



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 130/10-Royal Cambodia Phnom Penh Golf Club**

**Date of award: 21 December 2010**

### **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): **Pen Bunchhea**

#### **DISPUTANT PARTIES**

##### **Employer party:**

Name: **Royal Cambodia Phnom Penh Golf Club [Civikha Investment Development Co., Ltd.] (the employer)**

Address: Okromdol Village, Samrongkrom Commune, Dangkor District, Phnom Penh

Telephone: 012 761 717

Fax: N/A

Representatives:

1. Mr Chet Boravuth      Lawyer
2. Mr Chan An            Deputy Director
3. Mr Hak Lei             Administration staff

##### **Worker party:**

Name: **Cambodian Federation of Independent Trade Unions (CFITU)**

##### **Local Union of CFITU**

Address: Andoung Tatrak Village, Krosang Commune, Dangkor District, Phnom Penh

Telephone: 012 884 057

Fax: N/A

Representative:

1. Ms Tep Kimvannary      President of CFITU
2. Mr Sam Mom             President of the Local Union of CFITU
3. Mr Say Song             Vice-President of the Local Union of CFITU

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- |                      |                                    |
|----------------------|------------------------------------|
| 4. Mr Sok Khoeun     | Member of the Local Union of CFITU |
| 5. Mr Seam San       | Member of the Local Union of CFITU |
| 6. Mr Sun Thai       | Member of the Local Union of CFITU |
| 7. Ms Touch Koleap   | Worker                             |
| 8. Ms Kim Borey      | Worker                             |
| 9. Ms Chin Vannak    | Worker                             |
| 10. Ms Khan Lomornng | Worker                             |

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer renew the employment contracts of four workers on the basis of their years of seniority. It is alleged that they were dismissed as a result of revenge and discrimination. The employer refuses to reinstate them, because their contracts have expired. The employer asserts that it has already provided them with severance payments in accordance with the Labour Law.
2. The workers demand that the employer dismiss Chan An, who used improper language towards workers. The employer would like [management] to address the problem internally first and to respond to the workers later.
3. The workers demand that the employer dismiss Supervisor Hong in the spraying section on the grounds of serious misconduct as stipulated in Article 83 of the Labour Law. The workers claim that the supervisor had an altercation with another staff member, Sam Samnang, who was dismissed. The employer would like [management] to address the problem internally first and to respond to the workers later.

### **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. 1073 KB/RK/VK dated 26 November 2010 was submitted to the Secretariat of the Arbitration Council on 26 November 2010.

## **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:** First hearing: 6 December 2010 at 2:00 p.m.  
Second hearing: 13 December 2010 at 2:00 p.m.

### **Procedural issues:**

On 27 October 2010, the Department of Labour Disputes received a complaint from the Local Union of CFITU outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 15 November 2010. Four of the seven issues were resolved. The three non-conciliated issues were referred to the Secretariat of the Arbitration Council via non-conciliation report No. 1073 KB/RK/VK dated 26 November 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 three non-conciliated issues, held on 6 December 2010 at 2:00 p.m. A second hearing was held on 13 December 2010 at 2:00 p.m.

Both parties were present at each hearing. The Arbitration Council conducted a further conciliation of the three non-conciliated issues, resulting in issue 3 being withdrawn by the workers and issue 1 being resolved by an agreement between the parties.

The Arbitration Council will consider issue 2 based on the evidence and reasons below.

## **EVIDENCE**

**Experts:** N/A

### **Witnesses:**

A. Neutral witnesses: N/A

B. Witnesses for the employer: N/A

C. Witnesses for the workers:

- |                   |        |
|-------------------|--------|
| 1. Mr Mom Hel     | Worker |
| 2. Mr Song Sareun | Worker |
| 3. Mr Mom Pum     | Worker |
| 4. Ms Say Sopheap | Vendor |

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

A. Provided by the employer party:

1. Letter from the employer's representative, Chet Boravuth, to the Arbitration Council regarding the submission of documents relevant to case 130/10-Royal Cambodia Phnom Penh Golf Club, dated 2 December 2010.
2. Authorisation letter from the employer for Chet Boravuth, dated December 2010.
3. Brief statement on the labour dispute submitted by Chet Boravuth to the Secretariat of the Arbitration Council, dated 3 December 2010.
4. Certificate of commercial registration of Civikha Investment Development Co., Ltd, No. 2385 PN/CBP dated 30 March 2008.
5. Internal Work Rules of the employer, 2010.
6. Complaint against Hong, a supervisor, submitted by Sam Samnang to the chief of Trapeom Krosang Commune.
7. Patent certificate of Civikha Investment Development Co., Ltd, No. DLT.029756.2010, dated 22 February 2010.
8. Statute and memorandum of Civikha Investment Development Co., Ltd, dated 28 July 1995.
9. Resume of Nov Bunkheang, dated 26 October 2009.
10. Khmer identity card of Nov Bunkheang.
11. Health examination form of Nov Bunkheang issued by An Doung Hospital, dated 30 November 2010.
12. Employment contract of Norng Savun, dated 6 August 2010.
13. Payroll information for Norng Savun.
14. Casual employment contract of Sam Samnang, dated 6 August 2010.
15. Payroll information for Sam Samnang.
16. Casual employment contract of Phan Pov, dated 6 March 2010.
17. Casual employment contract of Phan Pov, dated 6 August 2010.
18. Payroll information for Phan Pov.
19. Casual employment contract of Khon Makara, dated 6 August 2010.
20. Payroll information for Khon Makara.
21. Resume of Khon Makara, dated 16 January 2008.
22. List of dependants of Khon Makara.
23. Reference form of Khon Makara, dated 18 October 2007.
24. Resume of Touch Samnang, dated 18 February 2009.
25. Resident registration book of Sam Samnang.

B. Provided by the worker party:

1. Statute of the Local Union of CFITU, dated 4 July 2009.

2. Certificate of registration of the Local Union of CFITU at Civikha Golf Club, dated 1 April 2004.
3. Letter from the head of the Department of Labour Disputes to the president of the Local Union of CFITU regarding recognition of its new leaders and second term, No. 577 KB/RK/VK dated 14 July 2009.
4. Record of an inquiry for information from the workers' representatives at Civikha Golf Club, dated 8 November 2010.
5. Complaint submitted by the leaders of the Local Union of CFITU to the head of the Department of Labour Disputes concerning the dismissal of four workers on 4 November [2010].
6. Letter from CFITU requesting the head of the Department of Labour Disputes to intervene in the demand by workers in the candy section for an improvement in working conditions, No. 64/2010 SSEK dated 26 October 2010.
7. Letter from the Local Union of CFITU requesting the president of CFITU to intervene in the demand by workers in the candy section for an improvement in working conditions.
8. Letter from the Local Union of CFITU requesting the general director of Civikha Golf Club to intervene in the dispute involving workers in the candy section, dated 11 October 2010.
9. Complaint submitted to the president of the Local Union of CFITU against Director Chhen or Chan An, affixing the thumbprints of workers in the candy section of Civikha Golf Club, dated 7 October 2010.
10. Endorsement letter and thumbprints of the workers at Civikha Golf Club, dated 15 November 2010.
11. Record of collective labour dispute resolution at Royal Cambodia Phnom Penh Golf Club, dated 15 November 2010.

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

1. Report on collective labour dispute resolution at Royal Cambodia Phnom Penh Golf Club, No. 1073 KB/RK/VK, dated 26 November 2010.
2. Record of collective labour dispute resolution at Royal Cambodia Phnom Penh Golf Club, dated 15 November 2010.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 698 KB/AK/VK/LKA dated 30 November 2010.
2. Notice to attend the first hearing addressed to the workers, No. 699 KB/AK/VK/LKA dated 30 November 2010.

3. Notice to attend the second hearing addressed to the employer, No. 713 KB/AK/VK/LKA dated 7 December 2010.
4. Notice to attend the second hearing addressed to the workers, No. 712 KB/AK/VK/LKA dated 7 December 2010.

### **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:**

- Royal Cambodia Phnom Penh Golf Club (Civikha Investment Development Co., Ltd) offers golfing facilities. It currently employs 240 workers.
- The Local Union of CFITU is the claimant in this case. Its leadership and second term were recognised on 14 July 2009.

### **Issue 2: The workers demand that the employer dismiss Chan An, who used improper language towards workers.**

- The workers and the employer agree that the morning working hours are from 7:30 to 11:00 a.m. and the afternoon working hours are from 1:00 to 5:00 p.m. During working hours, the workers are allowed to gather on the premises of the golf club to eat their food.
- The workers state that at one of the golf club's restaurants on 6 October 2010 at 4:00 p.m., Sun Thai asked Chan An: "[i]f the employer digs up this path, how can the female workers in the candy section cross the path?" Chan An responded abruptly, using offensive language towards the female workers and stating: "it is my right to take the female workers in the candy section outside with me at any time". The workers contend that the following workers heard Chan An's remark: 1. Sam Mom, President of the Local Union of CFITU; 2. Sok Khoeun, Secretary of the Local Union of CFITU; 3. Seam San, a union member; 4. Sun Thai, a union member; 5. Mom Hel, a worker; 6. Mom Pum, a worker; and 7. Say Sopheap, a vendor.
- The workers wrote a complaint, including the names and thumbprints of 89 female workers in the candy section, demanding that the employer dismiss Chan An on the grounds of using offensive language towards them.
- On 11 October 2010, the workers submitted the aforesaid complaint to the employer.

- The employer states that it had not received a prior complaint alleging the use of offensive language towards workers by Chan An, but it held a meeting with him after it received the complaint from the Local Union of CFITU on 11 October 2010. At the meeting, Chan An denied the workers' allegation but admitted to using the derogatory phrase (~~ឃុំ: ឃុំ~~) [this language is considered inappropriate in addressing women]. Consequently, the employer warned him against using this language to address workers. The employer promised to punish any staff member or worker who violates the Internal Work Rules.
- In order to further investigate the use of improper language towards workers, the Arbitration Council set a second hearing for 13 December 2010 at 2:00 p.m. so the parties could bring witnesses to the hearing.
- The workers brought four witnesses to the second hearing, namely Mom Hel, Song Sareun, Mom Pum, and Say Sopheap. The employer did not present a witness. Chan An and administration staff member Hak Lei were present at the hearing.
- The Arbitration Council called the four workers at the hearing to provide testimony before the Council. The witnesses took the oath and signed the witness forms. The four workers testified that they heard Chan An's offensive remark being addressed to female workers in the candy section. They stated that they were approximately three to four metres away from him.
- Chan An denied the allegation. He added that Sam Mom has a prior dispute with him in relation to (1) the bidding process for the employer's car, (2) an incident involving a security guard, and (3) an incident involving Pich (a worker). He did not give details of the aforementioned incidents. He went on to state that on the date he is alleged to have used offensive language towards workers, he told Sam Mom to "[s]top misinterpreting the incident".
- The employer maintains its position that it will not dismiss Chan An.

### **REASONS FOR DECISION**

#### **Issue 2: The workers demand that the employer dismiss Chan An, who used improper language towards workers.**

The Arbitration Council will consider whether the workers have the right to demand that the employer dismiss Chan An on the grounds of improper language.

Article 65, paragraph 1 of the Labour Law states:

A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.

Article 1 of Decree 38 on Contracts and Other Liabilities, dated 28 October 1988, states that “[a] contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them”.

Based on these articles, the Arbitration Council considers that only the parties to an employment contract, the employer and the worker, have the right to terminate the contract. A third party is not entitled to do so (*see Arbitral Award 108/08-Hugo, reasons for decision, issue 4*).

In previous arbitral awards, the Arbitration Council has ruled that

employees do not have the right to demand that the employer dismiss any employee unless the employees can prove that the employee is a dangerous person who should not be allowed in the establishment or factory, and that keeping the person could cause harm to the workplace (*see Arbitral Awards 14/03-Chu Hsing, reasons for decision, issue 1; 17/03-18/03-Ho Hing, reasons for decision, issue 4; 87/04-Noble Apparel, reasons for decision, issue 2; 116/07-Grace Sun, reasons for decision, issue 3; and 54/08-Zhong Yov, reasons for decision, issue 5*).

In this case, the workers failed to prove that Chan An is a dangerous person who should not be allowed at the golf club and that keeping him on could cause harm to the workplace. Based on the testimony of the witnesses, the Arbitration Council finds that Chan An did use improper (insulting) language towards workers in the candy section, but the Council considers that his improper remark does not cause the workplace to be unsafe for the workers. Thus, the workers’ demand has no valid basis.

However, in Arbitral Award 29/08-Tai Rong, reasons for decision, issue 2, the Arbitration Council held that:

the trading of insults or use of improper language is inappropriate behaviour which can cause bad feelings in the workplace. Thus, the company should take appropriate measures to stop these actions and create a peaceful environment in the workplace.

The Arbitration Council applies the abovementioned ruling in this case. In this case, the Arbitration Council finds that the employer has warned Chan An against using inappropriate language towards the workers. Moreover, the Council holds that the employer should take an appropriate measure to ensure that he will not use this language in the future.

In conclusion, the Arbitration Council rejects the workers' demand that the employer dismiss Chan An.

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

**DECISION AND ORDER**

**Issue 2:** Reject the workers' demand that the employer dismiss Chan An.

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

This award will become binding 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: **Pen Bunchhea**

Signature: .....