

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**



**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 53/06 – Hong Mei**

**Date of Award: 28 July 2006**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATOR PANEL**

Arbitrator chosen by the employer party:

**SENG VUOCH HUN**

Arbitrator chosen by the worker party:

**AN NAN**

Chair Arbitrator (chosen by the two Arbitrators):

**KONG PHALLACK**

#### **DISPUTING PARTIES**

##### **1- Employer Party**

Name : **Cambodia Hong Mei Imp & Exp Co., Ltd.**

Address : No. 30-31, Canadia Park, Sangkat Chaom Chau, Khan Dangkor,  
Phnom Penh

Telephone : 023 424 553, 012 850 348 Fax: N/A

Employer Representatives:

1. Mr. Zhang Xing Feng General Manager;
2. Mr. Seng Leng Assistant to General Manager;
3. Ms. Yang Yi Xiang Administrative Manager;
4. Mr. Roeun Saram Company's representative;
5. Mr. Tido Suy Seong Interpreter.

##### **2- Worker party**

Name : **Cambodian Industrial Union Federation (CIUF) and Cambodian  
Industrial Union (CIU) in Hong Mei Factory**

Address : No. 60A, Street 386, Sangkat Boeung Keng Kang III, Khan Chamkarmon,  
Phnom Penh

Telephone : 012 580 912, 011 878 034 Fax: N/A

Worker Representatives:

1. Mr. Lu Sak President of **CIUF**;
2. Mr. Li Veng General Secretary of **CIUF**;
3. Mr. Soum Sokly President of **CIU** and Worker delegate;
4. Mr. Yi Kun Theang Vice-President of **CIU** and Worker delegate;
5. Ms. Touch Sambath Secretary of **CIU**;
6. Ms. Chea Khim Worker.

### **ISSUE IN DISPUTE**

(In the non-conciliation report)

The worker party demanded that the employer party reinstate four worker delegates and workers Mr. Yi Kun Theang, Mr. Soum Sokly, Mr. Yi Rainsy and Ms. Chhum Makara. The employer party did not accept the four worker delegates claiming that the four persons incited other workers to go on strike and threatened other workers not to work overtime. Moreover, the four persons are probationary workers and since their probationary contracts expired, the company did not renew their contracts.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour 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 099/06 (Fourth Term).*

*An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 957 dated 10 July 2006 was submitted to the Secretariat of the Arbitration Council on 10 July 2006.*

### **HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:**

**Place of Hearing** : **The Arbitration Council**, Phnom Penh Centre, Building A,  
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,  
Phnom Penh.

**Date of the Hearing** : 12 July 2006 (from 8:00 a.m. to 12:00 a.m.)

#### **Procedural Issues:**

Having received the complaint from the striking workers by phone on 7 July 2006 demanding that the company improve the working conditions in accordance to the Labour

Law, the Department of Labour Disputes designated its expert official to settle and conciliate the dispute; four out of a total of five issues were successfully conciliated. The non-conciliated issue was submitted to the Arbitration Council on 10 July 2006.

Having received the case on 10 July 2006, the Arbitration Council issued an interim order to stop the workers from striking and to return to work on 11 July 2006 and to attend a hearing on 12 July 2006 at 8:00 a.m. All workers stopped striking and returned to work as ordered by the Arbitration Council except the four persons in the dispute.

Both parties were present at the hearing on 12 July 2006. The Arbitration Council made a further attempt to conciliate the non-conciliated issue, which was submitted to the Arbitration Council but the issue remained non-conciliated. Therefore, the Arbitration Council considers the non-conciliated issue based on the evidence and the findings of fact as follows:

## **EVIDENCE**

**Witness and experts besides the parties: N/A**

### **Documents, exhibits and other evidence considered by the Arbitration Council**

- a. Provided by the employer party:
  - 1- The company's letter dated 7 July 2006 to the Director of the Department of Labour Disputes on the request to terminate labour contracts of Mr. Yi Kun Theang, Mr. Soum Sokly, Mr. Yi Rainsy and Ms. Chhum Makara;
  - 2- Letter of Confession of Mr. Soum Sokly and Mr. Yi Rainsy dated 4 July 2006;
  - 3- Certifying Letter on the agreement not to add Mr. Soum Sokly and Mr. Yi Rainsy's previous misconduct to those that may arise in the future;
  - 4- Mr. Yi Rainsy's labour contract;
  - 5- Ms. Chhum Makara's labour contract;
  - 6- Mr. Soum Sokly's labour contract;
  - 7- Mr. Yi Kun Theang's labour contract (written in Chinese).
- b. Provided by the worker party:
  - 1- Letter No. 049 dated 6 July 2006 of Cambodian Industrial Union Federation (CIUF) to the Director of Hong Mei Cambodia Factory on the establishment of Cambodian Industrial Union;
  - 2- Receipt of case acceptance of the Department of Labour Disputes of the Ministry of Labour and Vocational Training dated 7 July 2006 on the registration application.
- c. Provided by the Ministry of Labour and Vocational Training:

- 1- Report No. 820 dated 14 July 2006 on the collective labour dispute conciliation in Hong Mei Cambodia Im and Ex Company of H.E Osman Hassan, Secretary of State of the Ministry of Labour and Vocational Training;
- 2- Report No. 957 dated 10 July 2006 on the collective labour dispute conciliation in Hong Mei Cambodia Im and Ex Company of Mr. Koy Tepdaravuth, the Director of the Department of Labour Disputes;
- 3- Minute of the collective labour dispute conciliation dated 7 July 2006.

**d. Provided by the Secretariat of the Arbitration Council:**

- 1- Arbitral Interim Order No. 014 dated 10 July 2006.

## **FINDING OF FACTS**

Hong Mei Company, located at Building No. 30, Canadia Park, Sangkat Chaom Chau, Khan Dangkor of Phnom Penh and employs approximately 250 workers. Newly recruited workers must work as apprentices for a period of two months with written apprentice contracts and followed by a two-month probationary period before full employment by the company according to a contract attached with stated "Clauses" regarding probation. A probationary worker can become a regular worker as long as their probationary work is satisfactory to the company. Apprentice workers and probationary workers worked full time and overtime like regular workers and they received between US\$40 and \$70 per month.

The company had already made its Internal Work Rules with the signatures of both the company's Director and the workers' representative and submitted it to the Ministry but it has not been officially registered yet. The company was waiting for the feedback from the Ministry.

In May 2006, the company organized an election to choose worker delegates with participation from the representatives of the Ministry. Mr. Yi Kun Theang and Soum Sokly were elected as worker delegates. Ms. Chhum Makara was also a candidate for worker delegate but she was not elected.

On 5 July 2006, the workers held an election to select the union leaders without notifying the employer. On 6 July 2006, the workers submitted a letter to the company's Director on the establishment of the union. On 7 July 2006, the workers applied for the registration certificate at the Ministry of Labour.

On 6 July 2006, the company verbally notified two worker delegates Mr. Yi Kun Theang and Mr. Soum Sokly along with two other workers Mr. Yi Rainsy and Ms. Chhum Makara on the termination of their labour contracts at a meeting held at about 4:00 p.m. with the presence of Mr. Roeun Saram, Mr. Seng Leng and Mr. Vann Li while Mr. Soum Sokly was not present because the company asked him to take leave while providing 50 percent of wage.

At around 7:00 a.m. on 7 July 2006, all the workers went on strike after learning that their representatives were dismissed by the company. On the same day, the company

submitted a letter to terminate the labour contracts of the four workers, Mr. Yi Kun Theang, Mr. Yi Rainsy, Ms. Chhum Makara and Mr. Soum Sokly, to the Labour Inspector. Based on the letter, the company asserted that the four workers were probationary workers and the termination of their labour contracts were made in accordance to Article 82 of the Labour Law and Clause 4 of their labour contracts dated 13 May 2006.

Having received the Arbitral Interim Order on 10 July 2006, all workers returned to work while the four persons in dispute were not allowed to return to work by the company.

At the hearing, the worker party claimed that the termination of their labour contracts were made after the company learned about the union's establishment. However, the employer party asserted that they did know that the four workers were the union leaders or union members. The company terminated their labour contracts because the four workers incited other workers to go on strike, threatened other workers not to work over-time and they were just probationary workers. Neither party showed any evidence to support their initial claim. The Arbitration Council finds that:

**1- Findings regarding Mr. Yi Kun Theang called Chorn Chi Wen (in Chinese)**

- Mr. Yi Kun Theang is a worker delegate and the union Vice-President, who was elected on 5 July 2006. He was a Chinese Interpreter for Hong Mei factory and he received a wage of more than US\$100 per month;
- Mr. Yi Kun Theang had only a labour contract written in Chinese dated 5 February 2006. However, his actual employment at the factory started on 16 February 2006 as a probationary worker and he became a regular worker three months later. His labour contract was an undetermined duration contract because there was no date of expiration. The employer party accepted that Mr. Yi Kun Theang was not a probationary worker;
- On 7 July 2006, the company sent a notification to the Ministry of Labour on the termination of Mr. Yi Kun Theang's labour contract. At the hearing, the employer party accepted that the company failed to notify Mr. Yi Kun Theang;
- Initially, the company accused Mr. Yi Kun Theang of inciting other workers to go on strike and threatening other workers not to work overtime but at the hearing, the company's representative asserted that he could not present the evidence and witness because he was concerned about the witness's safety. The Arbitration Council requested the company to present evidence but the company failed to provide any specific evidence related to the accusation. Later on, the employer party said that they did not dismiss Mr. Yi Kun Theang but he himself did not come to work. Mr. Yi Kun Theang claimed that he returned to work but he was not allowed by the company. The Arbitration Council request the company to allow Mr. Yi Kun Theang to return to work because it was a misunderstanding

but at the hearing, the employer party decided to dismiss Mr. Yi Kun Theang even though he did commit any misconduct.

## **2- Findings regarding Mr. Yi Rainsy**

- Mr. Yi Rainsy was a member of the union, which was established on 5 July 2006. He was the Chief of Cutting Unit and a Tailor and he received a wage between US\$60 and \$75 per month;
- Mr. Yi Rainsy was absent at the hearing because Mr. Yi Kun Theang is his brother and represented him for any clarification at the hearing;
- He started working for the factory as an apprentice worker from 13 March 2006 to 13 May 2006;
- Having successfully finished the apprentice contract, the company signed a new labour contract of a fixed duration from 13 July 2006 to 13 January 2007 with him. Clause 4 of the contract provided for the two-month probationary period to continue from the apprentice contract (13 May 2006 to 13 July 2006) with the signature of the worker. Clause 4 states, *“During the probationary period of two-month, if your work performance does not satisfy the company, the company requires you to voluntarily stop working and the company will compensate the wage up to the last day of your work with the company only;”*
- There was no separate probationary contract. Mr. Yi Kun Theang accepted that Mr. Yi Rainsy was still in the probationary period;
- On 7 July 2006, the company sent a notification to the Ministry to terminate Mr. Yi Rainsy’s labour contract because of the same reason as Mr. Yi Kun Theang’s—inciting other workers to go on strike and not to work overtime and because Mr. Yi Rainsy was a probationary worker. Regarding the incitement, the company argued exactly the same as Mr. Yi Kun Theang’s case. The company could not present any evidence or witness because the company was concerned about the witness’s safety. The Arbitration Council requested the company to present evidence but the company failed to present any specific evidence regarding the accusation but only a letter of confession dated 3 July 2006 regarding the disobedience to the unit supervisor. In the letter, Mr. Yi Rainsy pledged not to ever make the same mistake again;
- At the hearing, the employer party asserted that he was not satisfied with Mr. Yi Rainsy’s work performance. The Arbitration Council requested the employer party to show the causes of dissatisfaction but the company failed to do so.

### **3- Findings regarding Ms. Chhum Makara**

- Ms. Chhum Makara was a member of the union established on 5 July 2006. She was a worker and she received a wage between US\$40 and \$45 per month;
- Ms. Chhum Makara was absent at the hearing because Mr. Yi Kun Theang, her husband represented her for any confirmation at the hearing;
- Ms. Chhum Makara started working for the factory as a probationary worker from 22 May 2006 to 22 July 2006. Her labour contract was like those of Mr. Yi Rainsy and Mr Soum Sokly's—a contract of fixed duration from 22 July 2006 to 22 January 2007. Clause 4 of the contract provides for the two-month probationary period (22 May 2006 to 22 July 2006) with her signature. Clause 4 states, *“During the probationary period of two month, if your work performance does not satisfy the company, the company requires you to voluntarily stop working and the company will compensate the wage up to the last day of your work with the company only;”*
- There was no separate probationary contract. Mr. Yi Kun Theang accepted that Ms. Chhum Makara was still in the probationary period;
- On 7 July 2006, the company sent a notification to the Ministry to terminate Ms. Chhum Makara's labour contract because of the same reason as of Mr. Yi Kun Theang and Mr. Yi Rainsy—inciting other workers to go on strike and not to work over-time and because she was a probationary worker. Regarding the incitement, the company argued exactly the same as Mr. Yi Kun Theang's case. The company could not present any evidence or witness because the company was concerned about the witness's safety. The Arbitration Council requested the company to present evidence but the company failed to present any specific evidence regarding the accusation and there was no letter of confession of the past misconduct. At the hearing, the employer party did not assert that it was not satisfied with Ms. Chhum Makara's work performance.

### **4- Findings regarding Mr. Soum Sokly**

- Mr. Soum Sokly was the Vice-President of the union established on 5 July 2006. He was a Trainer for new workers and a Tailor and he received a wage between US\$60 and \$75 per month;
- Mr. Soum Sokly started working for the factory as an apprentice worker from 13 March 2006 to 13 May 2006;
- Having successfully completed the apprenticeship, the company signed a new fixed duration contract from 13 July 2006 to 13 January 2007 with him. Clause 4 of the contract provided for the two-month probationary period to continue from the apprentice contract (13 May 2006 to 13 July 2006) with the signature of the

worker. Clause 4 states, “*During the probationary period of two month, if your work performance does not satisfy the company, the company requires you to voluntarily stop working and the company will compensate the wage up to the last day of your work with the company only;*”

- There was no separate probationary contract. Mr. Soum Sokly accepted that he was still in the probationary period;
- On 7 July 2006, the company sent a notification to the Ministry to terminate Mr. Soum Sokly’s labour contract because of the same reason as of Mr. Yi Kun Theang—inciting other workers to go on strike and not to work overtime and because he was a probationary worker. Regarding the incitement, the company claimed exactly the same as Mr. Yi Kun Theang’s case. The company could not present any evidence and witness because the company was concerned about the witness’s safety. The Arbitration Council requested the company to present evidence but the company failed to present any specific evidence regarding the accusation but only a letter of confession dated 3 July 2006 regarding the disobedience to the unit supervisor. In the letter, Mr. Soum Sokly pledged not to ever make the same mistake again;
- At the hearing, the employer party asserted that it was not satisfied with Mr. Soum Sokly’s work performance. The Arbitration Council requested the employer party to show the causes of dissatisfaction but it failed to do so.

### **REASONS FOR DECISION**

#### **1- Mr. Yi Kun Theang’s case**

Based on the above fact findings, the Arbitration Council considers that Mr. Yi Kun Theang’s labour contract was a undetermined duration contract because this labour contract did not have an expiration date and after the two-month probationary period Mr. Yi Kun Theang has continued to work for the company as a regular worker for five month now and at the hearing, the employer party also accepted that Mr. Yi Kun Theang was a regular worker.

At the hearing, the employer party claimed that the company did not dismiss Mr. Yi Kun Theang, but Mr. Yi Kun Heang claimed that the company did not allow him to enter the factory compound to return to work. This shows that the employer party did dismiss him from work. At the hearing, the employer party finally added that the company had decided to dismiss Mr. Yi Kun Theang from work.

Therefore, in this case, the Arbitration Council considers whether or not the dismissal of Mr. Yi Kun Theang was made in accordance to the Law.

Article 74 of the Labour Law states about the requirements of dismissing a worker with an undetermined duration contract. Article 74 provides, “*The labour contract of*

*unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.”*

Based on the above Article 74 of the Labour Law, the Law actually allows the employer to legally dismiss his or her workers but this Article requires the employer to respect the conditions as follows:

- 1) Prior notice made in writing to the other party if he or she intends to terminate the contract;
- 2) The dismissal shall be made with a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group (See Award 64/05 – Jiang Wei)

At the hearing, the employer party alleged Mr. Yi Kun Theang of committing misconduct but the company did not have adequate evidence to support the allegation. Based on the Arbitration Council's jurisprudence, the employer party is obliged to present evidence related to its worker's misconduct (See Award 27/03 – Standard Garment).

But in this case, the employer failed to notify in writing to Mr. Yi Kun Theang. Article 75 of the Labour Law requires employer to inform the worker at least seven days in advance, if the worker has worked less than six months. Thus, condition (1) was not fulfilled.

Moreover, the employer party did not show evidence that Mr. Yi Kun Theang had committed serious misconduct or unacceptable aptitude and the enterprise's necessity in reducing workers. At the hearing, the employer party confirmed that the company had decided to dismiss Mr. Yi Kun Theang regardless of his misconduct. Thus, condition (2) was also not fulfilled.

Therefore, the Arbitration Council considers that the employer party did not have a valid reason to dismiss Mr. Yi Kun Theang from work. Thus, Mr. Yi Kun Theang's dismissal was illegal. Clause 34 of Prakas 099/05 on the Arbitration Council provides, *“In matters referred to the Arbitration Council, the Arbitration Council shall have the power and authority to fully remedy any violation of the provisions in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations arising from the professional relationship between the employer and the employees. Within the limitations of the Labour Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:*

- A. *Orders to reinstate dismissed employees to their former or any other appropriate position;*

- B. *Orders to the immediate payment of back pay;*
- C. *Orders to cease immediately any industrial action which is being conducted by a party to the dispute;*
- D. *Orders to cease immediately any other illegal or prohibited conduct, including but not limited to retaliation;*
- E. *Orders to bargain;*
- F. *Orders following a settlement under Article 30 of this Prakas;*
- G. *The establishment of terms for a collective bargaining agreement;*
- H. *Such other relief as is appropriate.*

In conclusion, the Arbitration Council considers that the dismissal of Mr. Yi Kun Theang did not comply with the Labour Law. Thus, the Arbitration Council orders the employer to reinstate Mr. Yi Kun Theang (See Award 47/06 – *Flying Dragon*).

## **2- Mr. Yi Rainsy's and Mr. Soum Sokly's cases**

In this case, the two workers worked as apprentices for two months through the apprentice contracts (from 13 June 2006 to 13 May 2006). After that they received two-month probationary contracts (from 13 May 2006 to 13 July 2006). The two-month probationary contracts were attached to the fixed duration contracts and were thumb-printed by the two workers (See Clause 4 of the labour contract).

The employer party confirmed that the company did not dismiss the workers but the company did not renew their labour contracts after the probationary period expired. The workers claimed that they were dismissed without any valid reasons during the fixed duration contracts.

Clause 4 of the labour contract states, "*During the probationary period of two-month, if your work performance does not satisfy the company, the company requires you to voluntarily stop working and the company will compensate the wage up to the last day of your work with the company only.*"

Article 68 of the Labour Law provides, "*A contract for a probationary period cannot be for longer than the amount of time needed for the employer to judge the professional worth of the worker and for the worker to know concretely the working conditions provided. However, the probationary period cannot last longer than three months for regular employees, two months for specialised workers and one month for non-specialised workers.*"

According to the Arbitration Council's jurisprudence, the probationary period of specialised garment workers is two month (See Award 69/04 – *Common Way*). In this

dispute, the two workers were tailors in Cutting Unit, who were specialised workers. Thus, the two-month probationary period was a legal period.

Article 82 of the Labour Law provides, "*The contracting parties are released from the obligation of giving prior notice under the following cases:*

- 1. For a probation or an internship specified in the contract;*
- 2. For a serious offense on the part of one of the parties;*
- 3. For acts of God that one of the parties is unable to meet his obligations."*

Based on Clause 5 of the Notification No. 006 dated 3 June 1997, the Arbitration Council notices that employer shall notify the probationary worker at least seven days in advance. This notification is in contrast to Article 82 of the Labour Law and it was issued before the promulgation of the Labour Law. The Arbitration Council considers that this Notification is nullified by the current Labour Law.

Therefore, the company is not obliged to give prior notice regarding the dismissal of probationary workers Mr. Yi Rainsy and Mr. Soum Sokly.

Article 73 of the Labour Law provides, "*A labour 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 on the condition that this agreement is made in form of writing in the presence of a Labour Inspector and signed by the two parties to the contract.*

*If the both parties do not agree, a contract of specified duration can be canceled before its termination date only in the event of the serious misconduct or acts of God.*

*The premature termination of the contract by the will of the employer alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract.*

*The premature termination of the contract by the will of the worker alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the employer to damages in an amount that corresponds to the damage sustained.*

*If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.*

*At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.*

*If a contract of unspecified duration replaces a contract of specified duration upon the latter's expiration, the employment seniority of the worker is calculated by including periods of the both contracts.*

*In every case of contract termination, the worker can require the employer to provide him with an employment certificate.”*

Based on the Arbitration Council's jurisprudence, a probationary contract is a contract of specified duration (See Awards 55/04 - You Chheng and 113/04 – Chou Star). In Award 113/04 – Chou Star, the Arbitration Council explained that, *“With this regard, the Arbitration Council considers that a probationary contract is a labour contract of specified duration from 1 month or 2 months or 3 months in proportion to the different types of specialisation.*

*Regarding the above-mentioned interpretation, a probationary contract is a type of a contract of specified duration.”*

In conclusion, the Arbitration Council considers that a probationary contract is a type of a fixed duration contract. Thus, the Arbitration Council considers that the employer did not dismiss the two workers but the employer decided not to renew the contracts of specified duration after Mr. Yi Rainsy and Soum Sokly's probationary contracts expired. And the employer even provide notice seven-days prior to the expiration of the workers' contracts and the decision not to renew the contracts. However, the Arbitration Council notices that for fixed duration contracts of less than 6 months, an employer is not required to notify a worker in case that the employer decides not to renew the contract. Thus, the employer was not obliged to notify the two workers when the company decided not to renew their contracts.

However, Mr. Yi Rainsy was a union member and Mr. Soum Sokly was the union President and a worker delegate elected in May 2006 with the participation from the Ministry. The Arbitration Council finds that Mr. Soum Sokly does not seem to be qualified enough to be a worker delegate. However, the Arbitration Council does not consider on the qualification because at the hearing, both parties accepted that Mr. Soum Sokly as a worker delegate and the election was held with the participation of the representative of the Ministry of Labour.

The Labour Law provides specific protection to workers based on their statuses. For example, Article 293 of the Labour Law provides that the dismissal of a worker delegate

could be made only with the agreement from the Labour Inspector. Moreover, Prakas 305/01 provides that the protection provided in Article 293 of the Labour Law is applicable for union leaders, candidates for the union leaders and the founding members of the union.

However, in the previous Awards, the Arbitration Council decided that the protection from dismissal in Article 293 of the Labour Law was not applicable for terminating a contract by the employer when the contract is expired (See Award 34/05 – Jacqsintex).

In this case, the termination of Mr. Yi Rainsy's and Mr. Soum Sokly's contracts was due to the expiration of their probationary contracts. It was not the act of dismissal of the employer. Therefore, the employer was not obliged to seek agreement from the Labour Inspector for terminating the workers' contracts.

In conclusion, the dismissals of Mr. Yi Rainsy and Mr. Soum Sokly were due to the expiration of their probationary contracts. And the worker party did not provide any reason that they have the rights to return to work.

In this case, Mr. Yi Rainsy's and Mr. Soum Sokly's probationary contracts expired on 13 July 2006. Thus, they were still probationary workers hired by the employer before their probationary contracts expired. Thus, Mr. Yi Rainsy and Mr. Soum Sokly were entitled to wages and other benefits from the day they tried to return to work (10 July 2006) to 13 July 2006.

### **3- Ms. Chhum Makara's case**

For Ms. Chhum Makara's case, she had worked as a probationary worker for two months (22 May 2006 to 22 July 2006). The two-month probationary period was included in the fixed duration contract with a thumb-print the same as those of Mr. Yi Rainsy and Soum Sokly (See Clause 4 of the labour contract).

She was notified by the employer of the decision not to renew her contract on 6 July 2006 and it was 16 days before the expiration of her probationary contract. Thus, the Arbitration Council considers that the employer did not dismiss her up until the hearing day at the Arbitration Council. However, at the hearing, the employer did mention about the company's intention not to renew Ms. Chhum Makara's labour contract after the expiration on 22 July 2006. Her labour contract is not expired yet.

Meanwhile, on 7 July 2006, the employer made a request to the Department of Labour Disputes to terminate her labour contract the same as those of Mr. Yi Rainsy and Mr. Soum Sokly.

According to the same reason regarding the demand for the reinstatement of Mr. Yi Rainsy and Mr. Soum Sokly, the Arbitration Council considers that the termination of Ms.

Chhum Makara's contract was due to the expiration of her probationary contract. And the worker party did not provide any reason that she has the right to return to work.

In this case, her probationary contract expired on 22 July 2006. Therefore, she was still a probationary worker hired by the employer before her contract expired. Thus, she was entitled to wages and other benefits from the day she tried to return to work (10 July 2006) to 22 July 2006.

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

**ORDERS AND DECISIONS**

- 1- Order the employer party to reinstate Mr. Yi Kun Theang and provide him with wages as well as other benefits as usual from 10 July 2006 to the day this Award comes into effect.
- 2- Reject the workers' demand that the company reinstate Mr. Yi Rainsy, Mr. Soum Sokly and Ms. Chhum Makara.
- 3- Order the employer party to provide Mr. Yi Rainsy and Mr. Soum Sokly with wages and other benefits from the day they tried to return to work (10 July 2006) to 13 July 2006.
- 4- Order the employer party to provide Ms. Chhum Makara with wages and other benefits from the day she tried to return to work (10 July 2006) to 22 July 2006.

**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 with the Secretariat of the Arbitration Council within this time period.*

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

Arbitrator chosen by the employer party:

Name: **SENG VUOCH HUN**

Signature: .....

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: .....