



KINGDOM OF CAMBODIA

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THE ARBITRATION COUNCIL

Case number and name: 64/06 – Caltex Cambodia Limited

Date of Award: 7 September 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party:

Ing Sothy

Arbitrator chosen by the worker party:

Vong Vanna

Chair Arbitrator (chosen by the two Arbitrators):

Tan Try

DISPUTING PARTIES

1- Employer Party

Name : **Caltex Cambodia Limited (Caltex Company)**

Address : Phnom Penh Centre, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh

Telephone : 023 223 355 Fax: 023 223 599

Employer Representatives:

1. Ms. Heng Sovann Human Resources Manager;
2. Mr. Sao Sary Human Resources Assistant;
3. Mr. Long Beang CAMFEBA Legal Assistant.

2- Worker party

Name : **Cambodian Workers' Democratic Union (CWDU) in Caltex Company**

Address : No. 6C, Street 476, Sangkat Tuol Tumpung I, Khan Chamkarmon,
Phnom Penh

Telephone : 012 998 906, 016 525 781 Fax: N/A

Worker Representatives:

1. Mr. Sor Mora Program Officer of Coalition of Cambodian Apparel;
Workers' Democratic Union (C.CAWDU);
2. Mr. Neb Ty President of CWDU in Caltex Company;
3. Mr. Bo Sinat Vice President of CWDU in Caltex Company;

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| 4. Ms. Oum Narin | Secretary of CWDU in Caltex Company; |
| 5. Mr. Eng Bunthoeun | Supervisor at Chbar Ampov Caltex Station; |
| 6. Mr. Buor Bedo | Pump attendant. |

ISSUES IN DISPUTE

(In the non-conciliation report)

- 1- The workers demand that the company reinstate Mr. Buor Bedo and Mr. Eng Bunthoeun. The company rejects reinstating the two workers for the reason that they both committed serious misconducts;
- 2- The workers demand that the company provide pump attendants with a medical allowance based on the company's ability. The company could not make a decision;
- 3- The workers demand that the company provide those who have worked between two and five years with a US\$5 raise and those who have worked for more than five years with a US\$10 raise. The company could not make a decision;
- 4- The workers demand that the company provide them with equal wages for the same work. The company could not make a decision.

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. 1097 dated 4 August 2006 was submitted to the Secretariat of the Arbitration Council on 4 August 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 : - 17 August 2006 (from 8:30 to 12:30)
- 24 August 2006 (from 8:30 to 12:00)

Procedural Issues:

Having received the complaint from the Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) on 5 June 2006 which demanded that the company comply
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with working conditions as set out in 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 not conciliated in the last conciliation session held on 21 July 2006.

On 4 August 2006, the Arbitration Council received the case and report No. 1097 from the Director of the Department of Labour Disputes dated 4 August 2006 in respect of the collective labour dispute conciliation. Having received the case, the Arbitration Council summoned the employer, the union in the company and the workers to attend a hearing to settle the four non-conciliated issues on 17 August 2006 at 8:30 a.m. and [then] 24 August 2006 at 8:30 a.m. At the hearing, the Arbitration Council made a further attempt at conciliation, but the four issues remained unresolved.

Therefore, the Arbitration Council considers the four non-conciliated issues based on the evidence and the findings of fact as follows:

EVIDENCE

Witness and experts besides the parties:

1. Mr. Ngin Bunny Caltex gasoline transport driver;
2. Mr. Nhek Raksmeay Security guard from MPA Company stationed at Chbar Ampov Caltex Station.

Documents, exhibits and other evidence considered by the Arbitration Council

a. Provided by the employer party:

- 1- Trade Registration Certificate No. 872 dated 22 June 2004 of the Ministry of Commerce on Trade Registration and acknowledgement of legal person status of Caltex Cambodia Limited;
- 2- Internal Work Rules of Caltex Cambodia Limited registered on 6 April 1998;
- 3- Business Conduct and Ethics Code of Chevron Corporation dated 1 July 2005;
- 4- Form acknowledging the legal procedural documents and principle guidelines in respect of legal compliance by Mr. Buor Bedo;
- 5- Fuel Invoice (D.O. No. T20603238, T20603239, T20603240) for the amount of 8,000 litres of Techron Gold, 8,000 litres of Techron Silver and 8,000 litres of power diesel to be transported to Chbar Ampov Caltex Station dated 4 June 2006;
- 6- Labour contract between Mr. Buor Bedo and Caltex Company dated 13 January 2005;
- 7- Confidential document of Caltex Company dated 4 May 2006 on the dismissal of Mr. Buor Bedo;

- 8- Minute on the observation on Mr. Buor Bedo dated 27 April 2006 at 5:45 p.m.;
 - 9- Additional minute on the incident of Mr. Buor Bedo's drunkenness dated 4 May 2006;
 - 10- Apsara Station Deputy Manager's letter dated 12 April 2006 to the Chairman of the Board of Retail Business Unit of Caltex;
 - 11- Apsara Station Deputy Manager's letter dated 24 April 2006 to the Chairman of the Board of Retail Business Unit of Caltex;
 - 12- Letter of clarification from Mr. Buor Bedo to the Manager and the Deputy Manager of Caltex Apsara Station;
 - 13- Labour contract between Mr. Eng Bunthoeun and Caltex Company dated 12 January 2005;
 - 14- Confidential document of Caltex Company dated 19 May 2006 on the dismissal of Mr. Eng Bunthoeun;
 - 15- Mr. Hang Bunthoeun's [completed] acknowledgment form for the Ethics Code and Business Operation of Chevron Texaco dated 2 July 2004;
 - 16- Mr. Ngjin Bunny's report dated 4 May 2006;
 - 17- Minute on the inquiry of Mr. Hang Bunthoeun dated 10 May 2006 at 2:15 p.m.;
 - 18- Minute on the inquiry of Mr. Nhek Raksmeay dated 10 May 2006 at 7:00 p.m.
- b. Provided by the worker party:
- 1- Registration Certificate of Cambodian Workers' Democratic Union in Caltex Company dated 12 June 2006;
 - 2- Letter No. 627 dated 12 June 2006 from the Minister of Labour and Vocational Training on the recognition of leaders of Cambodian Workers' Democratic Union in Caltex Company;
 - 3- Statute of Cambodian Workers' Democratic Union in Caltex Company registered certificate No. 941 dated 12 June 2006;
 - 4- Letter No. 092/06 dated 23 April 2006 from Cambodian Apparel Workers' Democratic Union notifying the result of the election of the union's leaders in Caltex Company;
 - 5- Attendance List for the election establishing Cambodian Workers' Democratic Union in Caltex Company on 23 April 2006 and list of candidates for union leader;
 - 6- Report of Cambodian Workers' Democratic Union in Caltex Company submitted to the Arbitration Council;
 - 7- Mr. Eng Bunthoeun's complaint in respect of his dismissal dated 20 May 2006;

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- 8- Mr. Buor Bedo's complaint in respect of his dismissal dated 5 May 2006;
 - 9- List of workers in Caltex Company who hold the same position, but receive less wages;
 - 10- Complaint dated 27 February 2006 and workers' petition submitted to the President of Coalition of Cambodian Apparel Workers' Democratic Union on the dismissal of Mr. Chok Bunthon;
 - 11- Letter of Cambodian Workers' Democratic Union in Caltex dated 18 May 2006 to the General Director of Caltex Company on the request to have a discussion with the company;
 - 12- List of workers in Caltex Company who requested the company multiply the regular wage rate for night shift work between 1996 and 2005 in accordance with the Labour Law.
- c. Provided by the Ministry of Labour and Vocational Training:
- 1- Letter No. 990 dated 11 August 2006 of the Minister of Labour and Vocational Training on the collective labour dispute conciliation in Caltex Company;
 - 2- Letter No. 1097 dated 4 August 2006 of the Director of the Department of Labour Disputes on the collective labour dispute conciliation in Caltex Company;
 - 3- Minute of the collective labour dispute conciliation dated 21 July 2006.
- d. Provided by the Secretariat of the Arbitration Council:
- 1- Invitation No. 304 dated 8 August 2005 to the worker party to attend the hearing;
 - 2- Invitation No. 305 dated 8 August 2005 to the employer party to attend the hearing.

FINDINGS OF FACT

- Having reviewed various documents submitted to the Arbitration Council;
- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;

The Arbitration Council finds that:

Issue 1:

- Caltex Company is located at Phnom Penh Centre, Sangkat Tonle Bassac, Khan Chamkarmon of Phnom Penh and employs approximately 500 workers.

Mr. Buor Bedo's dismissal case

- According to Mr. Buor Bedo's written labour contract dated 13 January 2005 with Caltex Company, Mr. Buor Bedo started working for Caltex Company on 20 February 2000. Mr. Buor Bedo is a pump attendant;

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- Mr. Buor Bedo's working hours are from 4:00 p.m. to 12:00 p.m.;
- It is a requirement of the parent company Chevron, that Caltex Company requires its workers to read and agree to comply with the **Business Conduct and Ethics Code of Chevron Corporation**. Mr. Buor Bedo accepted that he had read the Business Conduct and Ethics Code and respected the provisions in these Codes during his work performance;
- Although 9 April 2006 was one of the days during [Mr. Buor Bedo's] one-week leave, he substituted for his colleague Nget Bunthoeun because Nget Bunthoeun had to go to his home. This substitution was agreed by the Station Manager;
- On the afternoon of 9 April 2006, before coming to work, Mr. Buor Bedo met with his relatives and got very drunk. At 4:00 p.m. on the same date, Mr. Buor Bedo arrived at the Caltex Station near Stop Pet Chen (Chinese Hospital traffic light) on the corner of Monivong Boulevard and Sihanouk Boulevard to substitute for Mr. Nget Bunthoeun;
- After arriving at the station, Mr. Buor Bedo started working for a while but because of having drunk too much, he became dizzy and felt like vomiting. Therefore he was unable to work as usual. He went into the ladies' bathroom to vomit and he then fell asleep in the bathroom for around 30 minutes. The cleaner saw him and yelled at him. Mr. Buor Bedo then asked for the warehouse key and he rested in the [warehouse] for around two hours. At about 7:00 p.m., the Station Manager came to wake him up and asked him to work for awhile, then later on, told him to go home;
- In the investigation, the Management Official of Caltex Company initially questioned Mr. Buor Bedo about the drunken incident at the gas station on 27 April 2006 at 5:45 p.m.;
- On 4 May 2006, the Management Official of Caltex Company questioned another pump attendant Mao Cheymuny about the drunken incident of Mr. Buor Bedo;
- Caltex Company issued a letter of dismissal to Mr. Buor Bedo on 4 May 2006 because of his serious misconduct, [that is] being too drunk during working hours to [properly] perform work. Mr. Buor Bedo received the letter of dismissal on 5 May 2006;
- At the hearing, the company raised provisions of the Business Conduct and Ethics Code of the Chevron Corporation as follows:

Elements that violate Policy

The company prohibits [its workers] to:

- Utilise, own, distribute, purchase or sell illegal substances (including illegal drugs and narcotics, acceptable or usable drugs without doctor's prescription or substances or illegal materials) inside the company's premises during working hours or in the process of using the company's equipment;

- Utilise, own, distribute, purchase or sell alcohol without permission inside the company's premises during working hours or in the process of using the company's equipment.

The company will investigate and test for drug and alcohol use, if the law permits.... (See page 11).

Mr. Hang Bunthoeun/Eng Bunthoeun's dismissal case

- According to the labour contract, Hang Bunthoeun and Eng Bunthoeun is only one person;
- According to the written labour contract between Mr. Eng Bunthoeun and Caltex Company dated 12 January 2005, Mr. Eng Bunthoeun started working for Caltex Company on 30 July 1996. Mr. Eng Bunthoeun was the supervisor at Chbar Ampov Caltex Station;
- Mr. Eng Bunthoeun's working hours are from 12:00 p.m. to 8:00 p.m.;
- It's the requirement of the parent company Chevron, that Caltex Company requires its workers to read and [then] agree to comply with the **Business Conduct and Ethics Codes (the CODE) of Chevron Corporation**. Mr. Eng Bunthoeun accepted that he read the CODE and would respect the provisions in the CODE during his work performance (in reference to a document signed on 2 July 2005);
- On 4 May 2006, a company's fuel truck with licence plate number 3A-1849 transported 8,000 litres of Techron Gold, 8,000 litres of Techron Silver and 8,000 litres of power fuel attached with codes D.O. No. T20603238, T206039 and T206040 from Sihanoukville to Chbar Ampov Caltex Station and transferred the gasoline from the truck into the station's underground reservoirs. The transferring process finished at 7:36 p.m. The supply and receipt of the gasoline was made between Mr. Eng Bunthoeun, the supervisor and Mr. Ngin Bunny, the driver of the company's fuel truck and witnessed by a security guard Nhek Raksmeay from MPA Company;
- Before the gasoline was pumped into the station's underground reservoirs, Mr. Eng Bunthoeun asked Mr. Ngin Bunny to drain two or three litres of gasoline into a container in order to check the water in compliance with the company's policy. Both Mr. Eng Bunthoeun, the station supervisor and Mr. Ngin Bunny, the truck driver agreed that some two litres of gasoline was drained into the container;
- According to Mr. Nhek Raksmeay, a witness at the hearing, while the gasoline was pumped into the station's underground reservoirs, they (Mr. Ngin Bunny and Mr. Nhek Raksmeay) saw Mr. Eng Bunthoeun carry the checked-gasoline towards his motorbike and go to pour the gasoline into his motorbike. The truck driver Mr. Ngin Bunny stopped him, saying that he should not do that because the company does not

allow it. Mr. Eng Bunthoeun then carried the remaining gasoline and poured it into the station's underground reservoir;

- Mr. Ngin Bunny called the Manager in Sihanoukville to report the incident and he was ordered to write a report on the incident of the two litres of gasoline. In the mean time, Mr. Ngin Bunny asked the MPA security guard Mr. Nhek Raksmeay to be his witness and Mr. Nhek Raksmeay agreed;
- Driver Ngin Bunny wrote in the report that Mr. Eng Bunthoeun took two litres of gasoline and poured it into his motorbike (the report was signed on 4 May 2006);
- In response to the witness, Mr. Eng Bunthoeun rejected that he had poured the two litres of gasoline into his motorbike tank. However, he accepted that Mr. Ngin Bunny, the driver did stop him and he replied, "Don't worry, I don't want it". He added that he poured the two litres of gasoline into the station's underground reservoir but not into his motorbike tank;
- Each witness drew the location of the truck and the three men, the location of Mr. Eng Bunthoeun's motorbike and the location of the hose to the station's underground reservoirs. Having examined the drawings, questioned each witness separately, considered the responses of the two witnesses and of Mr. Eng Bunthoeun, who consistently indicated that Mr. Eng Bunthoeun did carry the two litres of gasoline to pour into his motorbike;
- Both the employer party and the worker party agreed that Mr. Eng Bunthoeun and Ngin Bunny had never met before nor had any personal animosity;
- The Arbitration Council considers that the employer's testimony was more credible than that of the workers;
- On 10 May 2006 at 2:15 p.m., the Management Official of Caltex Company questioned Mr. Eng Bunthoeun for the first time about the incident and accused him of stealing the gasoline, which had been pumped out for the purposes of checking the water, in order to pour into his motorbike tank;
- On 10 May 2006 at 7:00 p.m., the Management Official of Caltex Company questioned Mr. Nhek Raksmeay on the incident, who accused Mr. Eng Bunthoeun of stealing the gasoline that had been pumped for the purpose of the water-check, in order to pour into his motorbike tank on 4 May 2006;
- Caltex Company issued a letter to dismiss Mr. Eng Bunthoeun on 19 May 2006 citing a charge of serious misconduct - stealing the two litres of the company's gasoline to pour into his motorbike tank;
- Mr. Eng Bunthoeun received the letter of dismissal on 20 May 2006. Thus, the duration in which the company prepared the dismissal was 17 days starting from the day that Mr. Ngin Bunny and Mr. Nhek Raksmeay reported Mr. Eng Bunthoeun's misconduct to the employer.

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Issue 2:

- Caltex Company provides cashiers and workers in Star Mart with US\$200 of medical allowance per year. US\$200 is the maximum medical allowance that the company offers to its workers;
- For Caltex Company's senior workers and other office staff, they all receive a medical allowance in accordance with their positions and roles in the company;
- The workers, who are entitled to a medical allowance, have access to health services at seven medical practitioners selected by Caltex Company. After having received the treatment at any of these medical practitioners, the particular worker has to bring the receipt to the company's accountant for reimbursement;
- Contrary to the cashiers and workers in Star Mart and senior staff of the company, all pump attendants in gas stations are not provided with the medical allowance by Caltex Company;
- Only in cases of illness or injuries caused by incidents during work performance, is a pump attendant entitled to the medical allowance. In this case, he or she needs to pay the hospital or clinic bill first before claiming for a reimbursement from the company by attaching the appropriate medical treatment documents and the receipt;
- At the hearing, the worker party asserted that during work performance at the stations, pump attendants are exposed to several health hazards include inhalation of gasoline [fumes] and extreme heat especially during the hot season, which regularly harms their health during their work performance for the company;
- At the hearing, the employer asserted that Caltex Company is negotiating with the parent company on a medical allowance for pump attendants, but the company cannot promise when this new policy may come into practice;
- At the hearing, the employer accepted that the company, so far, has yet to establish a perfect Human Resources Department and currently the company is fixing up its weaknesses;
- Some provisions of the Caltex Company's Internal Work Rules mention the provision of a medical allowance to its workers.

Issue 3:

- At the hearing, the workers asserted that the workers, who made the demand in this issue, are pump attendants, cashiers in Star Mart and cleaners;
- At the hearing, the employer party asserted that the wage increase was not based on the duration of work or their seniority status; however, every month, Caltex Company runs an incentive program to provide three workers in each station with a bonus of between US\$20 and US\$40 based on the evaluation of their work performance. The

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evaluation panel includes the Station Manager, Program Specialist and Retail Business Consultant and the evaluation is based on the service quality of the pump attendants to clients and the amount of gasoline sold by each worker;

- Some provisions of Caltex Company's Internal Work Rules also make mention of the workers' wage.

Issue 4:

- In making the decision to hire workers and identifying their wage, Caltex Company bases its decision on a comparison of workers' wage rates of other petroleum companies (not less than and not more than these) and on the [individual] qualifications of each worker;
- Before 2002, Caltex Company provided a new cashier in Star Mart with US\$120, a new pump attendant with US\$70 and a new cleaner with US\$60 per month. Since 2002, the company has provided a new cashier in Star Mart with US\$100, a pump attendant with US\$60 and a new cleaner with US\$50 per month.

REASONS FOR DECISION

Issue 1: The worker demanded that the company reinstate Mr. Buor Bedo and Mr. Eng Bunthoeun.

Mr. Buor Bedo's dismissal case

On 5 May 2006, Caltex Company dismissed Mr. Buor Bedo for reason of serious misconduct. The company asserted that the misconduct was committed when he was too drunk as a result of out of hours behaviour and could not perform his work. [In addition] because of his excessive drunkenness he vomited making the ladies' restroom dirty and he slept in the room for more than 30 minutes.

At the hearing as well as in the company's inquiry made on 27 April 2006 at 5:45 p.m., Mr. Buor Bedo admitted his misconduct and accepted that he was too drunk to work for the company. However, he claimed that he did not use alcohol on the company's premises or during his work performance for the company. Since he had met his relatives during Khmer New Year, he drank with them before coming to work; however, because there was too much alcohol in his body, when he got to the station, he felt sleepy and felt like vomiting and because he could not stand it, he went into the ladies' restroom and slept there for a time. Mr. Buor Bedo asserted that he was intending to ask for permission to leave but the Station Manager was not in his office; he then asked for the warehouse key from his colleague and rested there until 7:00 p.m. He apologised to the company and asked for reinstatement with a promise to behave himself [in the future].

For Mr. Buor Bedo's case, the Arbitration Council has to consider three points to determine whether or not Mr. Buor Bedo's misbehaviour on 9 April 2006 was misconduct or

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serious misconduct and whether or not Caltex Company's dismissal of Mr. Buor Bedo was done in accordance with the legal procedures of the Labour Law.

The company had already conducted its investigation. According to the result of the investigation, Mr. Buor Bedo's and witnesses' response to the company's inquiry and Mr. Buor Bedo's confession at the hearing, the Arbitration Council considers that Mr. Buor Bedo did commit the misconduct on 9 April 2006.

Clause 3 of Article 83 (B) of the Labour Law provides, "*The following are considered to be serious offenses: serious infractions of disciplinary, safety, and health.*" However, no provision of the Labour Law determines a definition of terms "Serious infractions of disciplinary, safety, and health." Thus, the Arbitration Council examined Caltex Company's Internal Work Rules registered on 6 April 1998, but no provision in the company's Internal Work Rules determine a definition of what the company regards as serious infractions of discipline. However, some [other] legal documents do mention serious infractions of discipline.

The Arbitration Council examined Clause 4.2 of the labour contract dated 13 January 2005 between Mr. Buor Bedo and Caltex Company, which states:

"The employer has the right to terminate this Employment Contract without advance notice, payment in lieu of notice, severance pay or damages, for due cause. 'Due cause' for dismissal will occur in the event of:

- *Serious or repeated violations of duties, the CODE or other Chevron Texaco policies and guidelines, instructions or work regulations;*
- *Any behaviour that seriously damages the Employer's reputation or business..."*

Moreover Clause 7.1 of this labour contract provides, "*The employee is required to comply with the laws of Cambodia, the rules and regulations contained in the Chevron Texaco Business Conduct and Ethics Code (the "CODE") and any other policies of the Chevron Texaco Group, as they may be amended from time to time, and any other terms applicable to the Employer's employees generally...*"

The Arbitration Council considers that Clause 4.2 and Clause 7.1 of this labour contract refer to the provisions of the Business Conduct and Ethics Code "the CODE" of Chevron Corporation.

The Arbitration Council finds that Caltex Company had asked its workers to read the Business Conduct and Ethics Code "the CODE" of Chevron Corporation and all workers agreed to comply with the provisions of the CODE. At the hearing, Mr. Buor Bedo accepted that he had read and agreed to comply with the provisions of the CODE (Clause 7.1 of his labour contract states that a copy of the CODE is attached to the labour contract as Annex

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B). Therefore, the provisions of the CODE have an adequate legal basis to be considered by the Arbitration Council.

The Arbitration Council finds that Mr. Buor Bedo did violate the [proper] use of property reserved for clients by vomiting and sleeping in the ladies' washroom for more than 30 minutes. Thus, this [behaviour] can be considered misconduct. The Arbitration Council considers that his behaviour at that time seriously damaged the company's reputation or business as stated in Clause 4.2 of the labour contract.

Moreover, according to a provision of the CODE, the company prohibits its workers from utilising, owning, distributing, purchasing or selling alcohol inside the company's premises during working hours or in the process of using the company's equipment (see page 7). Even though this provision does not state whether a worker may drink alcohol outside of the company's premises, the Arbitration Council considers that Mr. Buor Bedo should have understood that once his body was filled with a high level of alcohol [to the extent that] he felt like vomiting and was feeling sleepy before performing work, it was an irresponsible act and careless behaviour. This is especially so when his work is associated with highly inflammable substances that require a high degree of attention to secure the company's as well as the clients' property. Therefore, the claim that he made regarding the use of alcohol outside the company's premises and not during the performance of work for the company, could not be used as an appropriate or acceptable reason [for the behaviour]. On the contrary, Mr. Buor Bedo's behaviour on 9 April 2006 violated his professional obligations and Caltex Company's safety rules. The Arbitration Council considers that he did not commit misconduct but serious misconduct, in regard to the Business Conduct and Ethics Code of Chevron Corporation.

The Arbitration Council [therefore] continues to consider whether or not Caltex Company dismissed Mr. Buor Bedo in accordance with the legal procedures of the Labour Law.

Article 26 of the Labour Law provides, "*An employer can not impose disciplinary action against a worker for any misconduct of which the employer or one of his representatives has been aware for over fifteen days.*

The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question."

Regarding the content of this Article, if a worker commits any misconduct, the employer can impose a disciplinary sanction against him or her only within a period of fifteen days, as stated in paragraph one of this Article. If the employer fails to impose a disciplinary sanction against a worker for misconduct, he shall be considered to renounce his [right] to impose a disciplinary sanction. Similarly the term "if this action is not taken within a period of

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seven days” indicates that the employer shall use its rights to dismiss a worker for serious misconduct only within a period of seven days as provided in Article 26(2). This provision considers that the employer renounces its right to dismiss the worker, if this action is not taken within a period of seven days from the date on which the employer himself or one of his representatives has learned about the serious misconduct of a worker.

The Arbitration Council finds that Caltex Company was aware of Mr. Buor Bedo’s misconduct on 9 April 2006 at 7:00 p.m. when the Station Manager realised that he was drunk. The company designated its Management Official to investigate Mr. Buor Bedo’s case and questioned him the first time on 27 April 2006 at 5:45 p.m. Caltex Company’s Management Official also questioned another pump attendant Mao Cheymuny, in relating to the incident of Mr. Buor Bedo at the station on 4 May 2006. Caltex Company issued a letter of dismissal to Mr. Buor Bedo on 4 May 2006 on the grounds of serious misconduct – being too drunk and being unable to perform work. Mr. Buor Bedo received the letter of dismissal on 5 May 2006. According to the facts, the Arbitration Council finds that Caltex Company imposed a disciplinary sanction against Mr. Buor Bedo 26 days after the Manager knew about his misconduct.

As Caltex Company failed to dismiss Mr. Buor Bedo within the period required by Article 26 of the Labour Law, the Arbitration Council considers that the company did not comply with the legal procedures as provided in the Labour Law, when dismissing Mr. Buor Bedo. Therefore, even though the Arbitration Council finds that Mr. Buor Bedo committed serious misconduct, Caltex Company is considered to have renounced its legal right to dismiss Mr. Buor Bedo. Thus, the company no longer had the right to dismiss Mr. Buor Bedo on 5 May 2006 because Caltex Company had violated the procedures in relation to his dismissal.

Mr. Eng Bunthoeun’s dismissal case

On 19 May 2006, Caltex Company dismissed Mr. Eng Bunthoeun on the grounds of serious misconduct. The company asserted that the misconduct was committed while he was performing his duty as the supervisor of Caltex Chbar Ampov Station on 4 May 2006 by stealing two litres of gasoline when he was receiving gasoline from the company’s fuel truck.

In response to the witnesses, Mr. Eng Bunthoeun denied having poured the two litres of gasoline into his motorbike but rather he poured the gasoline into the station’s underground reservoir.

In this case, the Arbitration Council considers two issues; whether or not Mr. Eng Bunthoeun’s behaviour on 4 May 2006 was serious misconduct and whether or not Caltex Company dismissed him in accordance with the legal procedures set out in the Labour Law.

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The Arbitration Council refers to Article 83(B-1) of the Labour Law, which provides, “*The following are considered to be serious offenses: ... Stealing, misappropriation, embezzlement...*” And Clause 4.2 of the labour contract dated 12 January 2005 between Mr. Eng Bunthoeun and Caltex Company which states,

“*The employer has the right to terminate this Employment Contract without advance notice, payment in lieu of notice, severance pay or damages for due cause. ‘Due cause’ for dismissal will occur in the event of:*

- *Theft, fraud or deceit;*
- *Any other serious offense, as defined in the Labour Law...*”

The Arbitration Council invited the two witnesses Mr. Ngin Bunny, the driver and MPA security guard Mr. Nhek Raksmeay, who were at the scene when the gasoline was being pumped into the station’s underground, 24,000-litre reservoirs at Caltex Chbar Ampov Station on 4 May 2006.

According to the two witnesses’ responses, while the gasoline was being pumped into the station’s reservoirs, they saw Mr. Eng Bunthoeun carrying a container of two litres of gasoline pumped from the truck for the purposes of a water-check towards his motorbike and then pour it into his motorbike which was parked nearby. When the truck driver stated that he should not have done this because the company would not allow it, Mr. Eng Bunthoeun carried the remaining gasoline and poured it back into the station’s reservoir.

In response to the witnesses, Mr. Eng Bunthoeun denied having poured the two litres of gasoline, pumped for the purposes of the water-check, into his motorbike. However, Mr. Eng Bunthoeun accepted that the truck driver Mr. Ngin Bunny did try to stop him and he replied, “Don’t worry, I don’t want it” and he brought the gasoline back and poured it into the station’s reservoir; but he did not pour the gasoline into his motorbike tank.

The Arbitration Council ordered one of the witnesses to draw the locations of the truck, the three men, Mr. Eng Bunthoeun’s motorbike and the station reservoir’s fuel hose. Having examined the drawing, inquired of each witness in separate sessions and having considered the two witnesses’ and Mr. Eng Bunthoeun’s testimonies, the Arbitration Council finds that the two witnesses’ testimonies are consistent and reliable and that Mr. Eng Bunthoeun did pour the two litres of gasoline into his motorbike tank. Since there are adequate reasons, the Arbitration Council considers that Mr. Eng Bunthoeun’s behaviour on 4 May 2006 was serious misconduct as provided in Article 83(B-1) of the Labour Law and Clause 4.2 of his labour contract.

The Arbitration Council also [must] examines whether or not Caltex Company dismissed Mr. Eng Bunthoeun in accordance with the legal procedures of the Labour Law.

Article 26 of the Labour Law provides,

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“...The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question.”

Driver Ngin Bunny called his Manager, who was stationed in Sihanoukville, to inform him of the incident and he was ordered by the Manager to write a report on the incident regarding the two litres of gasoline. In the mean time, MPA security guard Mr. Nhek Raksmeay also reported to his Manager, who is responsible for informing the Director of Caltex Company. Therefore, the Arbitration Council has adequate reasons to believe that Caltex Company was aware of Mr. Eng Bunthoeun's act on 4 May 2006.

At 2:15 p.m. on 10 May 2006, Caltex Company's Management Official made inquiries to Mr. Eng Bunthoeun for the first time in relation to the incident, alleging that he stole the gasoline that was pumped from the truck's reservoir for the purpose of the water-check, and poured it into his motorbike tank and at 7:00 p.m. on the same day, Caltex Company's Management Official made an inquiry to the MPA security guard Nhek Raksmeay on Mr. Eng Bunthoeun's case. Only on 20 May 2006 did Mr. Eng Bunthoeun receive a letter of dismissal.

As already explained in Mr. Buor Bedo's case, the employer has to use their right to dismiss Mr. Eng Bunthoeun for serious misconduct within a period of seven days as provided in paragraph 2 of Article [26] starting from the time when the employer or its representative has learned of Mr. Eng Bunthoeun's serious misconduct and this provision considers that Caltex Company has renounced its rights in dismissal. Therefore, the company no longer has a right to dismiss Mr. Eng Bunthoeun on 19 May 2006 because Caltex Company had violated the legal procedures related to his dismissal.

Issue 2:

The workers demanded that the company provide the pump attendants with a medical allowance based on the company's ability [to pay for this]. The employer asserted that each cashier and worker in Star Mart receives a medical allowance of US\$200 per annum. No pump Attendants in any station receive a medical allowance from the Caltex Company like that of cashiers and workers in Star Mart. The worker party asserted that during the work performance at the stations, pump attendants may be exposed to several negative effects including inhaling gasoline [fumes] into their respiratory systems when serving clients and the daily heat especially during the hot season, which regularly harms their health during work performance for the company.

The employer [stated that they] cannot provide the medical allowance for the pump attendants because currently the company has no such policy. The employer asserted that only in cases of illness or injuries caused by a work accident, would a pump attendant be provided with a medical allowance.

In this issue, the Arbitration Council does not see any provision of the Labour Law which states that the employer has an obligation to provide a medical allowance to its workers. The Arbitration Council finds that Articles 103 and 106 provide only for the provision of wages, and that the medical allowance is not within the scope of Article 106.

The Arbitration Council finds with reference to the company's practice, there are only two types of workers: (1) cashiers and workers in Star Mart and (2) senior and other office staff who are provided with US\$200 per annum from the company. Caltex Company provides cashiers and workers in Star Mart with US\$200 and the senior and other office staff with a medical allowance based on their status and position in the company.

The Arbitration Council examined Clause 3 of Caltex Company's Internal Work Rules, which state, “

C. After being employed, all workers are entitled to a medical allowance as stated in their labour contracts as follows: senior workers as stated in his or her individual labour contract and his or her close family members—legitimate spouse and children shall be entitled to medical care by medical practitioners selected by Caltex Company. The list of medical practitioners will be released on an ongoing basis. Caltex Company shall cover 90 percent of the payment of its workers' medical care. Moreover, Caltex Company shall also cover 90 percent of the payment of its workers' close family members' medical care at the maximum of US\$200 per annum...”

According to the above-mentioned provision, the term “**all workers**” in the first paragraph should be interpreted in the sense that the company shall provide every worker with a medical allowance. However, the next paragraph seems to provide a contrary meaning by limiting the number of workers who are entitled to the medical allowance to only one type of worker - **some senior staff** and their family members. Thus, the provision of Clause 3 is not consistent and it is not easy for the Arbitration Council to make a specific interpretation of the content of Clause 3. The Arbitration Council cannot rely on Clause 3 in order to define whether or not **every worker** or **only some workers** are entitled to a medical allowance from Caltex Company.

Since there is not enough legal basis to determine a definition as to the medical allowance in this case, the Arbitration Council considers that this issue is not a rights dispute but an interests dispute.

Regarding interests disputes, the Arbitration Council has always considered whether or not the union that forwarded the dispute to the Arbitration Council for settlement has most representative status. This is because the Arbitration Council considers that the most representative status of a union provides the legal capacity to negotiate a collective bargaining agreement within a company. In this regard, the Arbitration Council finds that Cambodian Workers' Democratic Union in Caltex Company whilst legally registered has not yet gained most representative status in accordance with Prakas 305, dated 22 November

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2001. Therefore, this union does not have the legal right to bring any interests demand before the Arbitration Council for settlement (see [Arbitral] Awards 62/06 – Quick Sew, 57/06 – Evergreen, 81/04 – Evergreen, 98/04 – Great Union and 66/06 – Gold Lida).

Issue 3:

The workers demanded that the company provide those who have worked between two and five years with a US\$5 wage increase and those who have worked for more than five years with a US\$10 wage increase.

At the hearing, the workers confirmed that the workers who made the demand were pump attendants, cashiers in Star Mart and cleaners. The employer claimed that the wage increase should not be made with reference to the duration of work or a worker's seniority status, but [on the basis that] every month, Caltex Company runs an incentive program to provide three workers in each station with a bonus of US\$20 to US\$40 based on an evaluation of each worker's performance.

With respect to this issue, the Arbitration Council does not see any provision of the Labour Law or Ministry regulation which provides for an obligation on the employer to provide medical allowance to its workers.

The Arbitration Council considers that because no provision of the law provides for this issue, an annual wage increase or the amount of an increase is the management and economic prerogative of the company. The Arbitration Council examined Clause 5 of Caltex Company's Internal Work Rules, which state, "... *Each worker's wage shall be reviewed at Caltex Company's discretion – an increase shall be in proportion to a worker's performance and the company's income.*" The provision of Clause 5 indicates that a wage increase is under the company's supervision. However, the Arbitration Council considers that if the company decided to provide a raise in any one year, the company should review every worker's case.

Regarding this issue, the worker party asserted that the monthly program was not applicable to all workers because members of the evaluation panel are the Station Manager, Program Specialist and Retail Business Consultant and only workers, who were present in the shift, had the opportunity for their performance to be evaluated. The Arbitration Council considers that this [latter] demand was not included in the Ministry's non-conciliation report; therefore, the Arbitration Council will not consider this issue.

Therefore, the Arbitration Council considers that this demand is not a rights dispute but an interests dispute. Cambodian Workers' Democratic Union in Caltex Company does not have the legal right to bring an interests demand before the Arbitration Council for settlement (see the above reasoning in relation to Issue 2).

Issue 4:

The workers demanded that the company provide them with equal wages for the same work, but the company could not make a decision [in relation to this issue].

In respect of this issue, the Arbitration Council will divide the workers into two groups—those who were recruited before 2002 and those who were recruited since 2002.

The Arbitration Council finds that before 2002, Caltex Company provided a new cashier in Star Mart with US\$120, a new pump attendant with US\$70 and a new cleaner with US\$60 per month. Since 2002, the company has provided a new cashier in Star Mart with US\$100, a new pump attendant with US\$60 and a new cleaner with US\$50 per month.

Article 106 of the Labour Law provides, “*For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age.*”

The Arbitration Council considers that the provision of Article 106 establishes three requirements as follows:

- Work of equal conditions;
- Work of equal professional skill;
- Work of equal output.

Workers who have been recruited in the same generation with the same working conditions and the same professional skills (both the generation before 2002 and the one after 2002) are not different, and there is no difference in the provision of wages based on these two bases. Regarding the question of whether or not the wages provided can be different; if a worker’s output is different from another workers’, the Arbitration Council considers that the company has the right to pay the worker with the better output [more], but the company does not have the right to pay a lesser wage to workers who produce an output that is equal or higher. At the hearing, the worker party did not present any specific evidence to prove that Caltex Company had provided better wages to workers with lesser outputs. Therefore, the Arbitration Council considers that the company has not provided workers recruited in the same generation with different wages and has not violated Article 106.

The Arbitration Council finds that, Caltex Company had previously provided its new workers in two different generations with two different levels of wage—new workers recruited after 2002 have received lesser wages than those recruited before 2002. This raises a question of whether or not the provision of lesser wages to workers recruited in a later generation violates Article 106 of the Labour Law.

The Arbitration Council considers that the content of Article 106 does not clearly state that it would be a violation if the employer provided its workers [recruited] in different generations with different wages (more than or less than). On the contrary, the Arbitration Council considers that the employer has the right to provide its workers recruited in different generations with

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wages based on economic factors and the income level of the company as long as the company does not violate the provisions related to minimum wage provided in the law.

Therefore, the Arbitration Council cannot reference Article 106 to determine that Caltex Company has violated the provision of equal wage payment. [The Arbitration Council therefore] considers that Caltex Company has not violated the provisions of the Labour Law related to this issue.

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

ORDERS AND DECISIONS

1. Order Caltex Company to reinstate Mr. Buor Bedo and Mr. Eng Bunthoeun;
2. Reject the workers' demand that the company provide pump attendants with a medical allowance based on the ability of the company;
3. Reject the workers' demand that the company provide those who have worked between two and five years with a US\$5 wage increase and those who have worked for more than five years with a US\$10 wage increase;
4. Reject the workers' demand that the company provide them with equal wages for the same work.

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Tan Try**

Signature:

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