workers and Mr. Lin Sarak on the grounds of union discrimination which violates Article 293 of the Labour Law.

Clause 34 of Prakas 099 SKBY dated 21 April 2004 states “*...the arbitration panel, the panel shall have the power and authority to...orders to reinstate dismissed employees to their former or any other appropriate position...*”

So the Arbitration Council orders the employer to reinstate those eight workers. (See Arbitral Award 02/04- Cambodiana, issue 1; 17/04- Cheer View, issue 1; 19/04-Kbal Koh II, issue 1; 170/7- Cham Textile, issue 1; and 148/07- Pay Her, issue 1)

Issue 3: Workers demand to convert workers who have been working for more than two months to regular workers.

Based on facts the employer confirmed that currently the company does not have any workers who are under casual contracts; however in future if the company needs casual

workers the company will recruit more as the law does not so prohibit [such practice]. The workers do not know whether there are workers under casual contracts or not and also object to what the employer stated.

Clause 19 of Prakas 099 SKBY dated 21 April 2004 on the Arbitration Council allows any person who is not party to the dispute but who receives an authorization letter from the disputant parties to be able to represent them in resolving the dispute before the Arbitration Council. This Clause means that even though C.CAWDU does not have a union certificate this union still can represent the parties to resolve the dispute before the Arbitration Council if the union obtains a written authorization letter from workers who make a claim.

In this case C.CAWDU does not have a certificate. The Arbitration Council can not find any written authorization letter from workers in connection with making this claim. So the Arbitration Council considers that the union does not represent all workers in the company.

Moreover, the Arbitration Council considers that the complaint in the dispute has not yet happened, so the Arbitration Council can not find any facts or evidence related to [casual] workers requiring resolution.

Regarding future demands, in case 10/03- Jacqsintex the Arbitration Council determined that *“The Arbitration Council is established to resolve labour disputes, not to resolve dispute that have not yet happened.”*

In this case the Arbitration Council agrees with this determination because no one can predict whether or not this dispute will happen or not, or where or when it will happen. Also we do not know who workers may be in the claim, such as their names, group or section, how many workers will be in the dispute, or even the type of workers' contract. (See Arbitral Award 68/04-City New, issue 4; 36/06-Mondotex, issue 5; and 58/07- 8 Stars Sportswear, issue 1)

So the Arbitration Council decides to reject the demand of workers to convert workers working more than 2 months to be regular workers.

Issue 4: The workers demand that the Company reinstate Doung Tola, whom the company dismissed.

Workers stated in the hearing that the company dismissed Mr. Doung Tola on the grounds of being a union leader. So the Arbitration Council will consider whether Mr. Doung Tola is a union leader or not? Whether or not the dismissal was based on union discrimination? Was the termination of Mr. Doung Tola's contract the result of a willful abandonment of the job or a dismissal by the company?

1- Is Mr. Doung Tola a union leader?

In the hearing workers stated that Mr. Doung Tola is a union leader but workers do not have any evidence to support their statement. The Arbitration Council finds that Mr.

Doung Tola is not named in the list of union election members dated 31 July 2007 and the list regarding election results dated 06 August 2007. Thus the Arbitration Council finds that Mr. Doung Tola is not a union leader.

2- Was the dismissal based on the ground of union discrimination?

Based on facts above, the Arbitration Council finds that in the list of union election members dated on 31 July 2007 and in the list of election result dated 06 August 2007 which has the name of the three union leaders –such as Mr. Neoun Vuthy elected as the President, Mr. Koun Sothy as the Vice-President, Mr. Youn Rith as Secretary– and the activists – approximately 44 members– and none of these include Mr. Doung Tola’s name.

Moreover, the minute of the election of C.CAWDU of E-Garment factory dated 03 August 2007 regarding workers who attended the election which the Arbitration Council received from the workers dated 22 March 2008 also does not include the name of Mr. Doung Tola either. Additionally, in the hearing Mr. Doung Tola stated that he has never worked for the union.

So the Arbitration Council decides not to accept the argument regarding the termination of Mr. Doung Tola’s contract on the grounds of union discrimination.

3- Is the termination of Mr. Doung Tola’s contract wilfull abandonment of employment or dismissal?

Article 67 Paragraph 2 of the Labour Law states “*The labor contract signed for a specific duration cannot be for a period longer than two years.* “

Article 67 paragraph 7 of Labour Law states “*Contracts of a fixed duration must be in writing. If not, it becomes a labor contract of undetermined duration.*”

The company signed a contract with Mr. Doung Tola in accordance with the agreement on casual contracts for the period of two months. The company has signed continuous casual contracts with Mr. Doung Tola since 2006. Between the period that the contract ended the company told workers to leave one day, two days or three days then the company signed another contract with the workers.

The Arbitration Council determines that Mr. Doung Tola’s contract has a duration of at least 2 months, and the total length of employment is not more than 2 years, and it is in written form. So the Arbitration Council considers that Mr. Doung Tola’s contract is a fixed duration contract.

In the hearing the employer alleged that the company terminated Mr. Doung Tola’s contract because Mr. Doung Tola abandoned his job. However, Mr. Doung Tola states that on 20 August 2007 at 7:00am he went to get piece work from the company but the company did not give him piece work so he went to his house without telling the reason to supervisor of the weaving section or the company representative. So the Arbitration Council will consider as follows:

In Internal Work Rules of the company the Arbitration Council finds that Clause 6 of Internal Work Rules states that *“Regarding workers who are absent without permission for any reasons, the following will apply:*

- *Leave for 1 day will result in a verbal warning and loss of pay in proportion to the day of leave. Leave for 2 days consecutively will result in a written warning, and loss of pay in proportion to the days of leave and loss of eligibility for the annual salary increase.*
- *If there is no improvement and happens again, there will be a written warning; but if third and last time this person still commit the same act the company will dismiss him/her. “*

In this case, on 20 August 2007 at 7:00am, [Mr. Duong Tola] went to the company to get piece work but the company did not give him any so he went to his house without telling the reason to the supervisor or the company representative; so the Arbitration Council considers that according to the Internal Work Rules of the company a worker who is absent for one day will receive a verbal warning and if he is absent two consecutive days he will receive a written warning, and will be dismissed when the act continues to be committed. Based on the parties' statements in the hearing the Arbitration Council could not the company had made any warning verbally or in writing to Mr. Duong Tola. Moreover, Mr. Duong Tola added in the hearing that he did not receive any information that the company terminated him because he went home directly when he went to get the piece work and the company did not have work for him to perform. The Arbitration Council considers that Mr. Duong Tola's action of going to his house without telling the company was so that the company could not give him a warning.

Article 69 Paragraph 1 states that *“Within the limits of his contract, the worker owes all of his professional activities to the enterprise. He must provide the services for which he was hired and perform them himself in a professional manner.”*

In this case Mr. Duong Tola did not perform his work which was assigned by the company. Moreover, even if the company did not have work for him to perform on 20 August 2007 Mr. Duong Tola should have stayed in the company during the working hours. However, he went home without telling the company and also failed to provide notification about the reason for such absence to the company.

Based on these reasons the Arbitration Council considers that Mr. Duong Tola abandoned his job by himself because he did not work for the company.

So the Arbitration Council decides to reject the demand to reinstate Mr. Duong Tola.

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

DECISIONS AND ORDERS

Issue 1: Order the company to reinstate the eight workers back to work

Issue 3: Reject the demand for the company to convert workers working two months up to be a regular workers.

Issue 4: Reject the demand to reinstate Mr. Doung Tola.

Type of Award: Non binding award

This Award will become binding after 8 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: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: