



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអង្គជំនុំជម្រះ

THE ARBITRATION COUNCIL

Case number and name: Cambodian Women's Crisis Center

Date of Award: 23 April 2010

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Huon Chundy**

Chair Arbitrator (chosen by the two Arbitrators): **Nhean So Munin**

DISPUTING PARTIES

Employer party:

Name: **Cambodian Women's Crisis Center (CWCC)**

Address: #42F, Street 488, Sangkat Shar Deum Thkaov, Khan Chamkarmon, Phnom Penh, Cambodia.

Telephone: 092 993 358

Fax: N/A

Representative:

- | | |
|------------------------|--------------------------------------|
| 1. Ms. Soy Saravorthny | Executive Director of CWCC |
| 2. Mr. Sy Satya | Representative Lawyer |
| 3. Ms. Kong Leakna | General Secretary |
| 4. Mr. Phun Vithyea | Legal Advisor of KhmerLex Law Office |
| 5. Ms. Pon Sokuntheara | Legal Officer of KhmerLex Law Office |

Worker party:

Name: **Staff Members of Cambodian Women's Crisis Center (CWCC)**

Address: #42F, Street 488, Sangkat Shar Deum Thkaov, Khan Chamkarmon, Phnom Penh, Cambodia.

Telephone: 012 767 869

Fax: N/A

Representative:

1. Mr. Pe Vannak	Representative Lawyer
2. Ms. Pol Vannarom	A staff member of CWCC
3. Ms. Chuob Vantha	A staff member of CWCC
4. Ms. Chum Soputhy	A staff member of CWCC
5. Ms. Thon Sokhom	A staff member of CWCC
6. Mr. Lach Thea	A staff member of CWCC
7. Ms. Kim Sophorn	A staff member of CWCC
8. Mr. Uy Bunsong	A staff member of CWCC

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the organisation [CWCC] reinstate Mr. Lach Thea, Mr. Uy Bunsong, Ms. Pol Vannarom, Ms. Thun Sokhom, Ms. Chuob Vantha, Mr. Huy Pichsovann, Ms. Kim Sophorn and Ms. Chum Soputhy; in the alternative, the workers demand the organisation should pay them [a termination payment] in accordance with the law plus compensation in the amount of US\$ 5,000 (five thousand US dollars) to each of them.

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 Arbitration Council member No. 190 KB/BRK dated 2 September 2009 (Seventh 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 the non-conciliation report No. 878 MKBV/AVK/VK, dated 22 February 2010 was submitted to the Secretariat of the Arbitration Council on 23 February 2010.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, No. 72, Street 592, Corner of Street 327 (in front of Intra Devi High School), Sangkat Boeung Kak II, Khan Tuol Kork, Phnom Penh.

Date of hearing: 24 March 2010 at 2:00 p.m.

Procedural issues:

On 19 January 2010, the Phnom Penh Department of Labour Disputes received a complaint from the workers; it then assigned an expert officer to conduct conciliation on the single demand.

On 9 and 19 February 2010, the expert officer conducted conciliation but the meetings did not yield a conciliation result on the single demand. Thus, the single issue was referred to the Secretariat of the Arbitration Council on 23 February 2010 through the non-conciliation report of collective labour dispute No. 878 MKBV/AVK/VK, dated 22 February 2010.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the conciliation on and hearing of the one non-conciliation point on 18 March 2010 at 8:00 a.m.

However, the worker party made a request through a letter dated 4 March 2010 for the postponement of the hearing date in order to look for a lawyer to accompany them and the Arbitration Council agreed to the request. The Secretariat of the Arbitration Council summoned the employer party and the worker party again for the hearing and conciliation on the one non-conciliation point on 24 March 2010 at 2:30 p.m.

Both the employer and worker parties were present at the arbitral hearing on the rescheduled hearing date.

The parties could not reach agreement during the conciliation session at the Arbitration Council. Thus, the Arbitration Council conducted the hearing on the one non-conciliation point.

Therefore, in this case, the Arbitration Council will consider the issue in dispute based on evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Statement in response to the claim by KhmerLex Law Office, dated 3 March 2010.
2. Agreement regarding payment for termination of employment between CWCC and Huy Pich Sovann, dated 25 February 2009.
3. List of names of staff members with details regarding their professional qualification, seniority and family situation.
4. Response letter to the request by staff members of CWCC.
5. Employment contract between CWCC and Ms. Pol Vannarom, dated 1 April 2009.
6. Employment contract between CWCC and Ms. Pol Vannarom, dated 1 April 2008.
7. Employment contract between CWCC and Ms. Pol Vannarom, dated 1 April 2006.
8. Employment contract between CWCC and Ms. Pol Vannarom, dated 30 September 2005.

9. Employment contract between CWCC and Mr. Lach Thea, dated 1 March 2009.
10. Employment contract between CWCC and Mr. Lach Thea, from 1 March 2008 to 28 February 2009.
11. Employment contract between CWCC and Mr. Lach Thea, dated 1 March 2006.
12. Employment contract between CWCC and Mr. Lach Thea, dated 28 February 2005.
13. Employment contract between CWCC and Mr. Lach Thea, dated 17 May 2001.
14. Employment contract between CWCC and Mr. Lach Thea, from 23 May 2000 to 28 February 2001.
15. Employment contract between CWCC and Ms. Chuob Vantha, dated 9 October 2007.
16. Employment contract between CWCC and Ms. Chuob Vantha, dated 1 October 2007.
17. Employment contract between CWCC and Ms. Chuob Vantha, dated 1 March 2006.
18. Employment contract between CWCC and Ms. Chuob Vantha, dated 5 September 2006.
19. Employment contract between CWCC and Ms. Chuob Vantha, dated 28 February 2005.
20. Employment contract between CWCC and Ms. Chuob Vantha, dated 15 October 2003.
21. Employment contract between CWCC and Ms. Chuob Vantha, dated 1 March 2003.
22. Employment contract between CWCC and Ms. Chuob Vantha, dated 17 May 2001.
23. Employment contract between CWCC and Mr. Uy Bunsong, dated 2 March 2009.
24. Employment contract between CWCC and Mr. Uy Bunsong, from 1 March 2008 to 28 February 2009.
25. Employment contract between CWCC and Mr. Uy Bunsong, dated 1 March 2007.
26. Employment contract between CWCC and Mr. Uy Bunsong, dated 1 March 2006.
27. Employment contract between CWCC and Mr. Uy Bunsong, dated 28 February 2005.
28. Employment contract between CWCC and Mr. Uy Bunsong, from 1 March 2001 to 28 February 2003.
29. Employment contract between CWCC and Ms. Thon Sokhom, from 1 September 2008 to 31 August 2009.
30. Employment contract between CWCC and Ms. Thon Sokhom, from 1 September 2007 to 31 August 2008.
31. [Duplicate of the above entry] Employment contract between CWCC and Ms. Thon Sokhom, from 1 September 2007 to 31 August 2008.
32. Employment contract between CWCC and Ms. Thon Sokhom, dated 1 February 2007.
33. Employment contract between CWCC and Ms. Thon Sokhom, dated 1 August 2006 to 31 January 2007.

34. Employment contract between CWCC and Ms. Kim Sophorn, dated 1 February 2009.
35. Employment contract between CWCC and Ms. Kim Sophorn, dated 1 February 2008.
36. Employment contract between CWCC and Ms. Kim Sophorn, from 1 February 2007 to 31 January 2008.
37. Internal Work Rules of CWCC, dated 13 April 2007.
38. List of documents.
39. Letter to authorise lawyer, Si Satya to represent CWCC in the resolution of the labour dispute with its workers in case 21/10 at the Arbitration Council, dated 16 March 2010.
40. Letter to authorise Mr. Phun Vithyea, legal advisor, and Ms. Pon Sokuntheara, legal officer, to participate in the hearing of case 21/10 at the Arbitration Council, dated 16 March 2010.
41. Letter to authorise lawyers from KhmerLex Law Office [to represent the employer at the Arbitration Council], dated 29 January 2010.
42. List of names of staff members with details regarding their professional qualification, seniority and family situation.
43. Summary statement to respond to the claim brought by workers dated 19 March 2010 in case 21/10 of the Arbitration Council, dated 23 March 2010.
44. Financial status of a project called Violence Against Women from 2009 until the present time.
45. List of names of new workers who were recruited during the termination of employment of the claimants.
46. List of names of terminated workers who were invited to return to work.
47. Response letter to the workers' evidence, dated 30 March 2010.
48. Statement of clarification and response to the workers' evidence, date 30 March 2010.

B. Provided by the worker party:

1. Letter to the Arbitration Council requesting a postponement of hearing, dated 4 March 2010.
2. Letter by eight members of staff of CWCC to the Arbitration Council.
3. Employment contract between CWCC and Ms. Pol Vannarom, dated 1 April 2009.
4. Employment contract between CWCC and Ms. Thon Sokhom, from 31 August 2009 to 1 September 2010.
5. Employment contract between CWCC and Mr. Uy Bunsong, dated 2 March 2009.
6. Employment contract between CWCC and Ms. Chuob Vantha, from 9 August 2008 to 8 August 2009.

7. Employment contract between CWCC and Ms. Kim Sophorn, dated 1 February 2009.
8. Internal Work Rules of CWCC.
9. Report alleging the Director of CWCC illegally forced staff members to resign, dated 25 February 2009.
10. Minutes of the Board meeting on 26-27 May 2009, dated 27 May 2009.
11. Employment contract between CWCC and Ms. Chum Soputhy, dated 1 February 2009.
12. Leave request from Chum Soputhy, dated 2 June 2009.
13. Memorandum of CWCC to Ms. Pol Vannarom and Ms. Thon Sokhom, dated 1 June 2009.
14. Calculation of the amount of money owed to Pol Vannarom, Program Manager of Investigations.
15. Calculation of the amount of money owed to Uy Bunsong, a security guard of the office.
16. Calculation of the amount of money owed to Chuob Vantha, a staff member of the Investigations team.
17. Calculation of the amount of money owed to Lach Thea, a staff member of the Administration program.
18. Calculation of the amount of money owed to Kim Sophorn, a staff member of the Integration program.
19. Calculation of the amount of money owed to Chum Soputhy, Manager of Administration in Siem Reap Province.
20. Calculation of the outstanding wages for staff with the contract from June 2009 to August 2010, dated 19 February 2010.
21. Letter of representation for lawyer, Pe Vannak, dated 19 March 2010.
22. Letter from Thon Sokhom, Chum Soputhy, Uy Bunsong and Chuob Vantha to authorise lawyer, Pe Vannak to be their representative, dated 9 March 2010.
23. Letter from Kim Sophorn, Lach Thea and Pol Vannarom to authorise lawyer, Pe Vannak to be their representative, dated 16 March 2010.
24. Statement by lawyer, Pe Vannak, the representative lawyer, regarding submission of summary statement of collective labour dispute between staff members of CWCC and the Director in case 21/10 of the Arbitration Council for review and consideration, dated 19 March 2010.
25. Letter from representative lawyer Pe Vannak, to request submission of additional new evidence to support the claim of staff members of CWCC against the Director in case 21/10 of the Arbitration Council, dated 26 March 2010.
26. Report on the financial status of CWCC, dated 26 March 2010.

27. Letter from Ung Chanthol to Vannarom regarding reserved funds, dated 25 June 2009.
28. Letter from Say Vathany to Ung Chanthol Nob Sarin Sreyrath regarding the letter to partners and friends of CWCC, dated 7 June 2009.
29. Announcement of new staff members after the termination of the the claimants' employment contracts.
30. Note from staff members regarding a face to face meeting with the Executive Director on 5 June 2009.
31. Employment contract between CWCC and Ms. Thon Sokhom, from 31 August 2009 to 1 September 2010.
32. Letter of testimony by Huy Pich Sovan, dated 15 March 2010.
33. Letter from representative lawyer Pe Vannak, to request submission of additional new evidence to support the claim of staff members of CWCC against the Director in case 21/10 of the Arbitration Council, dated 30 March 2010.
34. Letter responding to the new evidence of the employer, dated 30 March 2010.

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

1. Report of collective labour dispute resolution at CWCC No. 878 MKBV/AVK/VK, dated 22 February 2010.
2. Minutes of collective labour dispute conciliation at CWCC dated 9 February 2010.

D. Provided by the Secretariat of the Arbitration Council:

1. First letter of invitation to the employer party to attend the hearing, No. 123 KB/AK/VK/LKA, dated 26 February 2010.
2. First letter of invitation to the worker party to attend the hearing, No. 124 KB/AK/VK/LKA, dated 26 February 2010.
3. Second letter of invitation to the employer party to attend the hearing, No. 155 KB/AK/VK/LKA, dated 15 March 2010.
4. Second letter of invitation to the employer party to attend the hearing, No. 156 KB/AK/VK/LKA, dated 15 March 2010.

FACTS

- Having reviewed the collective labour dispute conciliation report
- Having listened to the statements by the worker and the employer representatives, and
- Having examined additional documents

The Arbitration Council finds that:

- Cambodian Women's Crisis Center (CWCC) is a non-governmental, not-for-profit organisation established in 1997. The former Director (Executive Director) who was in charge of the organisation from 1997 to 2007 resigned and the position was taken over by a new Director from the time of her resignation in 2007 to today.
- The employer terminated 29 of over 30 staff members who are working in three provinces/cities (Phnom Penh, Siem Reap and Banteay Mean Chey) and in all projects/programs run by the organisation in June 2009. The worker party states that by 30 June 2009, the company had terminated 30 members of staff: 12 in the Phnom Penh office, eight in Banteay Mean Chey and 10 in Siem Reap. The Arbitration Council believes that 30 members of staff, including one staff member who the employer asserts has resigned, were terminated by 30 June 2009. However, after the 30 members of staff were terminated, some new staff were recruited to work on the same project and approximately eight or nine former staff members were re-recruited in the last few months of 2009.

Issue 1: The workers demand that the organisation provide payment for the remaining duration of their fixed duration contracts, benefits as outlined in the Internal Work Rules (regarding entitlement to financial benefits when the organisation terminates its members of staff who do not commit any misconduct), other benefits provided under the Labour Law and an amount of US\$ 5,000 for damages to each of the following staff members: 1. Lach Thea, 2. Uy Bunsong, 3. Pol Vannarom, 4. Chuob Vantha, 5. Kim Sophorn, 6. Chum Soputhy and 7. Thon Sokhom.

- In the hearing, the workers explained that they do not demand reinstatement but that the organisation provide payment for the remaining duration of their fixed duration contracts, benefits provided on page 27 of the Internal Work Rules (regarding workers' entitlement to financial benefits when the organisation terminates its staff members who do not commit any misconduct), other benefits provided under the Labour Law and an amount of US\$ 5000 for damages to each of the following staff members: 1. Lach Thea, 2. Uy Bunsong, 3. Pol Vannarom, 4. Chuob Vantha, 5. Kim Sophorn, 6. Chum Soputhy and 7. Thon Sokhom. The case regarding a worker named Huy Pich Sovan was resolved during the conciliation process by the Ministry of Labour and Vocational Training; thus this particular worker's claim was resolved and is not relevant in this case.
- The employer claimed that it cannot provide payment for the remaining period of their fixed duration contracts and an amount of US\$ 5,000 for damages to the seven workers as demanded by the workers. The employer also stated that regarding Ms. Chum Soputhy, it is a case of resignation and the employer already paid an amount

in accordance with the provisions for resignation. The employer stated that regarding the case of six other staff members who continue with the demand have worked [at the CWCC] for over two years; thus their employment contracts became undetermined duration contracts so that their termination payment shall be made in accordance with the conditions of undetermined duration contract. Regarding the amount of US\$ 5,000 as damages for each of them, the employer cannot pay them because the employer terminated staff members in the Violence Against Women project due to a lack of sufficient funds.

- The worker party argues that it is not true that the employer terminated them due to insufficient funds because the former Executive Director stated that in 2009, the Phnom Penh office had a shortage of funds but that the organisation has reserved funds from the sale of souvenirs and unused health allowance and bonuses from a previous time. The reserve funds are monies which can be used when the organisation faces a shortage of funds. In addition, [the worker party asserts that] at the end of each implementation year, the organisation always had some left over funds. Thus, the organisation has sufficient funds to pay [the wages and benefits] for a period of one year in accordance with the signed contract. Therefore, [the worker party asserts that] the organisation should pay their termination payment as demanded.
- In the hearing, the employer party added that at the time of termination of the staff members, the employer had not received the funds from donors in cash. Some donors already signed a funding agreement but had not provided the money as promised. The employer had received the cash from donors after the termination of the staff members. In the hearing, the workers did not object to this claim by the employer.
- The worker party reasoned that they do not believe that the organisation had a shortage of funds as it recruited new staff to work after their termination. The employer responded that the organisation had indeed recruited a few new staff members - staff for legal support in the Phnom Penh office, the Manager of Community Education for the Siem Reap office and marketing staff.
- Internal Work Rules of the organisation, on page 27, states: staff members are entitled to financial benefits when the organisation decides to terminate them, other than for the reason of misconduct as mentioned in the Internal Work Rules:
 1. *Indemnity for dismissal in an amount equal to seven days of the last monthly wages for members of staff who have been working for less than one year and an amount equal to 15 days of wages for every year of employment for those who have been working for one year or longer but this shall not exceed six months.*

2. *Additional payment in an amount equal to 5% of the total amount earned.*
 3. *Members of staff who have been working for the organisation for more than six months shall be entitled to an additional benefit of a 13th month salary (which is to be paid [twice a year], half of the wages during Khmer New Year and the other half to be paid during Phchum Ben.*
- The employer responded in a statement dated 23 March 2010 that the employer notified the staff members when it terminated them and the employer acknowledged that it is responsible for the insufficient notice provided, contrary to the Labour Law.
 - In addition, point B(4) of the organisation's Internal Work Rules, dated 13 April 2007, regarding termination of employment provides on pages 16-17 that:
*Termination of members of staff due to a violation of the code of conduct, discipline, procedure and employment contract by the members of staff and after the members of staff have received instruction or warning as stipulated in the Internal Work Rules, ... the organisation will notify the member of staff **one month in advance.***
 - However, in case staff members have committed serious misconduct such as spreading confidential information without permission, *"the organisation can terminate that member of staff from work immediately".*
 - On page 18 of the organisation's Internal Work Rules, there are provisions regarding procedure for dissolving the organization or reducing the number of staff during emergency situations such as when *"the organisation has a budget deficit"* and it is stated that *"[i]n this case, the administration should provide prior notification and reasons for the dissolution at least **one month in advance.**"*
 - The workers did not show the loss they suffered due to the termination of their employment by the employer is worth US\$ 5,000 per person.
 - [It was acknowledged] that the wages of all workers were gradually increased from the date they commenced their employment to the date of their termination.
 - [It was also acknowledged] that the workers did not request two days of leave per week to seek a new job during the period the employer gave them prior notice.

A. The case of worker, Chum Soputhy:

- Regarding the case of Ms. Chum Soputhy, the Arbitration Council found that she worked in the position as Manager of Administration in the Siem Reap office; she commenced her employment with this organisation on 1 February 2001 and continued in the job until 2 June 2009. This means that she has been working for the organisation for over eight years. According to her last contract, she was entitled to wages of US\$ 293 per month.
- The employer party states that Ms. Chum Soputhy resigned from work. Ms. Chum Soputhy, on the other hand, claims that she did not voluntarily resign from work. Ms.

Chum Soputhy states that she was coerced by the employer to resign. The employer party acknowledged that Ms. Chum Soputhy was advised to resign because on 1 June 2009 she caused a leak of the organisation's confidential information, and this was an act of serious misconduct. The employer added that in the case of termination due to serious misconduct, Ms. Chum Soputhy would not have received any payment. For that reason, the employer asked Ms. Chum Soputhy to resign so that she could receive some payment. Ms. Chum Soputhy decided to resign from work on 2 June 2009. Due to her resignation, Ms. Chum Soputhy did not receive prior notification from the employer. In the hearing, the employer did **not** prove that Ms. Chum Soputhy committed serious misconduct.

- Ms. Chum Soputhy continued to demand that the employer provide payment it is supposed to pay her for the remainder of her fixed duration contract; payment provided on page 27 of the Internal Work Rules (regarding entitlement to financial benefits when the organisation decides to terminate its members of staff for reasons other than serious misconduct); other benefits provided under the Labour Law; and an amount of US\$ 5,000 for damages because she considers that she has not committed serious misconduct to cause the leak of confidential information of the organisation.

B. The case of workers, Lach Thea, Uy Bunsong, Pol Vannarom, Chuob Vantha and Kim Sophorn:

- Regarding the case of **Lach Thea**, the Arbitration Council found that his position was administration staff member in the Phnom Penh office who commenced his employment on 23 May 2000 and continued in the position until the date of his termination by the employer on 30 June 2010. That is, he has been working for the organisation for a consecutive period of over nine years. According to his last employment contract, he is entitled to wages of US\$ 239 per month.
- Regarding the case of **Uy Bunsong**, the Arbitration Council found that his position was a security guard in the Phnom Penh office who commenced his employment on 1 March 2001 and continued in the job until the date of his termination by the employer on 30 June 2010. That is, he has been working for the organisation for a consecutive period of over eight years. According to his last employment contract, he was entitled to wages of US\$ 134 per month.
- In case of a worker named **Pol Vannarom**, the Arbitration Council found that her position was Manager of Investigations in the Phnom Penh office who commenced her employment on 1 October 2005 and continued in the position until the date of her termination by the employer on 30 June 2010. That is, she has been working for the

organisation for a consecutive period of over four years. According to her last employment contract, she was entitled to wages of US\$ 381 per month.

- Regarding the case of **Chuob Vantha**, the Arbitration Council found that initially her position was receptionist but then it changed to a staff member in the Investigations team in Phnom Penh who commenced her employment on 1 March 2000 and continued in the job until the date of her termination by the employer on 30 June 2010. That is, she has been working for the organisation for a consecutive period of over nine years. According to her last employment contract, she was entitled to wages of US\$ 189 per month.
- Regarding the case of **Kim Sophorn**, the Arbitration Council found that her position was a staff member of the Integration program in Phnom Penh who commenced her employment on 1 February 2005 and continued in the job until the date of her termination by the employer on 30 June 2010. That is, she has been working for the organisation for a consecutive period of over two years. According to her last employment contract, she was entitled to wages of US\$ 192 per month.

C. Case of a worker named Thon Sokhom

- Regarding the case of **Thon Sokhom**, the Arbitration Council found that her position was standby staff for the Investigations program in Phnom Penh who commenced her employment on 25 October 2005 and continued in the job until the date of her termination by the employer on 30 June 2010. That is, she has been working for the organisation for a consecutive period of over four years. **Thon Sokhom** had a part-time employment contract to work only on Saturdays, Sundays and public holidays provided under the government's decree on annual public holidays for civil servants and workers. According to her last employment contract, there was a clause which stipulates that "in case a party wishes to terminate the contract prior to the expiration date, the party shall provide at least two weeks of prior notification to the other party." It stated she is entitled to wages of US\$ 12.33 per day and her remuneration was paid on a weekly basis.

REASONS FOR DECISION

Issue in dispute: The workers demand that the organisation provide payment for the remaining duration of their fixed duration contracts; benefits provided on page 27 of the Internal Work Rules (regarding entitlement to financial benefits when the organisation terminates its members of staff for a reason other than for serious misconduct); other benefits provided under the Labour Law; and an amount of US\$ 5,000 in damages to each of the following members of staff: 1. Lach Thea, 2. Uy

Bunsong, 3. Pol Vannarom, 4. Chuob Vantha, 5. Kim Sophorn, 6. Chum Soputhy and 7. Thon Sokhom.

In the hearing, the worker party stated that they no longer demand reinstatement.

Before considering the workers' demand further, the Arbitration Council will consider whether workers in this dispute are employed under fixed duration contract or undetermined duration contract.

Article 67, paragraph 2, of the Labour Law 1997 states, *"The labour contract signed with one's consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years.*

Any violation of this rule leads the contract to become a labour contract of undetermined duration."

Article 73, paragraph 5, of the Labour Law states, *"If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of undetermined duration if its total length exceeds the time limit specified in Article 67..."*

In Arbitral Award (AA) 10/03-Jaqsintex, issue 1; AA 36/06-Mondotex, issue 2; and AA 57/06-Evergreen, issue 3, the Arbitration Council interpreted Article 67 (2) of the Labour Law as fixed duration contracts being converted into undetermined duration contracts where a renewal causes the total length of the employment contract to exceed two years. On this point, the Arbitration Council noted that:

"The Cambodian Labour Law has a bias towards contracts of undetermined duration as expressed in Articles 67 (7) & (8). The reason for this bias comes from the fact that undetermined duration contracts lead to increased employment security which is important for workers and which is in the interests of the employer as well because long term employment leads to an increased commitment to their work from employees. Further, Article 73(5) provides that contracts of a specified duration be converted to contracts of undetermined duration where there is no notice of termination and their "total length exceeds the time limit specified in Article 67 (2)." Because [Article 73 (5)] refers to the total length of time specified in Article 67(2) the Arbitration Council understands that the period of two years specified in Article 67(2) is also the maximum total duration and not the duration of each, individual renewal.

This interpretation is also supported by international labour standards; namely Paragraph 3 of ILO Recommendation 166 of 1982 regarding Termination of Employment which provides that contracts of fixed duration should not be used for long term employment.

This Recommendation of the ILO also states that fixed duration contracts should be converted to contracts of undetermined duration contracts if they are renewed one or more times. Although this Recommendation is not binding, it is a useful instrument to assist in the interpretation of Article 67.”

Therefore, the Arbitration Council considers that the interpretation of Paragraph 2 of Article 67 of the Labour Law as described above means that an employment contract of fixed duration shall become an undetermined duration contract when the renewal of the contract causes the total length of the initial and the renewed contracts combined exceed two years.

In this case, the Arbitration Council agrees with the interpretation previous cases mentioned above that a fixed duration contract shall be converted to an undetermined duration contract if it is renewed many times and the total length of the contract exceeds two years. The Arbitration Council considers that the interpretation regarding the type of employment contract based on the total length of duration of employment contract is identically applied to employment contracts of full-time workers for all the regular working days of the month as well as part-time workers for part of the regular working days of the month or for some days per week or month.

According to the finding of facts, the seven claimant workers in this case had continuous employment contracts for a total period of longer than two years from the time of commencement of their employment to the date of termination or constructive dismissal. Thus, the Arbitration Council considers that employment contract of the seven workers has become undetermined duration contracts.

The Arbitration Council further considers what is the legal status of the layoff of workers, Lach Thea, Uy Bunsong, Pol Vannarom, Chuob Vantha, Kim Sophorn and Thon Sokhom and the resignation of worker, Chum Soputhy.

A. Case of worker, Chum Soputhy

Chum Soputhy has been working continuously with the organisation between 1 February 2001 and 2 June 2009. According to the Arbitration Council's jurisprudence, interpreting labour regulations as above, the employment contract of Chum Soputhy has become an undetermined duration contract.

Paragraph 1 of Article 90 of the Labour Law states, *“[i]ndemnity for dismissal must be granted to the workers and, if applicable, he [or she] can also claim damages even though the contract was not terminated by the employer, but the latter, through his [or her] incitement, pushed the worker into ending the contract himself [or herself]...”*

In previous cases, the Arbitration Council considered that *“...if the company pushes workers by negative behaviour to resign from work (Article 90 of the Labour Law); in such cases the employees have the right to claim for termination compensation...”*

According to Paragraph 1 of Article 90 of the Labour Law and the interpretation of the Arbitration Council in the case mentioned above, the Arbitration Council considers that indemnity for dismissal should be provided to workers and the workers are entitled to demand damages although the termination is not initiated by the employer because later on it is found out that the employer has pushed the worker by negative behaviour into resigning from work.

In this case, Ms. Chum Soputhy was terminated from work as she was forced to submit her resignation. In the hearing the employer party acknowledged that it pushed Ms. Chum Soputhy to submit her resignation from employment stating that its intention was to allow the staff member to be able to receive a termination payment; the employer party argued that this was because if Ms. Chum Soputhy was dismissed due to serious misconduct related to the fact that she caused a leak of confidential information or internal documents of the organisation, then she would have not received a termination payment. Ms. Chum Soputhy argued that she did not commit serious misconduct by causing a leak of confidential information of the organisation as accused by the employer. In addition, [she responded that] the employer did not provide evidence to prove her misconduct of causing a leak of confidential information of the organisation without permission or any other serious misconduct [...] ; the employer does not show that it follows point B(4) (regarding termination of employment) of the organization's Internal Work Rules. Therefore, the Arbitration Council considers that the resignation of Ms. Chum Soputhy was not the result of her genuine intention, i.e., she submitted her resignation because the Director forced her to do so. Therefore, the Arbitration Council considers that the resignation of Ms. Chum Soputhy was constructive dismissal in accordance with Article 90 of the Labour Law above.

B. Case of workers, (1) Lach Thea, (2) Uy Bunsong (3) Pol Vannarom, (4) Chuob Vantha and (5) Kim Sophorn.

Workers named (1) Lach Thea, (2) Uy Bunsong, (3) Pol Vannarom, (4) Chuob Vantha and (5) Kim Sophorn were unilaterally terminated by the employer on 30 June 2009 based on the reason that the organisation was short of funds. The Arbitration Council will consider whether the termination of the five of them and 30 other members of staff at the same time in June 2009 was a mass layoff.

Article 95 of the Labour Law regarding mass layoff states, "*[a]ny layoff resulting from a reduction in an establishment's activity or an internal re-organisation that is foreseen by the employer...*"

The Arbitration Council in previous cases considered that "*...[t]he Arbitration Council finds that the fact that the hotel dismissed 51 workers in June, 13 in July and seven in August 2003 because it had to reduce the number of workers in the establishment is a mass layoff*"

and that it, therefore, must comply with the procedures set forth in Article 95 of the Labour Law.” (See AA 02/04-Hotel Cambodiana).

According to Article 95 of the Labour Law and consideration of the Arbitration Council in a previous case mentioned above, the Arbitration Council, in this case, considers that mass layoff is the layoff of a number of staff at one time due to a need to reduce the activities of an establishment for the reasons such as the lack of a buyer; insufficient funds to maintain the current scale of production or to support all the members of staff; or internal re-organisation to replace manual labour with advanced technology or automatic machinery which the employer intends and is able to utilise.

According to the findings of fact in this case, workers (1) Lach Thea, (2) Uy Bunsong, (3) Pol Vannarom, (4) Chuob Vantha and (5) Kim Sophorn, and 30 other members of staff were terminated at the same time in June 2009. The employer provided a reason that the termination of these members of staff was because the organisation was short of funds to continue their employment contracts under the project called Violence Against Women (VAW). The worker party, on the other hand, stated that the employer still has money in the budget to continue their contracts until the end of their employment contract period; but they did not have specific evidence to prove that at the time of their termination the employer had sufficient funds to continue their employment. The employer added in the hearing that at the termination of the workers’ employment contracts, the employer did not have sufficient funds from donors; some donors had signed a grant agreement but did not provide the money as promised. The employer had received some funds but only after it had terminated the staff members. Furthermore, the employer terminated 29 workers (30 as found by the Arbitration Council) in June 2009, which includes former employees other than the claimant workers in this case. As described above, the Arbitration Council considers that the termination of the 30 workers, including the claimant workers in this case, is a mass layoff because the employer considers that the organisation is facing a shortage of funds to continue its project and some of the activities of the organisation.

C. Case of worker, Thon Sokhom

According to the findings of fact, Thon Sokhom was among the 30 workers who were terminated by the employer in June 2009. Thus, according to the interpretation in point “B” above, the termination of Thon Sokhom is also a case of mass layoff in accordance with Article 95 of the Labour Law. However, the only difference is that Thon Sokhom had a part-time employment contract to work only on Saturdays, Sundays and public holidays stipulated under the government’s sub-decree regarding annual leave, according to the calendar of civil government officials.

The Arbitration Council in previous cases considered that “...[p]art-time work is allowed, though. Any worker who does not work full-time is also entitled to the benefits of full-

time work (wages, days off, benefits, etc.) in proportion to the amount of work they perform..." (See AA 03/03-Tonga, issue 2 and AA 55/04-You Chheng, issue 2).

The Arbitration Council in this case agrees with the Arbitration Council's interpretation in previous cases that workers who perform less than full-time work or work only on specific days of the week or of the month shall be entitled to the benefits of full-time work (wages, days off, benefits, etc.) in proportion to the amount of work they perform compared to benefits granted for full-time work.

Therefore, when she was terminated by the employer, Thon Sokhom was entitled to benefits in accordance with the Labour Law, in proportion to the total number of days worked compared to benefits provided for full-time work.

The Arbitration Council will consider another point regarding whether the seven workers above are entitled to (1) payment for the remaining duration of their fixed duration contracts, (2) benefits provided on page 27 of the Internal Work Rules: on entitlement to financial benefits when the organisation terminates its staff members who do not commit any misconduct, (3) an amount of US\$ 5,000 for damages and (4) other benefits provided under the Labour Law.

1. Payment for the remaining duration of employment contract

According to the interpretation above, the Arbitration Council considers that employment contract of the seven workers have become undetermined duration contracts. Thus, the seven claimant workers in this case are **not** entitled to wages for the remaining period of their employment contracts. Therefore, the Arbitration Council decides to reject the demand for payment for the remaining duration of employment contract of the seven workers involved in this case.

2. Payment in accordance with the collective bargaining agreement (or Internal Work Rules, on page 27 regarding financial benefits when the organisation terminates its members of staff who do not commit any misconduct)

- On page 27 of the organisation's Internal Work Rules, it states: members of staff are entitled to financial benefits when the organisation decides to terminate them for a reason other than misconduct as mentioned in the Internal Work Rules:
 1. *Indemnity for dismissal in an amount equal to 7 days of the last monthly wages for members of staff who have been working for less than one year and an amount equal to 15 days of wages per one year of employment for those who have been working for one year and longer but this shall not exceed 6 months.*
 2. *Additional payment in an amount equal to 5% of the total amount earned.*
 3. *Members of staff who have been working for the Organisation for more than six months shall be entitled to additional benefit of a 13th month salary (which is paid*

in an amount equal to half of the last wages during Khmer New Year and another half to be paid during Pchum Ben.

According to the organisation's Internal Work Rules above, the Arbitration Council considers that staff members are entitled to financial benefits when the organisation decides to terminate them for a reason other than misconduct which includes: indemnity for dismissal [...]; additional payment in an amount equal to 5% of the total amount earned; and a 13th month salary.

Based on the interpretation above, the termination of the seven workers in this case was not for the reason of their misconduct including the case of Ms. Chum Soputhy; although the employer has accused her of serious misconduct, her case is one of constructive dismissal as the Arbitration Council could not find that she has committed serious misconduct. Therefore, the seven workers in this case are entitled to benefits in accordance with the provisions stated on page 27 of the organisation's Internal Work Rules mentioned above; however, the worker named Thon Sokhom who is a part-time worker shall be entitled to benefits in proportion to the number of days she has worked as compared to the full-time workers in the organisation.

In addition, according to the findings of fact, the seven workers have been working for the organisation for a period longer than two years. Thus, they are entitled to the benefits provided for on page 27 of the organisation's Internal Work Rules, i.e., (1) an indemnity for dismissal in an amount equal to 15 days of the last monthly wages per one year of employment but this shall not exceed 6 months of wages, (2) payment of 5% of the total wages earned and (3) additional remuneration for a 13th month salary.

Please note that point (1) regarding **indemnity for dismissal** provided for in the Internal Work Rules has the same meaning as the **indemnity for dismissal** provided for in the Labour Law, Article 89. However, the method for calculation of the total amount of money entitled by the staff members may be different; this is because if it is calculated in accordance with the Internal Work Rules, then the workers' last monthly wages are used as the basis for calculation. Article 89 of the Labour Law and the jurisprudence of the Arbitration Council regarding the calculation of indemnity for dismissal is outlined as follows:

Article 89 of the Labour Law 1997 states, *"[i]f the labour contract is terminated by the employer alone, except in the case of a serious offense by the worker, the employer is required to give the dismissed worker... indemnity for dismissal as explained below:*

- *Seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months.*
- *If the worker has more than twelve months of service, an indemnity for dismissal will be equal to fifteen days of wage and fringe benefits for each year of service.*

The maximum of indemnity cannot exceed six months of wage and fringe benefits.”

According to Article 89 of the Labour Law and provisions on page 27 of the organisation’s Internal Work Rules, Arbitration Council considers that these sources of law require the employer to provide an indemnity for dismissal when the employer terminates the employment contracts of workers employed under undetermined duration contracts.

Article 13 of the Labour Law states, “[t]he provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void...the nature of public order of this law is not obstructive to the granting of benefits or the rights superior to the benefits and the rights defined in this law, granted to the workers by a unilateral decision of an employer...”

According to the findings of fact and interpretation above, workers (1) Lach Thea, (2) Uy Bunsong, (3) Pol Vanarom, (4) Chuob Vantha, (5) Kim Sophorn, (6) Thon Sokhom, and (7) Chum Soputhy were dismissed or constructively dismissed not for the reason of misconduct but in a mass layoff.

In AA 51/04-Sam Han, the Arbitration Council calculated the indemnity for dismissal by finding out the average monthly wages based on the total wages earned, including overtime payment and bonus, by the workers within the last 12 months prior to the dismissal divided by 12. Then, the average daily wage is found by dividing the average monthly wages by 26. The Arbitration Council in this case considers that this is the method to find out the average daily wage as in AA 51/04 above. The Arbitration Council concluded that 26 is the number of full-time working days and the normal working hours of the worker per month in case 51/04-Sam Han above.

The Arbitration Council agrees with the previous interpretation in the case above that in order to find out the average daily wage, to use in the calculation of the amount to be paid in accordance with Article 89 of the Labour Law, the [first step in calculation] should be based on the total wages earned by the workers within the last 12 months prior to the dismissal divided by 12. Then, to calculate for the average daily wage, this should be based on the average monthly wages divided by the number of the workers’ normal working days per month. Thus, if normally the workers work 22 days per month, then the calculation should be the average monthly wages divided by 22. For workers who do not work full-time, this should be divided in proportion to the number of total hours and days the workers worked within the last 12 months prior to the dismissal.

However, in this case, the Arbitration Council found that the organisation has its Internal Work Rules which includes the provision regarding the method of calculation of indemnity for dismissal by taking the workers’ last month’s wages as the basis for calculation.

Moreover, the calculation based on the workers' last month's wages provides more benefits to the workers than the provision in the jurisprudence of the Arbitration Council as mentioned above. Therefore, the Arbitration Council considers that the calculation of the indemnity for dismissal in this case shall be based on the organisation's Internal Work Rules.

In conclusion, the Arbitration Council orders the employer to calculate the indemnity to be provided to the workers to be based on the organisation's Internal Work Rules in accordance with the intention of Articles 13 and 89 of the Labour Law.

3. Damages in an amount of US\$ 5,000 for each worker

Article 91 of the Labour Law (1997) states, “[t]he termination of a labour contract without valid reasons by either party to the contract, entitles the other party to damages. These damages are not the same as the compensation in lieu of prior notice or the dismissal indemnity. The worker, however, can request to be given a lump sum equal to the dismissal indemnity. In this case, he [or she] is relieved of the obligation to provide proof of damage incurred.”

Based on the content of Article 91, the Arbitration Council considers that a party is entitled to damages when an employment contract is terminated at will by one party without a valid reason. In AA 84/08-Trinunggal Komara, the Arbitration Council interpreted that the workers are not entitled to damages because the employer had a valid reason for the termination of their employment contracts. In AA 66/07-Jia Fung, the Arbitration Council considered that “...the termination of a contract by an employer without valid reasons entitles the worker to damages...”

The Arbitration Council agrees with the Arbitration Council in previous cases that when the employer terminates the workers without a valid reason, the workers are entitled to damages in accordance with Article 91 of the Labour Law.

In the case of worker, Chum Soputhy, according to the analysis in point “A” above, this is a case of constructive dismissal. Thus, the Arbitration Council considers that Ms. Chum Soputhy is entitled to damages in accordance with Article 91 of the Labour Law because her dismissal was constructive dismissal, that is, dismissal without a valid reason.

In case of the other six workers who were collectively terminated due to the fact that the employer was short of funds, and thus the employer had a valid reason to terminate them. Therefore, the Arbitration Council considers that the six workers are not entitled to damages in accordance with Article 91 of the Labour Law.

The Arbitration Council considers further whether they are entitled to damages in accordance with provisions of the Labour Law other than Article 91.

Article 95 of the Labour Law states, “[a]ny layoff resulting from a reduction in an establishment's activity or an internal reorganisation that is foreseen by the employer is subject to the following procedures:

- The employer establishes the order of the layoffs in light of professional qualifications, seniority within the establishment, and family burdens of the workers.
- The employer must inform the workers' representatives in writing in order to solicit their suggestions, primarily, on the measures for a prior announcement of the reduction in staff and the measures taken to minimise the effects of the reduction on the affected workers.
- The first workers to be laid off will be those with the least professional ability, then the workers with the least seniority. The seniority has to be increased by one year for a married worker and by an additional year for each dependent child ...

The Labour Inspector is kept informed of the procedure covered in this article. At the request of the workers' representatives, the Labour Inspector can call the concerned parties together one or more times to examine the impact of the proposed layoffs and measures to be taken to minimise their effects.

In exceptional cases, the Minister in Charge of Labour can issue a *Prakas* (ministerial order) to suspend the layoff for a period not exceeding thirty days in order to help the concerned parties find a solution. This suspension may be repeated only one time by a *Prakas* of the Ministry.”

In previous Arbitral Awards, the Arbitration Council considered, “...when a company intends to reduce the activities in the establishment or to reorganise its internal affairs, it must follow such procedures as establishing the order of the layoffs in light of professional qualifications, seniority within the establishment and family burdens of the workers and the employer's obligation to notify the Labour Inspector. Moreover, the employer must give priority for re-recruitment to the laid-off workers [for a period of] two years [after the mass lay off]... Article 95 of the Labour Law allows the employer to terminate worker(s) due to the reduction in the establishment's activity at the employer's discretion...” (See AA 37/05-JDI).

In accordance with Article 95 of the Labour Law and Arbitral Awards of the Arbitration Council in previous cases mentioned above, the Arbitration Council agrees with the Arbitration Council in previous cases that when the company or organisation intends to reduce its activities or intends to reorganise its internal affairs, the employer shall follow procedure by classifying workers based on their professional qualification, employment seniority and family obligations and should inform the Labour Inspector of this arrangement.

In this case, the employer has not followed the procedure for a mass layoff; for example, the employer did not notify the Labour Inspector about the termination of workers.

The Arbitration Council considers that Article 95 of the Labour Law above stipulates the procedure for mass layoff which the employer should follow but it does not outline the requirement to pay damages to the workers in case the employer fails to follow the procedure.

In this case, the employer provided a list of workers working in three projects of the VAW programme who are making the complaint in the order of their professional qualification, employment seniority and family situation (Annexure A). However, the Arbitration Council does not find that the employer had notified the worker representative and the Labour Inspector to implement the reduction in the number of staff in accordance with Article 95 of the Labour Law.

By notifying the worker representative and the Labour Inspector in accordance with the requirements of Article 95 above, it allows the Ministry in Charge of Labour to intervene, in special cases, upon request by representatives of the workers to issue a letter to suspend the mass layoff for up to two periods not longer than 30 days at a time.

Therefore, the Arbitration Council considers that the failure to abide by the procedure stipulated in Article 95 regarding the notification above can produce a result that the workers lose the opportunity for intervention from the Minister in Charge of Labour which could allow them to receive work for at least for up to two periods not longer than 30 days at a time. Although the failure to abide by Article 95 above is not a reason for damages in accordance with Article 91 of the Labour Law, the Arbitration Council considers that it could be a loss of benefits for the staff members for the period that the Minister in Charge of Labour could have issued a *Prakas* to suspend this termination for up to two months. Thus, the Arbitration Council decides that the employer should compensate the workers in relation to its failure to comply with Article 95 in an amount equal to two months of wages at the rate of the workers' last wages, that is wages received prior to the termination, in addition to other payments the workers are entitled to for this termination.

Based on the interpretation above, the Arbitration Council rejects the demand for an amount of US\$ 5,000 as damages for each of the seven claimant workers because they have not proved that the loss they suffer from this termination is worth US\$ 5,000 in damages for each of them. However, six of the workers (except for, Chum Soputhy) are entitled to two months of wages calculated based at the rate of the workers' last wages, received prior to the termination, in addition to other payments the workers are entitled to due to this termination.

4. Other benefits as stipulated in the Labour Law

Based on the above interpretation regarding the type of employment contract, the workers' employment contracts were considered to be undetermined duration contracts; therefore, the Arbitration Council makes further consideration of the type of benefits in the Labour Law that the workers are entitled to in case of mass layoff, including constructive dismissal.

- **Compensation in lieu of prior notice**

Article 75 of the Labour Law (1997) states, “[t]he minimum wage period of a prior notice is set as follows:

- Seven days, if the worker's length of continuous service is less than six months;
- Fifteen days, if the worker's length of continuous service is from six months to two years;
- One month, if the worker's length of continuous service is longer than two years and up to five years.
- Two months, if the worker's length of continuous service is longer than five years and up to ten years.
- Three months, if the worker's length of continuous service is longer than ten years [...].”

Article 77 of the Labour Law states, “[t]he termination of a labour contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the employer to compensate the worker the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period.”

According to the above Articles 75 and 77 of the Labour Law, the Arbitration Council finds that the termination of a labour contract at will on the part of the employer alone, without giving prior notice or without following the procedure of giving prior notice as required by Article 75, would entitle the workers to the amount of wages and other benefits they could have received during the notice period.

Based on the above facts, the employer stated that the organisation had already informed those workers prior to the dismissal and the organisation also agreed to give compensation in lieu of prior notice in proportion to the period that the employer had failed to give notice to the workers as required by the Labour Law.

The Arbitration Council, therefore, orders the employer to give the amount of compensation in lieu of prior notice to the six workers, except Ms. Chum Soputhy, equal to the period when there was a failure to give prior notice because of not complying with Article 75 of the Labour Law.

For Ms. Thun Sokhom, the employer must give compensation in lieu of notice in proportion to the actual period she had been working as stipulated in the Labour Law or based on the period of employment contract which provides more benefits than the law that states that she should be informed **two weeks** in advance.

It should be noted that the calculation of the prior notice period should be counted from the date that the workers received the notice in writing, not the date of issue of the notice.

In Ms. Chum Soputhy's case, the employer did not give prior notice. The employer, therefore, must give compensation in lieu of notice to Ms. Chum Soputhy in proportion to the payment stipulated in Articles 75 and 77 of the Labour Law.

- Compensation in lieu of leave with payment to find a new job

Article 79 of the Labour Law states, “[d]uring the prior notice period, the worker of the enterprise is entitled to two days leave per week with full payment to look for a new job. These leave days are paid to the worker at the normal rate of remuneration, regardless of how it is calculated. This payment shall include other perquisites.”

The Arbitration Council in a previous case found, “[...] for the period of three months’ prior notice, the employer must have informed the 71 workers in advance. The workers, however, were informed only 15 days before the termination. Consequently, the employer owed two and a half months of compensation in lieu of prior notice to the workers. In addition to this, during the 15 days of prior notice, the workers were not allowed to take four days of with payment in order to find a new job. Hence, the employer should have given them the full four days’ payment. The other 22 days of leave with pay to find a new job during the three month notice period should not be given to the workers because they already had been compensated by the employer...” (See AA 02/04-Cambodiana).

In accordance with Article 79 of the Labour Law and the previous findings of the Arbitration Council in AA 02/04-Cambodiana, the Arbitration Council in this case partly agrees with the previous Arbitration Council findings that during the prior notice period, workers shall have the right to take two days off per week with payment in order to find a new job. If the employer fails to give prior notice, then the workers are not entitled to take two days off with payment to find a new job since they have already received compensation in lieu of prior notice as stated in Article 75 of the Labour Law.

The Arbitration Council, however, disagrees with the previous interpretation in AA 02/04-Cambodiana that says, “[w]ithin the 15 days of prior notice, workers were not entitled to receive four days of leave with payment in order to find a new job. Therefore, they also received compensation from the employer.” In this case, the Arbitration Council finds that workers have the right to get two days off per week, with payment, to find a new job during the prior notice period; the employer, however, refused to allow them to take the days off. The Arbitration Council has not received any evidence that the workers had asked the employer to take two days off per week, with payment, to find a new job during the prior notice period as permitted by the Labour Law.

Based on the above facts, the employer declared that it had given prior notice to workers, except for the six workers who did not receive this information. That is, the six workers did not receive prior notice. Ms. Chum Soputhy, on the other hand, was dismissed at

will of the employer alone. Therefore, the six workers do not have the right to be entitled to two days off with payment to find a new job during the prior notice period.

- Compensation in lieu of unused annual leave

Article 167 of the Labour Law states, “[i]f the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker...”

Based on the meaning of this article, in case of not having used up all paid annual leave, the workers are entitled to receive compensation in lieu of unused annual leave (See AA 84/08-Trinunggal Komara).

The Arbitration Council in this case also agrees with the Arbitration Council in the above case that in case of termination of employment contract, workers are entitled to compensation in lieu of unused annual leave.

Article 120 of the Labour Law 1997 states, “[t]he statute of limitations for a lawsuit for the payment of wages is three years from the date the wage was due. Claims subject to the lapse of a lawsuit include the actual wage, perquisites and all other claims of the worker resulting from the labour contract, as well as the indemnity in the event of dismissal.”

“Based on Article 120 of the Labour Law, workers have right to demand compensation in lieu of unused annual leave within the period of three years, after having the right to use paid annual leave, because it is the claim subject to lawsuit that arises from employment contract ...” (See AA 118/09-Shou Fong, issue 2).

Based on Article 120 of the Labour Law and the above AA 118/09- Shou Fong, the Arbitration Council in this case orders the employer to give compensation in lieu of unused annual leave during the last three years of the employment contract to the seven workers. Comparing the benefits that are given to the other workers, Ms. Thun Sokhom, who is not a full-time worker, shall be entitled to compensation in lieu of unused annual leave in proportion to the length of her employment.

- Payment of last month’s wages

Article 116 of the Labour Law states, “[i]n the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work.”

The Arbitration Council finds that workers are entitled to their last month’s wages that they have not received from the employer based on Article 116. (See AA 15/09-Charm Textile, reasoning issue 2)

The Arbitration Council, therefore, orders the employer to give the last month’s wages to workers- having not received or partly received the wages- who are involved in this case.

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

DECISION AND ORDER

- Reject the seven workers' demand to order the employer to give damages in an amount that is at least equal to the remuneration they would have received until the date of expiry of the contract.
- Order the employer to provide other benefits as stated on page 27 of the organisation's Internal Work Rules: a) Severance pay of 5 percent of wages b) The 13th month wage to Mr. Lach Thea, Mr. Uy Bunsong, Ms. Pol Vannarom, Ms. Chuob Vantha, Ms. Kim Sophorn and Ms. Chum Soputhy. The employer must also provide severance pay of 5 percent of wages, including wages, other benefits, and the 13th month salary, in proportion to Ms. Thun Sokhom's actual [part-time] working hours. The employer can only deduct the proportion of benefits that he or she already gave to each worker.
- Order the employer to provide indemnity for dismissal based on the clauses of the Internal Work Rules of the organisation and in accordance with Articles 13 and 89 of the Labour Law to the seven workers who are claimants in this case.
- Order the employer to give compensation in lieu of prior notice to the seven workers, who have not received the prior notice in full, because the employer failed to comply with the procedure of the Labour Law. For Ms. Thun Sokhom's case, the employer must give compensation in lieu of notice, in proportion to the actual period she had been working as stipulated in the Labour Law or based on the period of employment and the contract which provides more benefits than the law that states she would be informed two weeks in advance.
- Reject the workers' demand to order the employer to pay them leave with payment to find a new job during the prior notice period, as stated in Article 79 of the Labour Law, since the workers did not take leave to find a new job.
- Order the employer to give compensation in lieu of unused annual leave to the workers, who are claimants in this case, during the last three years of their employment contracts. On the other hand, Ms. Thun Sokhom was not a full-time staff member and should be given compensation in lieu of unused annual leave in proportion to her actual working period by comparing the benefits provided to full-time staff.

- Order the employer to give the last month's wages to workers who are claimants in this case and who have not fully received the payment or only partly received payment.
- Order the employer to pay damages to Ms. Chum Soputhy in accordance with Article 91 of the Labour Law. In addition to this, employer must pay damages equal to two months of wages, which is calculated by multiplying the last month's wages by two, and other benefits to the six workers because the employer failed to comply with Article 95 of the Labour Law.

Type of Award: Non binding or binding awards

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 to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Huon Chundy**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Nhean So Munin**

Signature: