

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

THE ARBITRATION COUNCIL

Case: 87/04

Date of award: 12 November 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

Nobel

(Employer party)

AND

Nobel Factory Union and Khmer Youth Union Federation

(Employee party)

DETAILED INFORMATION OF EMPLOYER PARTY:

Representatives:

- 1- Mr. ANH Leonh Seng, Director of the company
- 2- Mr. Goh Seow Nguan, Accountant
- 3- Mr. Taing Ky Say, Administrator.

Address: # 141, Street Chom Chao, Steung Meanchey quarter, Mean Chey district, Phnom Penh.

Tel: 011 903 906 023 995 050

DETAILED INFORMATION OF EMPLOYEE PARTY:

Representatives:

- 1- Mr. Long Sophat, Khmer Youth Union Federation Coordinator
- 2- Mr. Yun Vanna, Khmer Youth Union Federation Coordinator
- 3- Mr. Chheng Narin, President of Nobel Factory Union
- 4- Ms. Sim Sovann, Vice-president of Noble Factory Union
- 5- Mr. Chan Meng Hong, Member of Nobel Factory Union
- 6- Mr. Yi Puthear, Member of Nobel Factory Union

Address: Damnak Thom Village, Steung Meanchey quarter, Meanchey district, Phnom Penh.

Tel: 011 622 963 092 902 569

ISSUES IN DISPUTE:

(In non-conciliation report)

- 1- The employees demanded that the company maintain the work shifts and hours, with work from 6:00 a.m until 11.00 p.m., a lunch break from 11:00 a.m. till 11:30 a.m., and work from 11:30 a.m. to 2:00 p.m. However, the company requires a change in shifts, with work from 6:00 a.m. until 11:00 a.m., lunch between 11:00 a.m. and 12:00 p.m., and work from 12:00 p.m. till 3:00 p.m.
- 2- The employees demanded that the company dismiss the Chinese supervisor Phing Siv Ing because she looked down on and committed violence toward workers.

JURISDICTION OF THE ARBITRATION COUNCIL:

The Arbitration Council derives its power to make this Award from Section IIB of Chapter 12 of the Labour Law (1997); the Prakas on the establishment of the Arbitration Council 338/02, the Prakas on the Arbitration Council 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas and the Prakas on the Nomination of Arbitrators 103/04.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. That conciliation was unsuccessful. The non-conciliation report, no. 2630, dated 7 October 2004 was submitted to the Secretariat of the Arbitration Council on 20 October 2004.

COMPOSITION OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:	Mr. Mar Sambona
Arbitrator chosen by the worker party:	Mr. Liv Sovanna
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

HEARING AND EVIDENCE:

Date and place of hearing: at 8:30 a.m. Tuesday, 26 August 2004 at the Secretariat of the Arbitration Council.

Witnesses and experts:

1. Ms. Yos Sara, ID: QC-65

2. Ms. Chhum Chandeub, ID: QC-44
3. Ms. Ny Chamroeun, ID: QC-105

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

Provided by the employer party:

- 1- Company status, dated 01 May 2003
- 2- Internal Work Rules, dated 26 December 2003 and registered on 16 February 2004
- 3- Announcement of change in shift and hours of work, dated 11 September 2004

Provided by the employee party:

- 1- Registration certificate, no. 585 dated 01 April 2004 and the registration letter of Khmer Youth Union of Nobel Company, no. 301, dated 01 April 2004

Received from MoLVT:

- 1- Non-conciliation report on the collective dispute conciliation of the Ministry of Labour, dated 7 October 2004
- 2- Conciliation minutes on the collective dispute, dated 15 September 2004

CASE SUMMARY:

Nobel Factory is located in Building no.141, on Street Chom Chao, Steung Meanchey quarter, Meanchey district, Phnom Penh, and has a total of 670 employees. The employees filed a complaint to the Labour Inspection Department of Meanchey district on 22 September 2004, about the company's failure to comply with the Labour Law. Having received the complaint, Labour Inspectors intervened to conciliate and solve the problems on 23 September 2004 and in subsequent days. On 2 October 2004 the two parties reached an agreement over six issues, leaving two issues unsolved. On 20 October 2004, the Arbitration Council received an official non-conciliation report from the Ministry of Labour.

The Secretariat of the Arbitration Council had asked the two parties to provide documents and witnesses and attend the hearing at the Secretariat of the Arbitration Council on 26 October 2004 at 8:30 a.m. The two parties agreed on the first issue. The two parties agreed that the employees had to work from 6:00 am until 11:00 a.m., have lunch from 11:00 a.m. until 12:00 p.m., and return to work from 12:00 p.m. until 2:30 p.m. The Arbitration Council discussed the second issue on 28 October 2004 at 12:00 p.m. On 28 October 2004 the employee party provided three witnesses to explain why the employees demanded the company dismiss Ms. Phing Siv Ing, the Chinese Quality Control supervisor. But, the employer asked Ms. Phing Siv Ing to appear in the court to defend herself. During the hearing, the employee representatives and witnesses mentioned the main reasons leading to

the complaint about dismissing Ms. Phing Siv Ing. Phing Siv Ing was accused of (1) using violence by throwing clothes at the workers, using pens to knock workers' heads, pointing and pulling workers' heads, (2) ignoring the workers' arguments, and (3) taking revenge toward the workers such as firing workers (Case QC-97). But, Ms. Phing Siv Ing denounced all the accusations, refuting that the workers made lots of mistakes during their quality control. She agreed that she did shout and she was also reproached for that misconduct by the President of the company. So, she could not smile and speak with a soft voice when the workers made such a mistake. She never reproached any workers who performed their duties well; rather she always chatted with them, smiling. Phing Siv Ing argued that she did not recently point at or pull any worker's head or throw clothes at any worker who made mistakes. She admitted that sometime in March she used to throw clothes at workers. Phing Siv Ing added that she used to make gestures that might be seen as pointing, but she never pointed at or pulled any worker's head. She admitted that sometimes she used to use pens to tap the heads of the workers who made mistakes as she did not mean to hurt them. But, she just did it in a friendly manner, saying "What a dull creature! Why couldn't you do this easy task?" She did not use the pens to knock their heads angrily. As for throwing clothes at workers, Ms. Phing Siv Ing said that she did not do so, but she just raised the clothes the workers failed to do properly and threw them to the workers to check them again, and showed them where the mistakes were. The employees took their position by demanding the company dismiss Ms. Phing Siv Ing because they feared that Ms. Phing Siv Ing would avenge them and find any pretext to fire them. However, Ms. Phing Siv Ing said that she did in accordance with her duties, following what the boss told her to do. If the workers had done their work properly and quickly according to the standard set by the company—without making serious mistakes during each quality control, she would not blame anyone. Her duties were to supervise, reproach and punish or report to the Administration Office to further take actions according to the company's Internal Work Rules.

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

FINDING OF FACT:

- Having examined the collective conciliation minutes
- Having listened to the presentation of the two parties as mentioned above and minute in the hearing
- Having checked documents as mentioned above

We find that:*First issue:*

The two parties agreed that the employees had to work from 6:00 a.m. until 11:00 a.m., with a break from 11:00 a.m. until 12:00 p.m., and return to work from 12:00 p.m. until 2:30 pm.

Second issue:

Ms. Phing Siv Ing is the team leader of 50 quality controllers. Ms. Phing Siv Ing was always talking too loud and reproaching in Chinese any workers who made mistakes in quality control. When she talked, especially when she got angry, she did so with her hands moving violently. When she found problems with quality control, she would reproach the responsible workers by throwing the clothes at the workers to check again, which looked inappropriate. The Arbitration Council finds that this is wild behavior. In the hearing, the employees admitted that her throwing clothes at the workers or moving her hands violently had not hurt any worker.

REASON FOR DECISION:*First issue:*

The two parties agreed upon [the hours of work].

Second issue:

In general, the Arbitration Council finds that the employees are not entitled to order or demand the employer to dismiss any employee unless the employees can provide evidence showing that the employee is a dangerous person who can no longer be allowed to work in the company, and allowing the dangerous employee will do harm or really cause chaos to the workplace (see Arbitral Awards 04/03 - Lida, 14/03 - Chou Sing, 17/03 and 18/03 - Ho Hing, 16/04 - Chou Sing, 15/04 - Lucky Zone, 52/04 - Shin Kham and 73/04 - Genuine).

But, in this case the employees failed to provide any clear evidence to prove that Ms. Phing Siv Ing is a dangerous employee, who might cause disorder to the company, besides their discontentment of her management and her misbehaviors.

Moreover, according to Article 65 of Labour Law (1997) on labour contracts, which states that "a labour contract establishes working relations between the employee and the employer. It is subject to common law and can be drawn up in a way that conforms to the needs of the contracting parties." As this contract is under the common law, therefore, Decree no. 38 on Contracts also has its jurisdiction over this labour contract. Article 22 of Decree no. 38 mentions that: *"A contract is regarded as law as between the parties. Alterations to the contract can only be made if the other party agrees to the alterations. A contract shall be executed honestly and in accordance with the purposes agreed upon by the parties. A contract binds only the parties to the contract."*

In this sense, only parties of the labour contract are entitled to make any changes in the contract. Therefore, it is clear that any hiring or dismissal of any employee is the privilege of the employer, who is a party of the contract.

Even if an employee commits serious misconduct as stated in Article 83 of the Labour Law, the Arbitration Council finds that Labour Law does not require that the employer must dismiss the employee. Rather, the Labour Law simply gives the right to the employer to dismiss an employee (see 14/03 - Case Chou Shing and 17/03 and 18/03 – Hou Hing).

Therefore, the Arbitration Council finds that the demand by the employees is not legally founded. Therefore, the Arbitration Council rejects the demand.

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

DECIDES :

Rejects the demand by the employees to employer to dismiss Miss. Phing Siv Ing.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL :

Arbitrator chosen by the employer party:

Name: Mar Sambona

Signed:

Arbitrator chosen by the worker party:

Name: Liv Sovann

Signed:

Chair of arbitration panel:

Name: Ang Eng Thong

Signed:

This Award will become binding after eight days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

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