

**KINGDOM OF CAMBODIA**  
**Nation King Religion**

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**ARBITRATION COUNCIL**

Case number: 31/04  
Date of Award: June 28, 2004

**ARBITRAL AWARD**

Issued under Article 313 of the Labor Law

**Employer party:** Camintex Garment

Representatives : 1. Mr. Keo Sambo, Administrative Manager  
2. Mr. Tang Chhun, Deputy Administrative Manager  
3. Mr. Chea Sokheng, Administrative Assistant  
4. Mr. Long Heang, GMAC Officer

Address : Bayab village, commune, Sangkat Phnom Penh Thmey, Khan Russey Keo, P. Penh

Telephone : (855-23) 982 178, 012 681 643

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**AND**

**Employee party:**

Worker Representatives:	1. Lim Thyda	Officer of CCAWDU
	2. Roeun Chanthan	Trainer of CCAWDU
	3. Pa Soktha	President of Labor Solidarity Union in Camintex Factory
	4. Chhorm Chharvy	Secretary of the Union
	5. Ly Amey	Accountant of the Union
	6. Long Dalin	Advisor of the Union
	7. Long Thuon	Advisor of the Union
	8. Thou Vutha	Member of the Union
	9. Duch Dyna	Activist of the Union
	10 Nuon Sovannara	Advisor of the Union

Address: #6c, St. 476, Sangkat Tuol Tompong I, Khan Chamkar Mon, Phnom Penh.

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**Issues in dispute:**

(as set out in the non-conciliation report)

The non-conciliation report was sent by MoSALVY to the Arbitration Council for it to consider and resolve: The workers claim that the factory must reinstate the former union leaders and former workers because the factory has reopened. The employer refuses to accept these union leaders, accusing them of making trouble in the factory and causing the factory to close. For the former workers, the factory is willing to reinstate them, without discrimination against them for union establishment.

Workers involved in the dispute: Pa Sytha, Ly Amey, Nuon Sovannara, Chhorn Chhavy, eang Ratha, Sun Phearom, Thuch Phirom, Yem Thida, Long Polin, Duch Dyna, Long Thuon and Mach Chheng Kong.

**Jurisdiction of the Arbitration Council:**

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (No.099, dated April 21, 2004); the Arbitration Council Procedural Rules, which form an Annex to the same Prakas and the Prakas on the Nomination of Arbitrators, No.103, April 26, 2004.

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 a non-conciliation report, dated May 20, 2004, was submitted to the Secretariat of the Arbitration Council on May 24, 2003.

**Composition of the arbitration panel:**

Arbitrator chosen by the employer party:	Ouk Ry
Arbitrator chosen by the worker party:	Vong Vanna
Chair arbitrator (chosen by the two arbitrators):	Men Nimith

**Hearing and Evidence:**

Date and place of hearing: June 9 and 14, 2004 at 8:30 at Arbitration Council Secretariat, Phnom Penh Center (A), Sothearos Blvd., Sangkat Tonlebasak, Phnom Penh.

**Witnesses:** None

**Evidence:**

Provided by the employer party:

1. Patent No. 061/2002, dated March 5, 2002, from the Ministry of Finance
2. Permission letter from Investment Committee of Cambodia of the Cambodian Development Council to open factory No. 169/04, dated January 16, 2004
3. Certificate of registration with the Ministry of Commerce No. 229, dated February 16, 2004

4. Minutes of Collective Labor Conciliation, dated February 14, 2004
5. Minutes of Collective Labor Conciliation, dated March 25, 2004
6. Minutes of Collective Labor Conciliation, dated March 26, 2004
7. Letter from workers, dated April 1, 2004, to support a proposal for the employer to reopen the Camintex factory.
8. Notification of the closing the factory and various payments by the factory, dated March 27, 2004
9. Letter from the factory, dated March 26, 2004, to inform the Department of Labor Inspection about the factory closing.
10. Letter of worker in the Camintex factory dated April 25, 2004 for refusing to support the reinstatement 12 workers.

Provided by the employee party:

1. List of workers.

Received from MoSALVY:

1. Non-Conciliation Report from June 14, 2004 from MoSALVY.
2. Minutes of conciliation of collective labor dispute, dated May 14, 2004
3. Minutes of conciliation of collective labor dispute dated March 26, 2004
4. Notification of strike, dated February 13, 2004
5. Letter requesting protection for the union candidates dated February 12, 2004
6. Letter of delegation of rights from Union representative(s) in the factory to CCAWDU, dated June 9, 2004
7. Union Registration.
8. Complaint letter to the employer, dated April 19, 2004.

In the hearing both parties chose **Non-Binding Award**.

**Summary of the Case:**

The Camintex company was established on 16 January 2004. From the time of establishment up until when it closed there were 2 strikes. The first strike was on 14 February 2004, and the second strike was on 24 & 25 March 2004. The company closed on 27 March 2004. The company claimed that the two strikes caused production to drop, which caused buyers to cancel orders and also significant losses of profit.

On 22 April 2004, the factory re-opened. The factory agreed to accept 450 workers of a total of 700 to return to work. With respect to the remaining workers the factory agreed to rehire them according to their seniority and professional skill, with the exception of 12 workers who the company said had caused problems at the factory. The representatives of the workers from the CCAWDU federation claimed that these 12 workers were the leaders of the union that had been established on 13 February 2004 at 8:30am called the Camintex Workers Solidarity Union.

On 4 June 2004 the Arbitration Council received the complaint about the above issues from the parties. On 9 June 2004 at 8:30am and on 14 June 2004 the Arbitration Council attempted to conciliate and to hear the case according to its procedures.

**Findings of Fact:**

After considering the conciliation report of the collective dispute and having heard the evidence of the parties the Arbitration Council finds that:

1. The parties had a dispute about work on public holidays and the calculation of wages. These issues arose before the second strike, and indeed was the cause of this strike.
2. The workers gave 1 day's notice of their strike; there were no appropriate representatives; and there was no vote as required by the procedures.
3. The employer did in fact close the factory for 26 days.
4. The employer terminated the employment contracts of all 700 workers and paid severance benefits to all of these workers.
5. The workers accepted the severance benefits.
6. The employer accepted 450 of their former workers to return to work once they reopened the factory.
7. The employer decided not to rehire 12 workers because they were troublemakers but there was no substantive evidence of the misconduct of these workers.

**Reasons for decision:**

Camintex, which employs 700 workers, closed its doors for a short period of time for economic reasons. The company gave notice of its intention to close to the Ministry of Social Affairs and Labor and terminated the contracts of all of its employees. All of the workers received their wages and severance benefits on 1 April 2004. The Arbitration Council finds that there is no dispute on this point as the parties had already agreed to a termination of their contracts.

The Arbitration Council finds that the above actions constituted a collective dismissal as set out in Article 95 of the Labor Law. After closing for a short time from 27 March 2004, the company reopened on 22 April 2004. The Labor Law, Article 95, states "dismissed workers have, for two years, priority to be rehired for the same position in the enterprise." This means that if workers are dismissed collectively and thereafter the company's business improves again and requires new workers within a period of 2 years, the company has to re-hire their old workers before hiring other workers.

On the other hand, if the workers have committed acts of misconduct and the employer has the right to dismiss them, the Arbitration Council finds that the employer should not be required to rehire such workers after a collective layoff.

Workers who the company would have the right to dismiss fall into two categories:

1. Workers who have committed acts of serious misconduct not more than 7 days before the date of collective termination;<sup>1</sup> and
2. Workers who have committed acts of misconduct for which dismissal would be a proportionate sanction and where the misconduct occurred not more than 15 days prior to the date of collective termination.<sup>2</sup>

Thus in order for the employer to be able to refuse to rehire the 12 workers, the employer must provide evidence that they fall into one of the two categories above.

In the case of Camintex, the company was closed for less than one month and reopened on 22 April 2004. Thus the Arbitration Council finds that the Camintex must apply Article 95(5) of the Labor Law and must provide work to their former workers before opening the same positions to new workers.

Among the 700 workers, the employer accepted approximately 450 or two-thirds of the workers back to work. However, at the arbitral hearing, the employer claimed that he could accept all of the remaining workers if they had a need for more workers in the future, with the exception of the 12 workers who were the union leaders, because these workers were the ones who caused many problems in the factory.

With regard to the decision not to rehire the workers named above, the employer only offered one reason, which was that they caused problems. The workers, on the other hand, claim that the employer was discriminating against the union in rehiring workers, based on the fact that the employer had been willing to rehire some workers and had agreed to rehire the remaining workers, with the one exception of the 12 who were elected to the union leadership in February 2004. During the hearing of the Arbitration Council 9 June 2004, the representative of the employer conceded that the 12 workers in question were the union leaders, but that the decision not to rehire these people was based on the fact that these people had caused many problems in the factory and the company was not discriminating against the union. However, during the hearing of the Arbitration Council, the employer did not provide any evidence that these 12 individuals had committed acts of misconduct that would have justified disciplinary dismissal as of the day of collective layoff; the employer only repeated his allegation that these people had caused a lot of problems in the factory. After the hearing, the Arbitration Council received a letter from the workers at the factory saying following: "Absolute rejection of the 12 workers named in case number 31/04". This letter refers to the following reasons: "these people caused problems at the factory which led to the factory closing down, including inciting workers to conduct a demonstration and failing to respect the company rules as approved by the Ministry of Labor. Every prior disturbance was caused by these people, who also caused the factory to close down. We workers are afraid to lose our jobs. Thus we reject the reinstatement of these workers." Even though acts of misconduct are raised in this letter, no activity is mentioned which

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<sup>1</sup> Art. 26(2) of the Labor Law

<sup>2</sup> Art. 26(1), Art. 27 and Art. 74(2) of the Labor Law

proves serious misconduct as per Article 83 or other articles of the Labor Law. Furthermore, there are no details of the misconduct and there is no evidence that any of these matters were raised with the workers. Thus this letter cannot be considered evidence that these 12 workers committed acts of misconduct that justify dismissal. Accordingly, the Arbitration Council finds that there is not sufficient evidence to support the refusal to rehire under Article 95, on the basis of the 12 workers being troublemakers.

Furthermore, Article 12 of the Labor Law provides that "... no employer shall take into account: race ...membership of a workers' union or the exercise of union activities as a basis for a decision about hiring, defining and assigning work...." This means that if the employer rehires workers as required by Article 95 of the Labor Law, the employer cannot take into account whether these workers were union members, leaders or activists.

Considering that the employer took back two-thirds of his former workers, in order to guard against discrimination the Arbitration Council finds that the employer must also take back at least 8 of the 12 to go back to work immediately.

Regarding the 4 workers who are left, if the employer requires more workers within the next 2 years, these people must have priority over new workers.

In order to ensure that Article 95 is applied fairly for both the employer and the remaining 250 workers, the Arbitration Council requires the employer to accept all of these workers back to work in accordance with their seniority.

With reference to the above facts, evidence and reasons:

**Decision and Orders:**

The Arbitration Council decides to issue the decision and award as follows:

1. The employer must immediately reinstate 8 of the union leaders.
2. The employer must make a list of names of all of the remaining workers including the 4 remaining union leaders in accordance with their seniority.
3. If the employer requires more workers within the next 2 years starting from April 1 2004, the employer must give preference to workers according to the list referred to above.

**Signatures of Members of the arbitration panel:**

**Arbitrator chosen by the employer party:**

Name: Ouk Ry

Signed

**Arbitrator chosen by the worker party:**

Name: Vong Vanna

Signed

**Chair of arbitration panel:**

Name: Men Nimmith

Signed

*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.*