

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 36/04

Date of award: 22 June 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Phnom Penh Garment City Ltd.

(Employer party)

AND

Workers of Phnom Penh Garment City Ltd.

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives:

- 1- Tiem Darath, Administrative Chief
- 2- Gua Hieck Huor, Director of the company
- 3- Va Cherda
- 4- Cheat Khemera, Representative of GMAC

Address: # 650 Bloc B, National Road 2, ChomChao quarter, Meanchey district,
Phnom Penh.

Tel: 012 456 333 Fax: 023 361 148

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

- 1- Sok Ravuth, President of Union Federation of Khmer Free Laborers
- 2- Mei Vanna, President of Union of Khmer Free Laborers
- 3- Mam Vannak, Vice-president of Union of Khmer Free Laborers
- 4- Hen Sorphorn, Secretary of Union of Khmer Free Laborers
- 5- Vang Hun, Assistant shop steward
- 6- Uth Sameoun, Assistant shop steward
- 7- Lay Dara, Assistant shop steward
- 8- Prak KimSal, Vice-president of Union of Khmer Free Laborers
- 9- Mon Sitha, Vice-secretary of Union of Khmer Free Laborers

- 10- Hak Sarann, Vice-financier of Union of Khmer Free Laborers
- 11- Mao Mein, Committee of Union of Khmer Free Laborers
- 12- El Lynin, Committee of Union of Khmer Free Laborers
- 13- Chea Sopheak, Financier of Union of Khmer Free Laborers

Address: # 1581, National Road 2, Chak Angre Krom quarter, Meannchey district, Phnom Penh.

Tel: 012 638 191

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The workers demand that the company reinstate the 12 workers whom the company dismissed on 25 May 2004.

- 2- The workers demand that Mr. Tiem Darath be dismissed.

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 establishment of the Arbitration Council (No. 338, dated December 11, 2002); 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, dated 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 failed. The non-conciliation report No. 927 dated 28 May 2004 was submitted to the Secretariat of the Arbitration Council on 31 May 2004.

COMPOSITION OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party: **Mr. Mar Sambona**

Arbitrator chosen by the worker party: **Mr. Toun Siphann**

Chair arbitrator (chosen by the two arbitrators): **Mr. Kong Phallak**

HEARING AND EVIDENCE:

Date and place of hearing:

1st hearing: 4 June 2004, at 2pm.

2nd hearing: 7 June 2004, at 2pm.

3rd hearing: 12 June 2004, at 8am.

At the Secretariat of the Arbitration Council

Witnesses and Experts: N/A

EVIDENCE THAT WAS CONSIDERED BY THE ARBITRATION PANEL IS AS FOLLOWS:

Documents provided by the employer party:

- 1- Internal work rules of Garment City Ltd.
- 2- The labor contracts of the 12 employees.
- 3- Report on the resolution of the demands of the Free Laborer Union representatives and on the activities of Free Laborer Union dated 25 May 2004.
- 4- The Company's announcement, dated 17 May 2004, on wage calculation for the workers who went out to see the fire on 16 May 2004.
- 5- Letter dismissing Prak Kimsal, El Linin, Mao Mein, Chea Sopheak, Hat Sarann and Mom Sitha dated 25 May 2004.
- 6- Letter suspending Mr. Vang Horn, Mr. Uth Sameoun and Mrs. Lay Dara, all of whom are assistant shop stewards, and Mei Vanna, Mam Vannak and Hen Sorphorn, President, Vice-President and Secretary of the union issued by the company, accusing them of committing serious misconduct, but awaiting the Labor Inspector's approval to dismiss them, dated 25 May 2004.
- 7- Letter promising to stop making mistakes or behaving improperly between El Linin and Var Chheda, with an unclear date.
- 8- Letter and fingerprints of workers of the cutting section asking Vang Horn, EL Linin, and Mao Mein to change their behavior and to stop disturbing other workers, with an unclear date.
- 9- The company's letter ordering the workers to keep order and to avoid misconduct as set out in Article 83 of the Labor Law, dated 26 May 2004.
- 10- The company's complaint about the 12 workers to the Arbitration Council, dated 3 May 2004.

Documents provided by the employee party:

- 1- Union-registration letter of the Ministry of Labor and Social Affairs.
- 2- Letter with fingerprints of 313 workers demanding the company dismiss the six union committee members and not to suspend another six union leaders.
- 3- Workers' proposal (with fingerprints of 400 workers) to meet with the employer to solve the problems, namely that the employer did not allow the workers to return to work after they had gone to help put out a fire nearby on 6 May 2004, dated 17 May 2004.
- 4- Report on the election of official shop steward and assistant shop steward, dated 23 May 2004.

Documents received from MoLVT:

- 1- Non-conciliation report on the collective dispute, dated 28 May 2004.
- 2- Report on the collective conciliation.
- 3- Letter of the Minister No. 625 dated 3 June 2004.

Presentation by employers and employees in the hearing.

The two parties decided in the hearing that: THIS AWARD IS NOT IMMEDIATELY BINDING.

CASE SUMMARY:

Phnom Penh Garment City Ltd is located at # 650 Block B, National Road 2, Chak Angre Krom quarter, Meanchey district, Phnom Penh and employs about 850 workers.

On 16 May 2004 at around 9am, there was a fire near the factory, about 200 meters away. Some workers joined in putting out the fire without prior permission from the management. After having put out the fire, the workers returned to work, but the factory management did not allow them to return until after lunch.

On the morning of 17 May 2004, the Union of Khmer Free Laborers sent a letter asking to meet with the management to deal with the dispute taking place on the morning of 16 May 2004. The management did not meet with that Union but did meet with the Free

Trade Union of Workers of the Kingdom of Cambodia, which is the most representative union in the factory. After this, the management issued a notification to the workers, mentioning the calculation of wages on 16 May 2004. On 17 May 2004, most of the workers belonging to the two unions did not attend work but went on strike because the dispute had not yet been resolved.

On 18 May 2004, the strike continued and some workers switched off the electricity of the factory's first, second and third floors at around 7am in order to force the employer to find a satisfactory solution for them.

In the afternoon of 19 May 2004, the workers returned to work after the intervention of the Labor Inspector who solved the dispute through agreement, the contents of which were consistent with Mr. Tiem Darath's notification on 17 May 2004.

On 25 May 2004, the company dismissed six workers who are members of the union committee and suspended six workers who are union leaders in anticipation of being dismissed.

The six workers who were dismissed are:

1. Prak Kimsal;
2. Chea Sopheak;
3. Mom Sitha;
4. Mao Mein;
5. El Linin; and
6. Hat Sarann

The six workers who were suspended are:

1. My Vannara, the president of Union of Khmer Free Laborers;
2. Mam Vannak, the vice-president of Union of Khmer Free Laborers;
3. Hen Sorphorn, the secretary of Union of Khmer Free Laborers;
4. Vang Hun, assistant shop steward;
5. Uth Samoeun, assistant shop steward; and
6. Lay Dara, assistant shop steward

The company has already submitted a request to dismiss the six leaders of the Union to the Ministry of Social Affairs, but has not yet received a response.

On 26 May 2004, about 165 workers went on strike and burned tires in front of the factory to force the company to make a written statement of the negotiation of 17 May 2004 and to reinstate the 12 workers and to dismiss Mr. Tiem Darath.

The employees complained that the accusation and dismissal of the 12 workers was not lawful. The workers said that the misconduct of which the company accused the workers on 17 and 18 May 2004 was resolved on 19 May 2004.

Mr. Tiem Darath, representative of the employer, argued that on 18 May 2004, the 12 workers switched off the electricity for the whole day. The security told him the workers had switched off the electricity many times despite the security's efforts to switch it back on. The employer accused the workers of serious misconduct because they had switched off the electricity and threatened and incited other workers not to work.

1. Mr. My Vannara

My Vannara is the President of Union of Khmer Free Laborers. He started working for the company on 12 November 1998.

Vannara said that on 17 and 18 May 2004, between 700 and 800 workers went on strike, and no one worked. The strike was to protest against Mr. Darath, who did not solve the problem as demanded by the unions in relation to the workers' intervention in putting out a fire next door on 16 May 2004 and against his attempt to dismiss three workers, namely, Mao Mein, Vang Horn and El Linin. As such, he decided to switch off the electricity on the first floor on 18 May 2004 at 7am in the morning in order to force the employer to meet their demand. Vannara said that he switched off the electricity only once, and he did not order or incite other workers, especially Mr. Kosal or Sarann, to switch off the electricity. Around 2pm on 18 May 2004, an agreement was reached. The workers returned to work after having resolved the problem in the evening of 19 May 2004.

Tiem Darath argued that he saw Vannara switching off the electricity many times. He told the security to inform Vannara not to switch the electricity off, but he was not sure if the security had informed Vannara. In the meantime, Darath told the security to take photographs for evidence. The security did take the photographs.

Tiem Darath said that he told Vannara on 17 May 2004 that if there is any problem, Vannara should approach him in order to settle it, but Vannara did not. Mr. Darath accused Vannara of throwing away the demand letters; proving improper behavior. Mr. Vannara said

that he did throw the demand letters away because Mr. Tiem Darath did not accept them. Moreover, there was no table in there. He said Mr. Tiem Darath had looked down on him. That is why Mr. Darath did not meet with him at 9am to solve the problem which had been raised. Mr. Vannara argued that Mr. Darath was not a good manager as when he saw two unions quarrel, he did not help solve and in fact, ignored the dispute.

Vannara demanded the employer clearly notify what conduct was seen as being his fault and which rule such conduct contravened. If he does not, it is the sole responsibility of the court to judge which rule is abused. In addition, Article 26 of the Labor Law [only] allows the employer to dismiss employees who have committed serious misconduct within 7 days. He argued that the employer lost his right to dismiss him because the employer had [only] suspended him in anticipation of dismissal on 25 May 2004. The workers protested that the company, after having received their complaint, did not respond to them but chose to resolve problems with the Free Trade Union of Workers of Cambodia instead.

Darath said that Vannara committed serious misconduct, switching off the electricity and inciting and ordering Hat Sarann and Prak Kimsal to switch off the electricity on 18 May 2004. This violated Article 83(3),(4) and (5) (Chapter B). Darath said that he did not meet with any other unions to solve the problems of the Union of Free Khmer Laborers. But, he did add that another union is the most representative in the company.

2. Mr. Hat Sarann

Sarann started his work on November 1, 2002 as an ironing worker and as the Finance Officer of the Union of Free Khmer Laborers.

Mr. Tiem Darath argued in the hearing that Sarann had switched off the electricity in the second floor at around 7am on 18 May 2004. Moreover, the security told him that Sarann had other workers switch off the electricity as well. No witness to the events appeared at the Arbitration Council.

Sarann said that on 18 May 2004 he had switched off the electricity on the second floor once at 7:05am. But, when the electricity was switched on again, he did not switch it off. He did not order others to switch it off. He did not incite others. He asked the employer to reinstate him because the dismissal was not lawful. He argued that even though he was wrong, the employer had lost his right to dismiss him.

3. Mom Sitha

Mom Sitha started his work on 5 January 2002 as a sewer and as the secretary of the Union of Khmer Free Laborers.

Tiem Darath, the company's representative said that workers in the cutting section and security told him Sitha had switched off the electricity on the first floor at around 7am on 18 May 2004 and was always sitting at the switch in order to switch the electricity off.

Tiem Darath said Chhun Chhat President of another union told him that on 19 May 2004, Sitha aggressively ordered the workers to hang on in order to help solve the problems together. When they saw Tiem Darath go up to the second floor, they all applauded. But, no one witnessing the event appeared in the hearing.

Sitha said, on 18 May 2004, he had switched the electricity off once at 7:05am. He did not do that again after the security had told him half an hour later to switch it back on. He did not shout at other workers to switch on the electricity. He did not incite and shout at other workers to stop working. On the afternoon of 19 May 2004, he was at the ground floor. He was asking the employer to reinstate him because his dismissal was unlawful. He argued that despite his fault, the employer had lost the right to dismiss him.

4. Mr. Chea Sopheak, Mr. Prak Kimsal, Mr. El Linin, Mr. Mao Mein, and Mr. Uth Samoeun.

The employer said that Mr. Chea Sopheak, Mr. Prak Kimsal, Mr. El Linin, Mr. Mao Mein, and Mr. Uth Samoeun committed serious misconduct as they had switched off the electricity on 18 May 2004, ordered other workers to switch off the electricity, and incited workers to stop working.

Mr. Chea Sopheak started his work on 12 January 2001 as a packer and Finance Officer of the Union of Free Khmer Laborers. He switched off the second floor's electricity on 18 May 2004 at around 7am after the security had just switched the electricity back on. He shouted to the other workers: "Brothers and sisters help." Tiem Darath said that Chea Sopheak had pushed the security away and used a carton to prevent him from switching the electricity back on.

Mr. Prak Kimsal started his work on 1 December 2003 as a cloth sewer and as reserved Vice-President of the Union of Free Khmer Laborers. At 7:10am on 18 May 2004 he

switched off the first floor's electricity. He did not order or incite other workers to stop working.

El Linin started his work on 1 September 2003 as a cloth dragger and as a member of the committee of the Union of Free Khmer Laborers. He said that he did not switch off the electricity on 18 May 2004 or go up to the third floor and shout. Tiem Darath, however, said the security had told him that Linin had been constantly sitting next to the electricity cabin in order to switch off the electricity as evidenced in the photo.

Mr. Mao Mein started his work on 1 September 2004 as a cloth dragger and as a member of the committee of the Union of Free Khmer Laborers. He switched off the third floor's electricity on 18 May 2004 at 7:15am. He did not order the workers to switch off the electricity or incite them to stop working.

Uth Samoeun started his work on 2 February 2000 as an ironing worker and as an assistant shop steward. He did not switch off the electricity on 18 May 2004 or aggressively order others to switch off the electricity or incite them to stop working. He did not make any mistake and he must be reinstated. Tiem Darath argued that the security told him Samoeun had switched off the third floor's electricity and prevented others from switching it back on.

5. Mam Vannak, Mr. Hun Sorphorn, Miss Lay Dara and Mr. Vang Horn

The employer said that Mr. Mam Vannak, Mr. Hin Sorphorn, Miss. Lay Dara and Mr. Vang Horn did not switch off the electricity, but there were others (security and other workers) who had told Tiem Darath that these workers had ordered other workers to switch off the electricity, used cartons to block the electricity cabin [and others] from switching on the electricity, pushed away the security and incited other workers to stop working in order to help solve the complaints and applauded when seeing Tiem Darath going up the stairs. But, no witnesses to these actions appeared at the hearing.

Mr. Mam Vannak started his work in the company on 24 December 2004 as a technician. He was also the Vice-President of the Union of Free Khmer Laborers. He said he did not order others to switch the electricity off or incite other workers to stop working.

Mr. Hun Sorphorn started his work on 01 November 2002 as an ironing worker. He was also the Secretary of the Union of Free Khmer Laborers. He said he did not order other workers to switch off the electricity, incite workers to stop working, push away the security or

use cartons to prevent the security from switching on the electricity. He was on the second floor at that time.

Miss Lay Dara started her work on 23 March 1997 as a leader of product evaluators on the third floor. She was a shop steward. She met Tiem Dara on 18 May 2004 upstairs and told him he was not being fair and was being biased to another union. She asked Mr. Tiem Darath to reconsider what he had done. Mr. Tiem Darath acknowledged that Dara said that to him. Dara did not tell him at the second floor, but at the ground floor when he was calling the team leaders to meet him at 3pm. Dara responded that what could she do as her leg was injured. The employer said he could reinstate Miss Lay Dara.

Mr. Vang Horn started his work in the company on 11 November 1998 as a cloth dragger. He was also an assistant shop steward. He argued he did not shout to other workers to switch off the electricity or kick the cloth basket weighing 2 or 3 kilograms, which hit Darath's leg. But, he did just hit the basket. Mr. Darath and other workers were standing nearby. Horn did not know the basket hit Darath's leg because Mr. Darath did not say anything at the time. He has just learned that the basket hit Darath's leg on 25 May 2004 when the company suspended him awaiting approval for his dismissal. Tiem Darath said before kicking the basket, Vang Horn cursed: "Fuck everyone here." At that time he was standing about 2 or 3 meters away from Vang Horn. When the basket hit him, Darath did not respond because he thought his leg was slightly injured. But, when he went downstairs, he realized that he was bleeding. He rushed to inform the police nearby and took a picture for evidence.

FINDINGS OF FACT:

- Having examined the minute on collective conciliation.
- Having listened to the arguments between both employer and employee parties as mentioned in the minute of the hearing.
- Having checked documents as mentioned above.

We find that:

1st issue:

On 16 May 2004 some employees went to help put out a fire 200 meters away from the factory without prior permission from the management. The management did not allow the workers to return to work until after lunch. Afterwards, the company planned to dismiss three employees on 18 May 2003, namely Mao Mein, Vang Horn, and El Linin.

On 17 May 2004 around 7:00am to 8:00am the workers went on strike to demand that Mr. Darath find a solution for the workers' [issues] relating to the putting-out of the nearby fire. On 17 May 2004 Mr. Darath issued a notification about wage calculation for 16 May 2004, and workers received the notice on the evening of 17 May 2004. The notification covered all the workers.

On 18 May 2004 workers continued striking, and from 7:00am they switched off the electricity in the first, second and third floor. The employees returned to work in the evening of 19 May 2004.

The workers who switched off the electricity include:

1. Mr. Hat Sarann, switching off the electricity once at 7:05am on the second floor.
2. Mr. Mom Sitha, switching off the electricity once at 7:05am and waiting to switch it off again and again.
3. Mr. Chea Sopheak, switching the electricity off on the second floor at about 7am after the security had switched on the electricity for the first time.
4. Prak Kimsal, switching off the electricity on the first floor at 7:10am.
5. Mr. Mao Mein, switching off the electricity on the third floor at 7:15am. These five employees were dismissed by letter dated 25 May 2004.
6. My Vannara, President of the Union of Free Khmer Laborers, switching off the electricity at 7am. Mr. My Vannara was suspended, and awaits approval for dismissal, by letter dated 25 May 2004.

Other workers did not switch off the electricity including El Linin. El Linin was dismissed by letter dated 25 May 2004 as were the six employees above, each of whom have been accused of switching off the electricity and inciting other workers to stop working.

There are a lot of employees who joined the strike on 17 and 18 May 2004 and more than 12 employees suffering disciplinary measures. The employer did not provide explicit evidence to clarify the six workers' misconduct besides accusing them. Some workers said in the hearing that they did certain activities as follows:

1. Mr. Vang Horn threw the cloth basket that [weighed] about 2 or 3 kilograms, which further hit Mr. Darath's leg. Vang Horn said he used impolite words as Darath complained: "Fuck everyone here!"
2. Mr. Chea Sopheak acknowledged that he had shouted: "Brothers and sisters help!"

3. Mr. El Linin acknowledged that he was sitting near the electricity cabin to wait to switch off the electricity, but he did not do so.

2nd issue:

At the hearing of 12 May 2004 the employee party accepted dropping their demand relating to Mr. Tiem Darath's withdrawal from work.

REASON FOR DECISION:

1st issue: The Arbitration Council finds that there are five union activists who switched off the company's electricity during the strike, namely, Mr. My Vannara, Mr. Hat Sarann, Mr. Mom Sitha, Mr. Chea Sopheak, Mr. Prak Kimsal, and Mr. Mao Mein. The switching-off of the electricity during the strike is unlawful. Workers do have the right to strike, but they must abide by the legal procedure as stipulated in Chapter 13 of the Labor Law such as notifying about the strike and trying their best to peacefully conciliate with the employer first. Moreover, according to Article 330 of Labor Law, a strike has to be peaceful. Committing violence during the strike is considered to be serious misconduct that can be punished. [Punishments can] include suspension and layoff. In this regard, workers can go on strike to demand something, but cannot switch off the electricity of the company. Such switching-off of the company's electricity caused interruption to the whole production process and interrupted the management's work and the work of other workers. These actions caused damage to the company, which [in other words can] mean destroying other property during the strike. Interrupting the electricity system of the company, in a serious case, may cause fire or turmoil within the whole factory. The actions can be considered as part of violence during a strike; therefore, the strike was against the requirement to have a peaceful procedure. Hence, switching off the electricity during the strike can be considered as serious misconduct according to Article 330. In this case, the employer has the right to make dismissals in the seven days from the date he learned the fact, and 15 days for other disciplinary actions other than dismissal based on Article 26 of Labor Law. The Arbitration Council finds that the period of 7 or 15 days as stated in Article 26 is the number of calendar days, and if the seventh day falls on Sunday, it will be delayed to Monday so that the employer can make his decision. The company's layoff notification letter for the five workers above and the suspension of Mr. My Vannara in anticipation of dismissal were dated 25 May 2004, and the day was Tuesday. The Arbitration Council finds that the employer had taken disciplinary action, dismissing the above mentioned six workers eight days after the employer knew of the serious misconduct of the workers, and the eighth day did not fall on Monday. In this regard, the employer has lost his right to take disciplinary action to fire the above six workers. So, the six workers, namely, My Vannra, Hat Sarann, Mom Sitha, Chea Sopheak,

Prak Kimsal, and Mao Mein have the right to continue working in the factory as do the other workers. However, the Arbitration Council finds the six workers had committed serious misconduct which deserve disciplinary actions; but the right to take actions by the employer had ceased to exist. Therefore, the Arbitration Council decides that the employer can take other disciplinary action, instead of dismissal, as mentioned in the company Internal Work Rules — warnings in writing, and the employer has to allow the workers to return to work.

2nd issue: Vang Horn:

Vang Horn did not switch off the electricity, but kicked the cloth basket that hit Mr. Darath's leg. Moreover, Vang Horn said cursing words: "Fuck everyone here!" to Mr. Tiem Darath, who was present to conciliate on behalf of the company on the morning of 17 May 2004. The Arbitration Council finds that Vang Horn did intentionally kick the basket and said impolite words to Mr. Tiem Darath, the company's representative. According to Article 83 B (4), these actions are considered to be serious misconduct subject to dismissal within 7 days after learning of the fact or other disciplinary actions other than dismissal within 15 days as stipulated in Article 26 of Labor Law. The notification letter to the worker and to the Labor Inspectors about the suspension of Mr. Vang Horn, to be dismissed subject to approval, was dated 25 May 2004. In this regard, the same reasoning applies as in the cases of the six workers above; the employer has lost his rights to take disciplinary layoff action against Mr. Vang Horn. Therefore, Vang Horn has the right to continue working in the factory as do the other six workers. But, the Arbitration Council finds that Mr. Vang Horn committed serious misconduct deserving disciplinary action. The right to take action by the employer has ceased to exist. Therefore, the Arbitration Council makes its decision that the employer can take disciplinary action instead of dismissal as stipulated in the Internal Work Rules—warnings in writing, and the employer has to reinstate Mr. Vang Horn.

Therefore, the employer has to reinstate Mr. Vang Horn to the same position as he used to do immediately upon the award coming into force.

3rd issue: Regarding the other cases, Mam Vannak, Hin Sorphorn, Lay Dara, El Linin and Uth Samoeun did not switch off the electricity, but participated in the strike as the other workers did.

Mr. Tiem Darath, representative of the company, accused the above five workers of preventing security from switching on the electricity, [which was] previously switched off by striking workers. They did not switch off the factory's electricity, but did allegedly use cartons to prevent any switching-on of the electricity, incited other workers to strike, intimidated

workers, and applauded in the factory during the strike. Mr. Darath said he got a verbal message from the security and from other workers, but he did not witness these actions, apart from the applauding and singing loudly while he was passing by the crowd of strikers, amongst whom were the five workers. The Arbitration Council ordered the names and attendance of witnesses to the hearing, but Mr. Tiem Darath raised concern over their safety. Therefore, the accusation against the five workers seems to have no legal basis while the workers themselves denied the accusations, except for applauding when Tiem Darath went past the crowd.

For that reason, the Arbitration Council finds that the actions of the five workers are the same as those of the other workers participating in the strike, and are not subject to any disciplinary action since they did not commit serious misconduct as stipulated in Article 83 (B) as accused by the employer.

Therefore, the employer cannot take disciplinary layoff action or suspend the workers, Mam Vannak, Hin Sorphorn, Lay Dara, and Uth Samoeun because these workers have not committed serious misconduct as stated in the Internal Work Rules of the company or the Labor Law.

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

DECISION:

1. Order the company to reinstate the twelve workers as soon as this award comes into force.
2. Order the company to pay full wages and other benefits to the workers, Mam Vannak, Hin Sorphorn, Lay Dara, El Linin and Uth Samoeun, from 25 May 2004 until the day the company reinstates them.
3. Reject the right to wages and other benefits for the workers, namely, My Vannara, Hat Sarann, Mom Sitha, Prak Kimsal, Vang Horn, Mao Mein and Chea Sopheak, from 25 May 2004 until the day the company reinstates them.
4. Order the workers, My Vannara, Hat Sarann, Mom Sitha, Prak Kimsal, Vang Horn, Mao Mein and Chea Sopheak, to regard this award as a second written warning for their misconduct consistent with Article 10 of the Internal Work Rules of the company.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Sambona**

Signed:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signed:

Chair of arbitration panel:

Name: **Kong Phallak**

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