

Worker Representatives:

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| 1. Mr. Mut Kosal | Worker delegate; |
| 2. Mr. Puong Sophal | Worker delegate; |
| 3. Mr. Chhim Sophea | Worker delegate; |
| 4. Ms. Te Vuthy | Worker delegate; |
| 5. Mr. Im Sophara | Supervisor of the Sewing Unit; |
| 6. Mr. Chheav Mao | Worker in the Packing Unit; |
| 7. Ms. Em Pov | Worker; |
| 8. Ms. Seang Chan | Worker; |
| 9. Mr. Chhim Phon | Worker; |
| 10. Ms. Morn Sivon | Worker; |
| 11. Mr. Mao Ratana | Worker; |
| 12. Ms. Nob Sochhim | Worker delegate; |
| 13. Mr. Our Phoeun | Khmer Youth Federation Trade Union Official; |
| 14. Mr. Eng Vanna | Khmer Youth Federation Trade Union Official; |
| 15. Mr. Suon Socheat | Khmer Youth Federation Trade Union Official. |

ISSUES IN DISPUTE

(In the non-conciliation report)

The workers demanded that the company dismiss Mr. Ouk Sam Ol, Chief of the Packing Unit and Ms. Sro Sou Ngim, Chief of the Ironing Unit in the company. The company did not agree with the demand and asked for time to conduct an investigation and resolve the dispute in accordance with the Labour Law.

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 131/06 was submitted to the Secretariat of the Arbitration Council on 16 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 : 18 August 2006 (from 3:00 p.m. to 5:30 p.m.)

Procedural Issues:

On 11 August 2006, the workers at Now Corp Factory went on strike with respect to a demand about nine issues without any prior notice to either the factory or the Provincial Department of Labour and Vocational Training of Kandal province.

On 14 August 2006, eight out of nine issues were successfully conciliated by the Provincial Department of Labour and Vocational Training of Kandal province and the remaining non-conciliated issue was forwarded to the Arbitration Council on 16 August 2006.

Since the worker party refused to go to work but continued to go on strike, on 16 August 2006, the Arbitration Council issued an order ordering that all workers return to work. The Arbitration Council also summoned both the worker party and the employer party to a hearing on 18 August 2006 at 3:00 p.m. The Arbitration Council made a further attempt to conciliate the non-conciliated issue [at this time] but the issue remained unresolved. Therefore, in this award the Arbitration Council considers the non-conciliated issue based on the evidence and the findings of fact as follows:

EVIDENCE**Witnesses from the worker party:**

1. Ms. Em Pov;
2. Ms. Seang Chan.

Documents, exhibits and other evidence considered by the Arbitration Council**a. Provided by the employer party:**

- 1- Notification from the company, dated 14 August 2006 calling for all workers to return to work;
- 2- Brief report on the dispute, dated 18 August 2006;
- 3- Business Registration License No. 997/05E, dated 25 October 2005;
- 4- Statutes of Now Corp Factory.

b. Provided by the worker party: None

- 1- Ms. Seang Chan's journal on the request to not work overtime;
- 2- Phon Sok Ngim's journal on the insults made by Ms. Sro Sou Ngim, dated 12 July 2006;
- 3- Pech Sotha's journal on the insults made by Ms. Sro Sou Ngim, dated 10 July 2006;
- 4- Em Pov's journal on the request to not work overtime;
- 5- Thumb prints of 38 workers confirming that they left the factory at 11:00 a.m. on 17 August 2006 because of a flood in the factory, not because they did not respect the Arbitral Award;

6- Letter No. 550, dated 14 August 2006 on the notification to elect committee members of Khmer Youth Trade Union.

c. Provided by the Ministry of Labour and Vocational Training:

- 1- Report No. 13106, dated 15 August 2006 on the collective labour dispute at Now Corp company issued by Mr. Thol Neang, Director of the Provincial Department of Labour and Vocational Training of Kandal province;
- 2- Minute on the collective labour dispute, dated 15 August 2006.

d. Provided by the Secretariat of the Arbitration Council:

- 1- Order No. 018, dated 16 August 2006.

FACTS

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- Now Corp Company is located on Street 51, Choueng Ork Village, Lumhach Commune, Ang Snuol District of Kandal province. The company started its operation on 19 April 2006 but its full operation did not start until 13 May 2006. The company employs approximately 962 workers;
- The workers went on strike to demand that the company dismiss two Chiefs of the Finishing Unit—Mr. Ouk Sam Ol and Ms. Sro Sou Ngim accusing them of oppressing and using inappropriate language to insult workers;
- The manager of the company, who was present at the hearing, did not agree to dismiss Mr. Ouk Sam Ol and Ms. Sro Sou Ngim because although he was just aware of the issue, he needed time to conduct an investigation. He asked for the understanding of workers because they were all Cambodians. He was willing to write each of the Chiefs a letter of warning, if both of them had committed misconduct;
- Regarding the allegation that both Chiefs oppressed worker Em Pov; the worker party's witness claimed that on 5 July 2006 she had serious diarrhoea and at 3:30 p.m. she asked permission from Mr. Ouk Sam Ol to go home but her request was rejected. Therefore, she had to work until 6:00 p.m. even though she was sick. On the same day, she had to go and have an intravenous drip and stayed at the clinic until 10:00 p.m. Mr. Ouk Sam Ol claimed that he had asked her to provide a letter from the company's medical staff before he would allow her to go home. Only if the medical letter certified that she was sick, would he sign her leave form and that this was provided in the company's Internal Work Rules. Ms. Em Pov did not request the medical letter. Ms. Em Pov claimed that she did not request the medical letter;

- Regarding the allegation that the workers were insulted, the worker party claimed that both Mr. Ouk Sam Ol and Ms. Sro Sou Ngim have used some impolite terms or phrases as follows:
 - o “Subordinates have no right to protest or complain. If you are ordered to eat shit, you have to eat shit”;
 - o “Are you blind? Is your **** blind? Are you sitting until your **** swells?”
- Mr. Ouk Sam Ol claimed that he had used the impolite terms because the workers especially Sophara did not respect him as the Unit Chief. The workers accused him of not appraising their performance so that the company did not increase their wages. He confirmed that he had appraised each worker’s performance and submitted his appraisal to the management. He claimed that he was not the person who decides about the wage increase. The workers did not say anything in response to Mr. Ouk Sam Ol’s assertion;
- Ms. Sro Sou Ngim confirmed that she had used the impolite terms such as “blind” and “just sit to lighten buttocks”, but not “blind ****” or “until your **** swells” because the workers especially Sophara did not respect her as the Unit Chief. The workers did not say anything in response to Ms. Sro Sou Ngim’s assertion.

REASONS FOR DECISION

In regard to this case, the Arbitration Council makes its decision in a manner which is consistent with previous awards. In Award 73/04 – Genuine, the Arbitration Council explained that, *“In general, the Arbitration Council considers that the workers are not entitled to direct or demand the employer party to dismiss any worker unless the workers can provide adequate evidence to show that the worker is a dangerous person that should not be kept in the company or the factory and by regarding the worker as a dangerous person may cause a specific issue within a work place (see Award 04/03 – Lida, 14/03 - Chu Sing, 17/03 – Ho Hing, 18/03 – Ho Hing, 06/04 – Chu Sing, 15/04 – Lucky Zone, 16/04 – Yada Printing, 32/04 – Ecent, 34/04 – Full Value, 52/04 – Sin Cam).”*

But in this case, the worker party did not submit any specific evidence to show that Mr. Ouk Sam Ol and Ms. Sro Sou Ngim are dangerous persons who may cause fear in the work place, besides claiming that they were not happy with Mr. Ouk Sam Ol and Ms. Sro Sou Ngim’s impolite terms.

On the other hand, in accordance with Article 65 of the Labour Law (1997) which stipulates that a labour contract establishes working relations between the worker and the employer, and states that **“The labour contract ... is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.”** Because this labour contract is subject to ordinary law, Decree 038/88 also covers labour contracts. Article 22 of Decree 038/88) states, **“A contract is considered as law for the contracting parties. A**

contract can be changed with the consent of both parties. A contract is effective only between the two parties.

Considering this Article, it is clear that only the parties to the contract have the right to terminate the labour contract. Therefore, it is clearly understood that the hiring or dismissal of any worker within the company is the absolute right of the employer and the particular worker who are the parties to the labour contract.

[The Arbitration Council in this case finds] in accordance with Award 73/04 – Genuine and 87/04 – Nobel, in which the Arbitration Council stated that, “*Though a worker commits misconduct as stated in Article 83 of the Labour Law, the Arbitration Council considers that the Labour Law does not require the employer party to necessarily dismiss the worker. On the contrary, the Labour Law only provides the employer party the authority to dismiss the worker (see 14/03 – Chu Sing, 17/03 – Ho Hing and 18/03 – Ho Hing).*”

Therefore, the Arbitration Council finds that the demand of the workers was not based upon any appropriate legal principle.

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

DECISION

Reject the workers’ demand that the company dismiss Mr. Ouk Sam Ol and Ms. Sro Sou Ngim from the factory.

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 objection 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: **KAO THACH**

Signature:

Arbitrator chosen by the worker party:

Name: **TUON SIPHANN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: