



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 03/11-Solaris International**

**Date of award: 14 February 2011**

## **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Ing Sothy**

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

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

### **DISPUTANT PARTIES**

#### **Employer party:**

Name: **Solaris International (the employer)**

Address: #166, Street 41, Boeung Keng Kang 1 Commune, Chamkamorn District, Phnom  
Penh

Telephone: 012 882 380

Fax: N/A

Representatives:

- |                   |                        |
|-------------------|------------------------|
| 1. Ms Dar Syluom  | General Manager        |
| 2. Mr Hok Sakhorn | Head of Administration |

#### **Worker party:**

Name: **Staff of Solaris International**

Address: #166, Street 41, Boeung Keng Kang 1 Commune, Chamkamorn District, Phnom  
Penh

Telephone: 012 958 532

Fax: N/A

Representatives:

- |                       |                           |
|-----------------------|---------------------------|
| 1. Ms Mom Vanty       | Assistant to the Director |
| 2. Mr Philippe Decaux | Artistic Director         |

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**THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.**

3. Mr Nicolas Bevillard      3D Studio Director
4. Ms Khiev Sokchamroeun 3D Studio Worker
5. Ms Mao Pagna              3D Studio Worker
6. Ms Chea Vireaksreyleak Finance Assistant
7. Ms Yi Sithuon              Marketing Staff
8. Ms Out Chanmonita      Head of Distribution Section
9. Mr Seng Visoth             3D Studio Worker
10. Mr Joachim Loesener    3D Studio Manager
11. Mr Eung Senghak        3D Studio Worker
12. Mr Khiev Sokphen      3D Studio Worker
13. Mr Pich Rothana         3D Studio Worker
14. Mr Ouk Ratha             3D Studio Worker
15. Ms Sim Davy              News Anchor
16. Mr Jan Mueller          Dubbing Director
17. Mr San Sarath            3D Studio Worker
18. Mr Sun Sopheak         Dubbing Speaker

#### **ISSUE IN DISPUTE**

(From the Non-Conciliation Report of the Ministry of Labour and Vocational Training)

All staff members demand that the employer pay their outstanding wages. The employer states that it will pay the outstanding wages of 12 staff members, namely Nicolas, Joachim, Sokphen, Pagna, Hak, Ratha, Sameth, Sokchamroeun, Rothana, Sarath, Visoth and Rithy, in instalments over an eight month period. However, it will not pay the outstanding wages of the other staff members because they are now managed by Keo Sopheap (Manager of Apsara TV, which has taken over the management of Solaris International).

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

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the Labour 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. 133 dated 9 June 2010 (Eighth 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 non-conciliation report No. 8039 KB/RK/VK dated 17 December 2010 was submitted to the Secretariat of the Arbitration Council on 5 January 2011.

## **HEARING AND SUMMARY OF PROCEDURE**

**Hearing venue:** The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Commune, Tuol Kork District, Phnom Penh

**Date of hearing:** 18 January 2011 at 2:00 p.m.

### **Procedural issues:**

On 30 November 2010, the Phnom Penh Municipal Department of Labour Disputes received a complaint from the staff of Solaris International regarding their outstanding wages. Upon receiving the claim, the Municipal Department of Labour Disputes assigned an expert officer to conciliate the dispute and the last conciliation session was held on 8 December 2010. The issue was not resolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 5 January 2011 via non-conciliation report No. 8038 MKBV/RVK/VK dated 17 December 2010.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the non-conciliated issue, held on 18 January 2011 at 2:00 p.m.

Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the non-conciliated issue but it remained unresolved. The Arbitration Council will consider this issue based on the evidence and reasons below.

## **EVIDENCE**

**Witnesses and Experts:** N/A

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

#### **A. Provided by the employer party:**

1. Patent certificate of Solaris International, dated 4 March 2010.
2. Certificate of commercial registration of Solaris International, dated 8 July 2008.
3. Letter from the Ministry of Commerce to the chairman of the Board of Directors of Solaris International regarding a request to amend the company statute and deposit the new statute [at the Ministry], dated 18 February 2008.
4. Company statute, dated 17 July 2009.
5. Order for provisional relief issued by the Phnom Penh Municipal Court, No. 07 "J" dated 2 August 2010.
6. Resignation letter of Eung Senghak, dated 6 December 2010.
7. Resignation letter of Khiev Sokphen, dated 6 December 2010.
8. Resignation letter of San Sarath, dated 6 December 2010.

9. Resignation letter of Khiev Sokchamroeun, dated 6 December 2010.
10. Resignation letter of Mao Pagna, dated 6 December 2010.
11. Resignation letter of Ouk Ratha, dated 6 December 2010.
12. Resignation letter of Ouk Rithy, dated 6 December 2010.
13. Resignation letter of Sim Sameth, dated 6 December 2010.
14. Resignation letter of Pich Rothana, dated 6 December 2010.
15. Receipt of case registration [at the Phnom Penh Municipal Court], dated 13 August 2010.
16. Letter from the employer to the acting director-general of the Apsara Television and Radio Station regarding the transfer of staff, dated 9 August 2010.
17. Letter from the employer to Frank Dulac regarding staff transfer, dated 18 August 2010.
18. Letter from the employer to Jan Robert Mueller regarding staff transfer, dated 18 August 2010.
19. Letter from the employer to Lionel Cadiot regarding staff transfer, dated 18 August 2010.
20. Letter from the employer to Mom Vanty, regarding the transfer of staff, dated 18 August 2010.
21. Letter from the employer to Philippe Decaux regarding the transfer of staff, dated 18 August 2010.
22. Letter from the employer to the Arbitration Council objecting to documents provided by staff now employed by the Apsara Television and Radio Station, No. 001/11 SI dated 31 January 2011.

B. Provided by the worker party:

1. Letter regarding arbitrator selection, dated 5 January 2011.
2. Complaint submitted by Nicolas Bevillard to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
3. Complaint submitted by Joachim Loesener to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
4. Complaint regarding unpaid wages and bonus submitted by Sim Sameth to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
5. Complaint regarding unpaid wages and bonus submitted by Seng Visoth to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.

6. Complaint regarding unpaid wages and bonus submitted by Ouk Rithy to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
7. Complaint regarding unpaid wages and bonus submitted by Ouk Ratha to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
8. Complaint regarding unpaid wages and bonus submitted by Khiev Sokchamroeun to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
9. Complaint regarding unpaid wages and bonus submitted by Pich Rothana to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
10. Complaint regarding unpaid wages and bonus submitted by San Sarath to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
11. Complaint regarding unpaid wages and bonus submitted by Mao Pagna to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
12. Complaint regarding unpaid wages and bonus submitted by Khiev Sokphen to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
13. Complaint regarding unpaid wages and bonus submitted by Eung Senghak to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
14. Complaint regarding unpaid wages and bonus submitted by the staff of Solaris International to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
15. Minutes of collective labour dispute resolution, dated 8 December 2010.
16. Complaint against Edmond Escabasse, Director of Asialis/Solaris International, regarding the late payment of wages to staff submitted by Yuma Antoine Decaux to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
17. Complaint against Edmond Escabasse, Director of Asialis/Solaris International, regarding the late payment of wages to staff submitted by Philippe Decaux to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.

18. Order for provisional relief issued by the Phnom Penh Municipal Court, No. 07 “J” dated 2 August 2010.
19. List of names of the 28 staff demanding payment of their wages.
20. Complaint against Edmond Escabasse, Director of Asialis/Solaris International, regarding the late payment of wages to staff submitted by Morn Vanty to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 30 November 2010.
21. Complaint submitted by Morn Vanty to the head of the Phnom Penh Municipal Department of Labour Disputes.
22. Complaint submitted by Morn Vanty to the head of the Phnom Penh Municipal Department of Labour Disputes, dated 7 December [2010].
23. Letter of employment of Jan Robert Mueller, dated 27 January 2011.
24. Letter of employment of Kep Sophanna.
25. Letter of employment of So Dara.
26. Letter of employment of Sun Sopheak, dated 27 January 2011.
27. Letter of employment of Sim Davy, dated 27 January 2011.
28. Letter of employment of Suon Punlea, dated 27 January 2011.
29. Letter of employment of Tol Kunthea, dated January 2011.
30. List of names of the staff of Solaris International, dated 21 January 2011.
31. Further agreement on development cooperation between Apsara Television and Radio Station and Solaris International, dated 26 February 2010.
32. Employment contract of Philippe Decaux, dated 3 August 2009.
33. Employment contract of Yuma Antoine Decaux.
34. Loan agreement between Yuma Decaux and Asialis, dated 21 June 2009.
35. Employment contract of Lionel Cadiot, dated 3 August 2009.
36. Letter of employment of Lionel Cadiot.
37. Employment contract of Frank Dulac, dated 3 August 2009.
38. Payroll information for January 2010 for Frank Dulac.
39. Payroll information for February 2010 for Frank Dulac.
40. Payroll information for March 2010 for Frank Dulac.
41. Payroll information for June 2010 for Frank Dulac.
42. Payroll information for July 2010 for Frank Dulac.
43. Payroll information for August 2010 for Frank Dulac.
44. Payroll information for September 2010 for Frank Dulac.
45. Payroll information for October 2010 for Frank Dulac.
46. Employment contract of Yi Sithuon, dated 3 January 2009.
47. Payroll information for February 2010 for Yi Sithuon.

48. Payroll information for June 2010 for Yi Sithuon.

49. Letter objecting to documents submitted by the employer, dated 29 January 2011.

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

1. Report on collective labour dispute resolution at Solaris International, No.8038 MKBV/RVK/VK, dated 17 December 2010.
2. Minutes of collective labour dispute resolution at Solaris International, dated 8 December 2010.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 027 KB/AK/VK/LKA dated 11 January 2011.
2. Notice to attend the hearing addressed to the workers, No. 028 KB/AK/VK/LKA dated 11 January 2011.

**FACTS**

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers; and
- Having reviewed the additional documents;

**The Arbitration Council finds that:**

- Solaris International (Solaris) was established in 2005. It signed a cooperation agreement with the Apsara Television and Radio Station (Apsara), dated 1 June 2006, which is due to expire on 1 January 2025.
- From 2006 until 2 August 2010, Solaris governed Apsara and had approximately 180 workers, 80 of whom were staff of Apsara and the rest of whom were employed by Solaris for the term of its governance.
- On 2 August 2010, the Phnom Penh Municipal Court issued an order for provisional relief temporarily transferring the right to govern Solaris to Apsara pending a decision on the merits of the case.
- The claimants in this case are 30 former staff members who demand that Solaris pay their wages and the wages of Yuma Decaux.
- The employer states that it recognises only 12 of the staff members [as its workers] because Solaris made a request to Apsara that Solaris retain those workers. The 12 workers are persons with disabilities who worked in the 3D, website, and translation for the Khmer Rouge Tribunal sections. The request stemmed from concerns that

Apsara would not maintain the workers' contracts. Subsequently, the workers in those three sections remained under the management of Solaris.

- The employer and the workers agree that after the court issued the order for provisional relief, the management of Apsara locked the Solaris office and prevented Solaris' workers from entering.
- The employer states that since the court issued the order for provisional relief, Apsara has governed the Solaris business, including its income and expenses, with the exception of the three abovementioned sections. In principle, the successor is liable for debts incurred by the previous operator of the business. Therefore, Apsara is liable for the workers' unpaid wages because it temporarily governs the Solaris business pending issuance of the court judgement.
- The Arbitration Council finds that the order of provisional relief states:

Thus, the Court orders the debtor, Solaris International, to 1. Return the management of movable properties equipped in the Apsara Television and Radio Station to the creditor, the Apsara Television and Radio Station, and 2. Transfer the management of the Apsara Television and Radio Station to the creditor, the Apsara Television and Radio Station.

**List of the 12 workers recognised by Solaris:**

No.	Name	Position	Commencement date	Unpaid wages in USD
1	San Sarath	3D Studio Worker	1/1/2008	180
2	Khiev Sokchamroeun	3D Studio Worker	1/1/2008	180
3	Pich Rothana	3D Studio Worker	1/1/2008	180
4	Sim Sameth	3D Studio Worker	1/1/2008	180
5	Eung Senghak	3D Studio Worker	1/1/2008	180
6	Joachim Loesener	3D Studio Manager	1/8/2010	1,800
7	Ouk Ratha	3D Studio Worker	1/8/2008	180
8	Ouk Rithy	3D Studio Worker	1/8/2008	180
9	Seng Visoth	3D Studio Worker	1/8/2008	180
10	Mao Pagna	3D Studio Worker	1/1/2008	180
11	Khiev Sokphen	3D Studio Worker	1/1/2008	180
12	Nicolas Bevillard	Graphic Designer	1/9/2009	1,500

- The employer states that the 12 workers worked in the 3D, website, and translation for the Khmer Rouge Tribunal sections. The employer admits that it owes them unpaid wages and requests to pay in instalments over eight months because it is in

financial difficulty due to its expenditure being under the management of Apsara. Therefore, it says, it does not have sufficient funds to pay the workers.

- The workers acknowledge the employer's difficulty but ask to be paid in instalments over a three month period. They assert that eight months is too long to wait for payment because they need to meet the high cost of living.

**List of the 18 workers not recognised by Solaris:**

- The following 18 workers demand in this case that Solaris pay their outstanding wages:

No.	Name	Position	Commencement date	Unpaid wages in USD
1	Philippe Decaux	Artistic Director	1/8/2009	37,603
2	Yuma Antoine Decaux	3D Studio Manager	27/9/2007	17,500
3	Mom Vanty	English Translator	22/1/2010	1,500
4	Lionel Cadiot	Marketing Manager	1/8/2009	14,338
5	Frank Dulac	Human Resources Manager	1/8/2007	16,980
6	Yi Sithuon	Marketing Staff	1/10/2007	1,440
7	Chea Vireaksreyleak	Accounting Assistant	27/07/2009	300
8	Out Chanmonita	Marketing Manager	25/03/2007	9,518
9	Jan Mueller	Accounting Assistant	25/03/2007	9,518
10	So Dara	Dubbing Assistant	Not stated	1,620
11	Sim Davy	Dubbing Staff	11/6/2007	200
12	Sun Sopheak	Dubbing Staff	12/1/2009	310
13	Suon Punlea	Dubbing Staff	1/8/2009	500
14	Kep Sophanna	Dubbing Staff	12/1/2009	250
15	Tol Kunthea	Dubbing Staff	12/1/2009	500
16	Lay Nora	Security Guard	1/1/2001	280
17	Kem Sokkhoeun	Cleaner	1/4/2009	200
18	Kol Sopheak	Driver	2/3/2008	220

- The employer rejects their demand, stating that the 18 workers have not been employed by Solaris since the order for provisional relief was issued on 2 August 2010.
- The employer states that the order for provisional relief issued by the Phnom Penh Municipal Court temporarily transferred to Apsara the right to govern the Solaris

business until the court issues a judgment on the case. Therefore, Solaris' employees are under the interim management of Apsara.

- The employer states further that on 9 August 2010 it wrote a letter requesting that its workers be transferred to Apsara. Keo Sopheap, Acting General Director of Apsara, signed to accept the letter on 13 August 2010. The workers argue that they signed employment contracts with Solaris, therefore Solaris has no right to transfer them to Apsara without their agreement. The employer agrees that it signed employment contracts with the workers, but states that it notified them of the transfer before 4 August 2010, following the issuance of the order for provisional relief by the Phnom Penh Municipal Court on 2 August 2010.
- The Arbitration Council received the employer's evidence on 28 January 2011 and finds that Solaris notified the workers that they would be under the interim management of Apsara; for example, Mom Vanty and Philippe Decaux were notified of the transfer on 18 August 2010 and they signed to accept the notification. The workers did not object to this evidence.

**Case of Yuma Decaux:**

- The workers also demand that the employer pay Yuma Decaux's outstanding wages, but the employer does not agree to the demand.
- Yuma Decaux commenced as manager of the 3D Studio on 27 September 2007. On 31 December 2008, an accident during his vacation left him blind.
- On 1 January 2010, Yuma Decaux announced that he would work half days only and requested to be paid half his monthly wage.
- On 23 September 2010, Yuma Decaux resigned.
- Solaris argues that it does not recognise a debt to Yuma Decaux because he resigned and the former director of Solaris, Edmond [Escabasse], paid Yuma Decaux's outstanding wages. In a letter submitted to the Arbitration Council on 31 January 2011, the workers objected to employer's submission of email correspondence between Yuma and Edmond, arguing that the employer had translated only two or three lines of the email and that the translation lacked credibility because it was performed by an officer of the employer.
- The workers maintain their demand that the employer pay to Yuma Decaux outstanding wages of US\$ 17,500 for February, July, August, and September 2010.
- The Arbitration Council ordered the employer and the workers to submit evidence to substantiate their claim and gave them until 10 days after the hearing, 28 January

2011, to translate into Khmer and submit relevant documents. The parties were given until 31 January 2011 to object to the evidence.

### **REASONS FOR DECISION**

According to the facts, 30 workers and Yuma Decaux demand that the employer pay their outstanding wages. However, the employer recognises only 12 workers [as its workers]. Therefore, the Arbitration Council considers whether the employer is responsible for the payment of wages to the 30 workers and to Yuma Decaux.

#### **1. Case of the 12 workers recognised by the employer:**

According to the facts, the workers demand that the employer pay their outstanding wages in instalments over three months. The employer seeks to pay in instalments over eight months.

Article 116, paragraph 2 of the Labour Law states that “[e]mployees’ wages must be paid at least once per month”.

Based on this article, the employer is obliged to pay the workers’ wages at least once per month.

The employer has not complied with this article in this case. The Arbitration Council finds that the wages are outstanding due to Solaris’ financial difficulty. Furthermore, the workers acknowledge this difficulty. The Arbitration Council also finds that at the hearing the employer sought to pay the outstanding wages in instalments and the workers accepted the offer of payment in instalments. However, the employer sought to pay in instalments over eight months and the workers sought to be paid in instalments over three months. Because the Labour Law requires the employer to pay wages once per month, the Arbitration Council is of view that the workers’ request is reasonable. In this case, the workers acknowledge the employer’s financial difficulty, but payment in instalments over eight months is a lengthy period of time for the workers in light of the fact that the law requires the employer to pay them once per month. The Arbitration Council considers the issue as follows:

Clause 34 of *Prakas* No. 099 SKBY dated 21 April 2004 states: “In matters referred to the arbitration panel, the panel shall have the power and authority to...provide any civil remedy or relief which it deems just and fair, including:...B. orders to the immediate payment of back pay”.

Based on this clause, the Arbitration Council has the power and authority to order immediate payment of wages to the 12 workers. However, in this case the workers sought to be paid in instalments over three months at the latest. Therefore, the Arbitration Council orders the employer to pay the workers’ wages in instalments over three months.

## **2. Case of the 18 workers:**

Another 18 workers demand that the employer pay their outstanding wages in this case. Solaris claims that the 18 workers are no longer the responsibility of Solaris, since the court's order for provisional relief, dated 2 August 2010, transferred them to work under the management of Apsara.

Article 87 of the Labour Law states:

If a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transfer of fund to form a company, all labour contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise.

The contract cannot be terminated except under the conditions laid down in the present Section.

The closing of an enterprise, except for acts of God, does not release the employer from his obligations as stated in this section III. Bankruptcy and judicial liquidation are not considered as acts of God.

Based on this article, as well as previous arbitral awards, the Arbitration Council holds that a change in a company's legal status does not affect the employment contracts it has made with the workers (*see Arbitral Awards 98/07-Sky Sino, reasons for decision, issue 1; 83/08-Le Grand Café, reasons for decision, issues 1 & 2; and 100/08-Gawon Apparel, reasons for decision, issue 1*).

In Arbitral Award 100/08-Gawon Apparel, the Arbitration Council held that:

*"a change in the legal status of the employer"* means a change in the status of the employer or may simply mean a change from the present employer to the new employer. According to Article 2 of the Labour Law, an employer can be a natural person or a legal entity. Therefore, the present employer and the new employer can be either natural persons or legal entities. For this reason, in the case of a change of employer, the new employer can be a new natural person, a new legal entity, a pre-existing legal entity with new shareholders, or [there may be an] addition or subtraction to the number of shareholders which changes the number of shares through sale, merger or transference of funds (*see Arbitral Award 100/08-Gawon Apparel, reasons for decision, issue 1*).

The Arbitration Council will apply the abovementioned interpretation in this case.

In this case, the Phnom Penh Municipal Court ordered that Solaris, along with any of its movable property equipped in the Apsara Television and Radio Station, be subject to the interim management of Apsara until adjudication on the case.

The court order in this case effected a change in the company's legal status. Apsara manages the company's business, including its income and expenditure, with the exception of the three sections noted above. In principle, the successor is also liable for the debts incurred by the previous operator of the business, even though this liability is not mentioned in the order. Moreover, the court has not conducted a hearing on the issue. Thus, during the period prior to adjudication of the issue by the Phnom Penh Municipal Court, the Arbitration Council declines to consider the demand that the employer pay the outstanding wages of the 18 workers.

### **3. Case of Yuma Decaux:**

The Arbitration Council considers in this case whether the employer is obliged to pay Yuma Decaux's outstanding wages.

Article 118 of the Labour Law states:

In the event of disputes over the payment of wages, the employer has the duty to prove that he has made the payment.

This proof can be derived from the signature of the worker concerned or those of two witnesses if he is illiterate, on the payroll ledger that the employer is required to keep.

In Arbitral Award 62/08-Pao Da, the Arbitration Council interpreted this article to mean that "the employer is obliged to provide evidence to prove that it has paid the workers' wages".

The Arbitration Council applies this interpretation in this case. The workers state that the employer has not paid wages of US\$ 17,500 for February, July, August, and September 2010 to Yuma Decaux. The employer, on the other hand, states that it has paid Yuma Decaux's wages. Therefore, based on Article 118 of the Labour Law and the abovementioned jurisprudence, the employer bears the burden of proving that it has paid his wages.

During the hearing, the Arbitration Council ordered the employer to submit evidence that it has paid Yuma Decaux's outstanding wages. On 28 January 2011, the employer submitted non-translated documents. The Arbitration Council had confirmed at the hearing that all relevant documents must be translated into Khmer.

Clause 23 of *Prakas* No. 099 SKBY dated 21 April 2004 provides that "[t]he language to be used during the arbitral proceedings shall be Khmer."

Based on this clause, the Arbitration Council declines to consider the foreign language documents submitted by the employer.

In addition, the Khmer documents submitted to the Arbitration Council by the employer are not sufficient proof that the employer has paid Yuma Decaux's wages. The employer is required to submit documents in Khmer such as a pay slip with Yuma Decaux's signature in order to convince the Arbitration Council that Yuma Decaux has been paid his outstanding wages.

In conclusion, the Arbitration Council decides that the employer has not provided evidence to disprove the allegation by Yuma Decaux. Therefore, the Arbitration Council orders the employer to pay Yuma Decaux's wages for February, July, August, and September 2010.

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

**DECISION AND ORDER**

1. Order the employer to pay the 12 workers' outstanding wages in instalments over three months.
2. Decline to consider the demand that the employer pay the outstanding wages of the 18 workers until the Phnom Penh Municipal Court makes a decision on the merits of the case.
3. Order the employer to pay Yuma Decaux's outstanding wages for February, July, August, and September 2010.

**Type of award: non-binding award**

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

**SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....