



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្យាករណ៍

THE ARBITRATION COUNCIL

Case number and name: 55/08 – 57/08- Sinomax

Date of Award: 20 May 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Kol Vathana**

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

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

DISPUTING PARTIES

Employer party:

Name: **Sinomax International (Cambodia) Garment Co., Ltd**

Address:

Telephone: 023 990 645, 012 800 097 Fax: 023 990 635

Representative:

- 1- Mr. Tha Cha Chief of Administration
- 2- Mr. Hom Phea Lawyer

Worker party:

Name: **Coalition of Cambodia Apparel Workers Democratic Union (C.CAWDU) and Local union of Coalition of Cambodia Apparel Workers Democratic Union (local union of C.CAWDU) at Sinomax II**

Address: #6, Street 476, Sangkat Toul Tom Poug I, Khan Chamkarmon, Phnom Penh

Telephone: 012 396 069, 012 988 623 Fax: 023 210 481

Representative:

- 1- Mr. Ek Sopheakdey Secretary of C.CAWDU
- 2- Mr. Ny Buntheourn Vice-president of Local C.CAWDU
- 3- Mr. Khov Maneth Activist of Local C.CAWDU

- 4- Ms. Sun Bopha Activist of Local C.CAWDU
5- Ms. Oun Sok Activist of Local C.CAWDU

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

A. Non-Conciliation issues in report of the collective labour dispute resolution at Sinomax factory No 224 KB/KN dated 21 April 2008 (Case 55/08-Sinomax)

- 1- [The workers] demand that the company continue the labour contract of Mr. Ny Buntheourn Vice-President of C.CAWDU at Sinomax factory. The company does not agree and decides to wait for the Labour Inspector's decision.
- 2- [The workers] demand that the company retain the wages, position, and other benefits of Mr. Ny Buntheourn. The company does not agree but if the Labour Inspector decides to reinstate Mr. Ny Buntheourn the company will maintain all benefits.

B. Non-Conciliation issues in report of the collective labour dispute resolution at Sinomax factory No 234/08 KB/KN dated 22 April 2008 (Case 57/08-Sinomax)

- 1- The company does not agree to reinstate Be Lot, ID 2605 in the cutting section because the worker does not follow the Company's instruction and performs cutting work without the Company's permission. For a worker named Khov Danith, ID ST 1088 in the cutting section, the Company follows the probationary contract which it has made with the worker.
- 3- The workers demand that the Company provide 50% of three months wages (based on an average of 12 months wages) before female workers commence their maternity leave and provide 2 cans of formula milk per month for babies. The Company does not agree to the workers' demand, asserting that it follows the Labour Law.
- 4- The Company does not agree to reinstate Soy Lak, ID 969 in the cleaning section, and Norng Ry, ID 1458.
- 5- The workers demand that when the Company terminates a worker who is a member of C.CAWDU, the company should discuss this with the union. The Company does not agree.

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 was unsuccessful, and the non-conciliation report No.224 KB/KN dated 21 April 2008 and non-conciliation report No. 234/08 KB/KN dated 22 April 2008 was submitted to the Secretariat of the Arbitration Council on 21 April 2008 and registered 23 April 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: 24 April 2008 (14:00pm – 17:00pm)

Procedural issues:

On 18 April 2009 and 21 April 2008, the Department of Labour and Vocational training in Kandal Province conciliated a collective dispute involving 15 issues (2 issues in non-conciliation report 224 KB/KN dated 21 April 2008 and 13 issues in non-conciliation report 234/08 KB/KN dated 22 April 2008); 9 issues were conciliated and 6 issues remained [unresolved] (2 issues in non-conciliation report 224 KB/KN dated 21 April 2008 and 4 issues in non-conciliation report 234/08 KB/KN dated 22 April 2008). The 6 remaining issues were referred to the Secretariat of the Arbitration Council on 21 April 2008 (case 55/08-Sinomax) and on 23 April 2008 (Case 57/08-Sinomax).

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing and conciliation of the six non-conciliation issues on 24 April 2008 at 14:00pm. Both parties were present as invited by the Arbitration Council.

On the hearing date, the Arbitration Council attempted to conciliate six non-conciliated issues indicated in the non-conciliation report. As a result, four issues in the non-conciliation report 234/08 KB/KN dated 22 April 2008 (case 57/08-Sinomax) were conciliated. The workers withdrew issue 1 (regarding Mr. Be Lot) and issue 3 (regarding Mr. Soy Lak and Norng Ry mentioned in the non-conciliation report 234/08 KB/KN dated 22 April 2008) because the workers have already found alternative work (case 57/08-Sinomax).

Therefore, the Arbitration Council will consider issues 1 and 2, listed in non-conciliation report 224 KB/KN dated 21 April 2008 (case 55/08-Sinomax), and issue 2, listed in non-conciliation report 234/08 KB/KN dated 22 April 2008 (case 57/08-Sinomax) based on the evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council:

Provided by the employer party:

1. Authorisation letter to Mr. Hum Phea, the lawyer representing the Director of the Company dated 05 April 2008
2. Wage detail of worker Kov Danith for February 2008
3. Detail of maternity payments to 11 Workers
4. Notification to the Company regarding the non-renewal of Mr. Ny Bunthoeurn's contract dated 28 March 2008
5. Notification to Chief of Department of Labour and Vocational Training regarding the non-renewal of Mr. Ny Bunthoeurn's contract dated 12 April 2008
6. Notification to Chief of Department of Labour and Vocational Training regarding the suspension of Mr. Ny Bunthoeurn's contract dated 12 April 2008
7. Letters dated 01 February 2008 and 03 April 2008, signed by Mr. Ny Bunthoeurn confessing to misconduct during work hours
8. Minutes dated 11 March 2008 by group leader of shift AB regarding an incident whereby worker threatened the security guard
9. Minutes dated 11 March 2008 by Ros Ratana 2008 testifying that Mr. Ny Bunthoeurn blamed, pointed at the face of and threatened the security guard Som Vichakar
10. Minutes dated 11 March 2008 regarding the resolution of the incident whereby the security guard was threatened
11. CV and cover letter of Mr. Ny Bunthoeurn dated 12 April 2007
12. Probationary contract of Mr. Ny Bunthoeurn dated 12 April 2008
13. Contract of Mr. Ny Bunthoeurn :
 - 12 April 2007 to 12 July 2007
 - 12 July 2007 to 12 October 2007
 - 12 October 2007 to 12 January 2008
 - 12 January 2008 to 12 October 2008
14. Probationary contract of Mr. Peng Lot dated 02 January 2008
15. Statute of the company
16. Probationary contract of Mr. Kov Danith dated 20 December 2007
17. CV and cover letter of Mr. Kov Danith dated 20 December 2007
18. Letter dated 15 January 2008 from Mr. Peng Lot confessing to misconduct committed during work hours
19. Certificate of commercial registration of Sinomax company No. 1197 BN.NTK dated 19 August 2004
20. Internal Work Rules of the company registration No 187 KB/RK/RFK dated 19 December 2007

Provided by the worker party:

1. Minutes of the collective labour dispute conciliation dated 12 March and 18 April 2008
2. Probationary contract of Mr. Ny Bunthoeurn dated 12 April 2008
3. Contract of Mr. Ny Bunthoeurn :
 - 12 April 2007 to 12 July 2007
 - 12 July 2007 to 12 October 2007
 - 12 October 2007 to 12 January 2008
 - 12 January 2008 to 12 October 2008
4. Letter from Mr. Ny Bunthoeurn dated 3 April 2008 confessing to misconduct committed during work hours
5. Agreement between the Company, workers and C.CAWDU dated 30 January 2008
6. Request from workers of Sinomax Company to discuss some working conditions dated 24 January 2008
7. Summary statement of dispute in Sinomax Company dated 11 March 2008
8. Motion by 470 workers to show their support to Mr. Ny Bunthoeurn and to demand that the company reinstate him, to support the demand regarding working conditions on 8 issues, and to authorize C.CAWDU to settle the dispute on their behalf.

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

1. Report of the collective labour dispute resolution at Sinomax Company dated 21 and 22 April 2008.
2. Minutes of the collective labour dispute conciliation dated 18 and 21 April 2008

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 267 K.B/AK/VK/LKA dated 23 April 2008 to invite the workers to attend the hearing.
2. Invitation letter No. 266 K.B/AK/VK/LKA dated 23 March 2008 to invite the employer to attend the hearing.
3. Interim Order of the Arbitration Council No. 004 KBR dated 24 April 2008

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 worker party and the employer party

The Arbitration Council finds that:

- Sinomax factory employs approximately 700 to 720 workers.

- The union who is claimant of this case is the Coalition of Cambodia Apparel W.D.U in Sinomax factory. Based on the summary statement submitted by the worker party, the union has approximately 550 members but only 230 members pay union contribution fees.
- Based on the claim of the union and employer, there is no union with Most Representative Status in the factory.
- Based on the evidence the Arbitration Council received, 470 workers support this case.

A. Non-Conciliation issues in the report of the collective labour dispute resolution at Sinomax factory No 224 KB/KN dated 21 April 2008 (Case 55/08-Sinomax)

Issue 1 and 2: Workers demand that the company reinstate Mr. Ny Buntheourn who is the Vice-President of C.CAWDU at local Sinomax factory and retain his position and all benefits.

- Mr. Ny Buntheourn commenced work with the company on 12 April 2007. He has a fixed duration contract. He works in the cutting section and receives a base wage of US\$64 and average wages per month of US\$90. He has signed four [fixed duration] contracts with the company and each contract is around 3 months in length, as follows:
 - 1st contract of 3 months from 12 April 2007 until 12 July 2007.
 - 2nd contract of 3 months from 12 July 2007 until 12 October 2007
 - 3rd contract of 3 months from 12 October 2007 until 12 January 2008
 - 4th contract has 3 months from 12 January 2008 until 12 April 2008
- On 18 January 2008, he was elected Vice-President of C.CAWDU in Sinomax factory.
- On 28 March 2008 the company notified Mr. Ny Buntheourn that they would not renew his contract for the reason that his contract expired on 12 April 2008.
- On 12 April 2008 the company again informed Mr Ny Buntheourn that his contract of employment was temporarily suspended and that they were waiting for the decision from the Labour Inspector.
- On the same day, 12 April 2008, the company sent a letter to the Chief of the Department of Labour and Vocational Training of Kandal province to request the non-renewal contract of Mr. Ny Buntheourn because he is the Union President.
- Since the due date of Arbitral Award, the Chief of the Department of Labour and Vocational [Training] has not issued a decision regarding the non-renewal contract of Mr. Ny Buntheourn. Mr. Ny Buntheourn was allowed to return work as normal after there was an order from the Arbitration Council to stop the strike.

- Related to the decision not to renew the contract, the company said it is the right of the employer to renew or not renew the contract because the contract had already expired. Moreover, Mr. Ny Buntheourn committed misconduct on 3 occasions; the first two times the company gave him a warning and the third time they only recorded his mistake.
- Mr. Ny Buntheourn confessed that he did committed misconduct on 2 occasions but claimed that on the third occasion he did not commit misconduct and that is why he did not put his thumb print on the report.
- In the hearing the company representative asked the Arbitration Council to allow the company to suspend Mr. Ny Buntheourn's contract and wait for a decision from the Labour Inspector because his contract had already expired.
- The union asked the Arbitration Council to reinstate Mr. Ny Buntheourn and retain his position and benefits because he is Vice-President of the union and used to represent workers to settle the dispute since he was elected as Vice-President.

B. Non-Conciliation issues in the report of the collective labour dispute resolution at Sinomax factory No 234/08 KB/KN dated 22 April 2008 (Case 57/08-Sinomax)

Issue 1: workers demand the company to reinstate Mr. Khov Danith

- Mr. Khov Danith commenced work at the company on 20 December 2007 as a probationary worker. The term of his contract is from 20 December 2007 until 20 March 2008. He works in the cutting section as Chief of Cutting and receives wages of US\$60.
- He was terminated on 18 February 2008 without any notification.
- One clause of the probationary contract of Mr. Khov Danith states *“During this period if the company considers...[the worker] does not have sufficient capacity to work for the company...[the worker] agrees that the company can terminate the worker and the employer is only required to give 24 hours notice. “*
- The company stated that the reason the company terminated Mr. Khov Danith was because he worked slowly and received low production compared to other workers. The company did not know that Mr. Khov Danith was a union member since the company did not receive the union registration certificate and does not know who the union members are.
- Mr. Khov Danith states that the company did not explain the difference between his work and other workers and how slow he is compared to other workers. He questioned why he was dismissed if the company has work to do. [He considers that he was] dismissed because he joined the union meeting and collected union dues. The company did not respond to his claim but said Mr. Khov Danith is a probationary worker so the company can dismiss [him at] anytime.

- Mr. Khov Danith has not yet received his last wage but he received his wages for December (around US\$30) and January (US\$79).
- The Arbitration Council ordered the union to send the ID card of union members and the name list of union because union not yet registered. However, union did not provide these documents to the Arbitration Council.

Issue 2: workers demand that the company provide half wages (based on the average wages received in last 12 months) to pregnant workers who take 3 months maternity leave and provide 2 cans of formula milk per month for babies

- The company pays workers' maternity leave payment each month calculated on their base wage and the company allows workers to take 90 days leave.
- Workers demand that the company calculate the maternity leave payment based on the average [total] wages received during [the past] 12 months and demand to receive their wages before the commencement of their maternity leave based on Articles 182, 183, 116 and 115 of the Labour Law. Moreover, pregnant workers need money for medical fees and treatment.
- The company does not agree because the Labour Law is not clear. Hence, the company will refer it for the Arbitration Council's [decision].

REASONS FOR DECISION

A. *Non-Conciliation issues in the report of the collective labour dispute resolution at Sinomax factory No 224 KB/KN dated 21 April 2008 (Case 55/08-Sinomax)*

Issue 1 and 2: Workers demand that the company reinstate Mr. Ny Buntheourn who is Vice-President of C.CAWDU at local Sinomax factory and retain his position and all benefits.

Based on the above facts the company has not yet dismissed Mr. Ny Buntheourn and is waiting for the Labour Inspector's decision. The employer also allowed Mr. Ny Buntheourn to work temporarily. The employer states that the employer has already submitted a letter to seek approval from the Labour Inspector but the Labour Inspector has not yet responded. The employer's representative stated that after receiving the decision from the Labour Inspector, the company will consider whether to follow it or not. This means that the dispute not yet occurred. Moreover, this dispute is within the jurisdiction of the Department of Labour and Vocational Training. Therefore, the Arbitration Council decides not to consider the demand.

Generally, the Arbitration Council rejects a future rights dispute (*See Arbitral Awards 36/06- Mondotex, Issue 5 and 58/07- 8 Star Sportswear, Issue 1*)

In this case, the Arbitration Council agrees with the above jurisprudence. Therefore, the Arbitration Council declines to consider the demand to reinstate Mr. Ny Buntheourn who is Vice-President of C.CAWDU at the local Sinomax factory and retain his position and all benefits.

B. Non-Conciliation issues in the report of the collective labour dispute resolution at Sinomax factory No 234/08 KB/KN dated 22 April 2008 (Case 57/08-Sinomax)

Issue 1: workers demand that the company to reinstate Khov Danith

Related to this demand the Arbitration Council finds that Article 82 of the Labour Law states that the employer does not have an obligation to give notice of termination to probationary workers. However, the Arbitration Council finds that a clause of Mr. Khov Danith's probationary contract gives the employer an entitlement to terminate his employment and it requires the employer to give him 24 hours notice, which is a benefit above the law. However, the employer violated the contract as it did not give notice to Mr. Khov Danith. Nonetheless, the contract does not provide that failure to give such notice would give Mr. Khov Danith an entitlement to demand anything.

Article 67 of the Labour Law states "*A labour contract signed with one consent for a specific duration must contain a precise finishing date.*"

The Arbitration Council considers that based on Article 67 of the Labour Law, a probationary contract is a fixed duration contract because it is a written contract and has a clear start and end date. (See *Arbitral Awards 55/04- Yu Chheng, Issue 1; 113/04-Jeou Star, Issue 1 and 75/07- GDM, Issue 1*)

Based on Article 73 of the Labour Law a fixed duration contract will terminate on expiry of the contract or can be cancelled if both parties wish to end it.

In this case the employer states that it terminated Mr Khov Danith's contract before expiry because Mr. Khov Danith works very slowly and is less productive [than other workers]. Based on the above facts, the Arbitration Council considers that the employer does not have a valid reason to support the claim that Mr. Khov Danith is less productive [than other workers].

Article 73 of the Labour Law states that termination of a fixed duration contract before its expiry provides parties with an entitlement to:

- 1-Damages in amount at least equal to the remuneration he would have received until the termination of the contract.
- 2- Severance pay at least equal to five percent of the wages paid during the length of the contract

Total wages received over three months X 5

Article 12 of the Labour Law states that “...no employer shall consider on account of membership of worker’s union or the exercise of union activities to be the invocation in order to make decision... hiring...termination...”. Article 279 of the Labour Law states that “Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits , disciplinary measures and dismissal. “ In this case workers do not have enough evidence to prove union discrimination. Therefore, the termination of Mr. Khov Danith is not as a result of union discrimination

Moreover, during a probationary period the parties to a contract have the right to decide whether or not to continue the contract. In this case, Mr. Khov Danith can decide not to continue the contract if he does not like the employer while the employer also has a right not to continue the contract with Mr. Khov Danith who is a probationary worker.

In conclusion, the Arbitration Council decides to reject the demand for the company to reinstate Mr. Khov Danith. The employer shall pay wages equal to the remuneration Mr. Khov Danith would have received until the termination of the contract.

Issue 2: workers demand that the company provide half wages (based on the average wages received during 12 months) to pregnant workers who are on 3 months [maternity] leave and provide 2 cans of formula milk per month

1- Demand for half wages (based on the average wages received during 12 months) to pregnant workers who on 3 months maternity leave.

Article 182 of the Labour Law states “In all enterprise covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days”.

Based on facts the Arbitration Council finds that the company allows female workers to take 90 days maternity leave. Therefore, the Arbitration Council considers that the practice of providing 90 days maternity leave is lawful according to Article 182.

Article 183 paragraph 1 of the Labour Law states “During the maternity leave as stipulated in the proceeding article, women are entitled to half of their wage, including their perquisites, paid by the employer. “

Based on the above facts, the Arbitration Council finds that the company pays female workers who are on maternity leave half of of their base wage..Therefore, the Arbitration Council considers that the act of the employer is unlawful according to Article 183 paragraph 1 of the Labour Law and decisions of the Arbitration Council in previous cases.

Regarding the calculation of wages during maternity leave, in previous Arbitral Awards the Arbitration Council held that wages during maternity leave are the [total] wages [received over] twelve months before a woman takes maternity leave, divided by twelve to get the average monthly wage, then divided by two to find half of that, multiplied by three for

the duration of 90 days (three months), which is the period of maternity leave. (See *Arbitral Awards 68/04-City New, Issue 4; 18/06-GHG, Issue 3; 33/07-Gold Fame, Issue 7 and 06/08-Kingsland, Issue 1*)

Therefore, to be consistent with previous Arbitral Awards, the Arbitration Council decides that the employer should calculate the maternity leave payment based on the average monthly wages earned in the last 12 months.

Moreover, Article 115 paragraph 3 of the Labour Law states *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

In the hearing, the Arbitration Council finds that workers demand their maternity [leave] payment in advance because they have to spend more money than normal as they have to pay for medical fees and treatment.

In previous Awards, the Arbitration Council gives a detail interpretation of the meaning of Article 115 of the Labour Law and decided that wages during maternity leave shall be paid in advance of taking maternity leave because payment of this wage shall not be made on the day when workers are entitled to go on maternity leave; but it should be paid one day before the workers go on leave. (See *Arbitral Awards 57/06- Evergreen, Issue 6, 97/06- New Max, Issue 1 and 91/07- JK, Issue 3*)

In this case, the Arbitration Council agrees with the jurisprudence above. Therefore, to be consistent with the previous Arbitral Awards the Arbitration Council orders the company to pay half wages to pregnant workers who are on three months maternity leave.

2- Demand the company to provide 2 cans of formula milk per month

In this case, the workers demand that the company provide 2 cans of formula milk per month during maternity leave. Regarding this demand the Arbitration Council finds that the Labour Law and other labour regulations do not state anything about the provision of formula milk during maternity leave. Moreover, the workers did not provide any evidence to support their demand for 2 cans of formula milk per month.

Furthermore, government policy encourages mothers to breastfeed rather than using milk formula; previous Arbitral Awards also encourage breastfeeding. (See *Arbitral Awards 83/04- June Textile, Issue 1 and 24/06 - Fortune, Issue 3*)

Therefore, the Arbitration Council considers that this demand is not consistent with government policy and previous Arbitral Awards.

Thus, the Arbitration Council considers that this demand is higher than the obligations that the employer is required to comply with under the Labour Law and hence it is an interests dispute.

Generally, for an interests dispute, the Arbitration Council will always consider whether the union who is bringing the dispute has most representative status to negotiate a

collective bargaining agreement within a factory (*see Article 96 of Labour Law paragraph 2 (b) and Prakas 305 clause 9 paragraph 1*) and legal rights to bring a dispute before the Arbitration Council.

In order to achieve most representative status, Article 277 of the Labour Law and Clause 6 of Prakas 305 SKBY dated 22 November 2001 on *the Representative status of Professional organizations of workers in enterprises and establishments and the rights of collective negotiation and to conclude a collective agreement for enterprises and establishments* provides that a union's membership must equal more than half of the workers [in the company] and must be registered and meet all the requirements stated in this Article.

In general, the Arbitration Council will consider an interests dispute only if the union that brought the dispute has most representative status in the factory. (*See [Arbitral] Awards 81/04-Evergreen, Issue 4; 09/05-Kin Tai, Issue 2; 84/07-Yung Wah II, Issue 1; 108/07- 8 Star Sportswear, Issue 3; 135/07-Wilson, Issue 1 and 14/08- Quick Sew, Issue 3*)

Based on the facts, the Arbitration Council finds that the workers union does not have most representative status in the company. Therefore, this union does not have the right to collectively bargain on behalf of workers in the whole factory. (*See Clause 9 of Prakas 305 SKBY dated 22 November 2001 on the Representative status of Professional organizations of workers in enterprises and establishments and the rights of collective negotiation and to conclude a collective agreement for enterprises and establishments.*)

Furthermore, Clause 43 of Prakas 099/04 SKBY dated 21 April 2004 on the Arbitration Council states that, "*An Arbitral Award that settles an interests disputes will replace the collective bargaining agreement for one year starting from the date that Award comes into practice unless parties negotiate a new collective bargaining agreement to replace the Award.*"

Based on Clause 43 of Prakas 099/04 SKBY dated 21 April 2004 the Arbitration Council finds that if the Arbitration Council issues an Arbitral Award [that settles an interests dispute] on this issue, it will become a collective bargaining agreement that applies to all workers in the company and it will mean other workers are prevented from striking when there are interests disputes in the future; it will cause unfairness to other [workers].

In conclusion, the Arbitration Council declines to consider the demand for the company to provide 2 cans of formula milk per month.

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

DECISION

A. *Non-Conciliation issues in the report of the collective labour dispute resolution at Sinomax factory No 224 KB/KN dated 21 April 2008 (Case 55/08-Sinomax)*

Issue 1 and 2:

- Decline to consider the demand for the company to reinstate Mr. Ny Buntheourn who is Vice-President of the local C.CAWDU.
- Decline to consider the demand for the company to retain the position and benefits of Mr. Ny Buntheourn.

B. Non-Conciliation issues in the report of the collective labour dispute resolution at Sinomax factory No 234/08 KB/KN dated 22 April 2008 (Case 57/08-Sinomax)

Issue 1:

- Reject the demand for the company to reinstate Mr. Khov Danith.
- Order the company pay damages equal to the remuneration Mr. Khov Danith would have received until the termination of his contract.

Issue 2:

- Order the company to provide a maternity leave payment in an amount equal to 50% of the worker's average wages earned in the last 12 months in advance of their taking maternity leave and order the company to pay the 3 months of wages to female workers before they take maternity leave.
- Decline to consider the demand for the employer to provide 2 cans of formula milk per month.

Type of Award: Non binding or binding awards

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: **Kol Vathana**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: