



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 109/07- Kingsland

Date of Award: 12 December 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION 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**

DISPUTING PARTIES

Employer party:

Name: **Kingsland Garment Cambodia Ltd. (Kingsland Company)**

Address: Building 538, National Road 2, Chak Angre Leu, Khan Mean Chey, Phnom Penh

Telephone: 012 480 952, 012 856 939 Fax: N/A

Representative:

- | | |
|----------------------|----------------|
| 1. Mr. Lin Shao Qing | Chief mechanic |
| 2. Mr. Cheat Khemra | GMAC officer |
| 3. Ms. Tang Lin | Administrator |

Worker party:

Name: **Coalition of Cambodian Apparel W.D.U. (C.CAWDU) and local union of C.CAWDU**

Address: Building 538, National Road 2, Chak Angre Leu, Khan Mean Chey, Phnom Penh

Telephone: 012 282 653 Fax: N/A

Representative:

- | | |
|-------------------|--|
| 1. Mr. Oum Visal | General secretary of the union coalition |
| 2. Mr. Ly Bunyim | President of local union at the factory |
| 2. Ms. Phal Savin | Vice-President of local union at the factory |

3. Mr. Sao Khatt Doeun	Secretary to the union
4. Mr. Chuon Vanna	Cashier to the union
5. Ms. Vann Huon	Union advisor
6. Mr. Sao Khatt Da	Union activist
7. Mr. Long Chhun Eng	Union activist
8. Mr. Long Chhun Leng	Union activist
9. Mr. Nhean Chantha	Union activist
10. Mr. Say Oun	Union activist
11. Ms. Chan Simhorn	Union activist
12. Ms. Se Seng	Union activist
13. Ms. Phann Touch	Union activist
14. Mr. Hin Thea	Union activist

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The company must provide full wages on days that it does not have enough work for the workers to do and asks them to go back home.
- 2- The company must not transfer workers from one place to another without agreement from them.
- 3- The company should provide 20 fans for the cutting section because it is so hot there that it is difficult for the workers to work.
- 4- The company should increase the piece rate price that it has lowered to US\$ 0.08 back to US\$ 0.11 as normal.
- 5- The company should allow the workers to take special leave based on their special needs.
- 6- The company should provide wages, bonus, medical treatment fee and severance bonus when workers are sick with a proper certificate from the hospital.
- 7- The company should pay workers who take maternity their maternity leave payment [half of their wages and perquisites for three months] in advance.
- 8- The workers request the company to allow pregnant workers to leave work 30 minutes early.
- 9- The company should incorporate the US\$ 15 bonus into workers' main wage.
- 10- The company should convert floating workers [who have been working] for more than two months to be full-rights worker.
- 11- The workers request the company to prepare hot and cold water containers and glasses for drinking.

- 12- The workers request the company to issue pay slips a day before paying wages to the workers.
- 13- The workers request the company to clearly mention the position of each worker (electrician, mechanic, head cutter, workers who work in the cutting and sewing sections, cleaner, warehouse worker, fray trimmer, driver) on their [identification] cards, and the company should put protective covers on the cards for workers as well because the company never does this for them.
- 14- The company should reimburse US\$ 2 to US\$ 5 for equipment deposits.
- 15- The company should reimburse 10,100 riel for medical check fee.
- 16- The company should provide one hour per day to female workers who have a baby 3 months or older, but if the company does not provide this then it should pay US\$ 20 per month instead.
- 17- The company should build a proper toilet to avoid bad smells coming out, especially to the cutting table, the place where workers get their drinking water and the sewing section, as is the situation now.
- 18- When union leaders go to meet the company to resolve workers' issues, the company should not avoid such meetings by giving various excuses.
- 19- The company should review the interpreter section because when the workers seek permission for special leave, A Mey does convey the message to the manager and sometimes the interpreter does not talk to the workers when they seek permission for leave until some of them cry.
- 20- The company should provide an additional amount [of money] when the workers cannot sew enough to reach the minimum daily wage and write [the amount added] in the piece rate record book; for workers who have sewn enough to reach more than the minimum wage, the company has to record this in the piece-rate record book until end of the month.
- 21- The company should not discriminate against cleaners and should allow them to work overtime on the public holidays that other workers [in the factory] have to work.
- 22- The company should not deduct workers' annual leave for those days that are designated by the company as days-off for the workers such as on Chinese New Year and [when the workers are required to work] on a public holiday [the company should not] give workers a regular working day off in lieu.
- 23- Working overtime should be based on voluntary principles, that is the company should not force and get angry with any worker who does not work overtime; for example, in cases where workers do not perform overtime work for one day, the company does not allow the worker to work overtime for one week or one month, and the company even changes the place where workers work.

- 24- The company should not use female workers to unload cloth from container trucks and to carry sacks of cloth pieces.
- 25- The company should recruit a head of the cleaning section to ensure proper order in the factory.
- 26- The company should prepare paid annual leave for the workers following the Labour Law.
- 27- The company has to reinstate Ms. Se Seng, female, ID card: 1262, Group H2 in the fray trimming section and Mr. Hin Dieng, male, ID card: 1047, Group D3 in the box packaging section and provide their wages and perquisites for the period of their dismissal.
- 28- The company must finish building a daycare center for the workers by August 2007. If by August 2007, the company can not finish construction, then it must provide US\$ 30 per month for outside daycare services.
- 29- The company must reimburse full wages to the workers for the period in June and July 2007 when the company directed them to take a break as the company did not have any work for them to do; [the amount of the reimbursement should be calculated] according to the number of days that each workers took off.
- 30- The company must pay back the amount of US\$ 4.33 to Ms. Sieng Ny in the fray cutting section, ID card: 1218, whom the company did not pay on 30 June 2007.
- 31- The workers request that the company add US\$ 20 per month to the main wage of workers who are skillful and have many years of seniority in the cutting section.
- 32- The workers request that the company clearly separate the tasks and responsibilities of workers in the warehouse and cutting sections.
- 33- The workers request that Mr. Chhay, the manager of the cutting section, reveal the amount of money received from selling equipment so that workers understand how the money is used every month.
- 34- The workers request that the company deduct union contribution fees from members of C.CAWDU for C.CAWDU through the Kingsland Company's account.
- 35- The workers request that the company reinstate 2 union activists: Nhien Chantha, Section B, the cutting group, ID card: 827 and Hin Thea, the ironing section, Group D1, ID card: 920 and provide their full wages from the day they were terminated until the day they are reinstated.
- 36- The workers request that the company pay their wages on the seventh day of each month at the latest and finish payment before 4:00 p.m.
- 37- The workers request that the company not discriminate against C.CAWDU as the company has terminated union activists one after the other, and to allow C.CAWDU to resolve the problem of its members during working hours.

- 38- The workers request that the company reinstate Mr. Chuon Vanna, ID 837, group B, cashier of C.CAWDU and to pay his wages and bonus from the time of termination to reinstatement.
- 39- The workers request that the company dismiss the Chinese head of mechanics because he physically beat Mr. Say Oun and Ly Bunyin and to dismiss a head of security on the daytime shift who caught Mr. Say Oun for the head of mechanics.
- 40- The workers request that the company pay full wages and bonuses that the company deducted on 3 September 2007 from 17 people who are union leaders and union activists of C.CAWDU including: Khin Sreymom, Porn Neary, Say Oun, Sao Khada, Eou Bona, Sy Net, Yung Malis, Hong Theavy, Sao Khadeoun, Lok Seiha, Seoum Sam En, Ly Bunyin, Ko Kimleng, San Thi, Hong Kimly, Vin Horn, and Ros Sothea; [and the workers stated] that the company has caused great difficulties to C.CAWDU.
- 41- The company should terminate Mr. Hatt Matt, Manager of the warehouse section ID card: 857, as for example on 3 August 2007 he did not come to work but he punched-in, in addition, his incorrect reporting caused the dismissal of other workers without any [proper] reasons.
- 42- The workers request that the company pay their wages and perquisites when they are invited by C.CAWDU to join a seminar or meeting and the union has properly submitted a request to the Company.
- 43- The company should pay back wages to Ms. Phal Savin who asked for special leave from 27 to 29 August 2007, and from whom the company deducted her wage and bonus; and the company should pay the wage to Mr. Van Huot, union advisor, to whom the company did not make payment on 30 to 31 August and on 01 September 2007 when the company deducted his wage and the bonus.
- 44- The company should let Mr. Ly Bunyin, union president, come to work normally and provide his wages and perquisites from the day the company suspended his work to the day he comes back to work at the same place.
- 45- The workers request the company to reinstate 2 union leaders: Ms. Phal Savin, Vice-President of the local union and Mr. Sao Khadeoun, secretary to local union, and to provide their wages and perquisites from the day the company terminated them to the day they are reinstated.
- 46- The company should reimburse all the wages and bonuses deducted from workers during the work suspension in August and September 2007, when they had a break as the company did not have work for them to perform.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor 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. 076 dated 10 May 2007 (Fifth 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 hearing was unsuccessful, and the non-conciliation report No. 1107 KB/AK/VK dated 08 October 2007 and was submitted to the Secretariat of the Arbitration Council on 16 November 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing:

First hearing : 24 October 2007 (From 8:00 a.m. to 12:00 p.m.)
Second hearing : 27 October 2007 (From 8:00 a.m. to 12:00 p.m.)
Third hearing : 30 October 2007 (From 2:00 p.m. to 05:00 p.m.)
Fourth hearing : 12 November 2007 (From 8:00 a.m. to 12:00 p.m.)
Fifth hearing : 16 November 2007 (From 2:00 p.m. to 05:00 p.m.)

Procedural issues:

On 7 September 2007, the Department of Labour Dispute received a complaint from the workers of Kingsland Company regarding the demand for the employer to improve working conditions. After receiving the complaint, the Department of Labour Dispute assigned an officer to conciliate this dispute and the last conciliation was held on 21 September 2007 but the 46 issues of the workers' demand were not able to be resolved because the employer was absent without reason. The 46 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 16 October 2007.

After receiving the case, the Secretariat of the Arbitration Council invited the employer party and the worker party at the factory to the hearing and conciliation on the 46 non-conciliation issues for five times: the first time on 24 October 2007 at 8:00 a.m., second time on 27 October 2007 at 8:00 a.m., third time on 30 October 2007 at 2:00 p.m., fourth time on 12 November 2007 at 8:00 a.m., and the fifth time on 16 November 2007 at 2:00 p.m. The worker party was present as invited by the Arbitration Council all five times.

On all five hearing days, the Arbitration Council attempted to conciliate the 46 non-conciliation issues mentioned in the non-conciliation report by the Department of Labour Dispute and received a result of 36 issues being conciliated. Thus, in this award, the Arbitration Council will consider only on remaining 10 issues: issue 7, issue 27, issue 31, issue 35, issue 38, issue 39, issue 40, issue 41, issue 44, and issue 45 based on evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Letter No. 1068 KB/AK/VK regarding the termination of Ms. Phal Savin, Vice-President of local C.CAWDU at Kingsland Garment Factory, dated 28 September 2007.
2. Minutes about a quarrel during working hours between local union and supervisor(?), dated 24 August 2007.
3. Letter by Mr. Ly Yang Li, director of Kingsland Company, regarding request to suspend employment of Ms. Phal Savin, dated 25 August 2007.
4. Letter by Mr. Ly Yang Li, director of Kingsland Company, regarding request to terminate the employment of Ms. Phal Savin, dated 28 August 2007.
5. Announcement by Kingsland Company regarding [the act of] disobeying the discipline and Internal Work Rules of the company by Ms. Phal Savin.
6. Minutes about a quarrel between a Chinese supervisor and Ms. Phal Savin, dated 25 August 2007.
7. Minutes of individual dispute conciliation, dated 13 September 2007.
8. Warning letter to Mr. Nhean Chantha by Kingsland Company, dated 20 August 2007, regarding the display of bad behaviour toward Chinese supervisor.
9. Warning letter to Mr. Nhean Chantha by Kingsland Company, dated 21 August 2007, regarding Mr. Nhean Chantha sleeping in cloth warehouse.
10. Contract of Mr. Nhean Chantha with the Company Director regarding the promise to improve work, dated 9 February 2007.
11. Notification of Kingsland Company regarding termination of contract of Mr. Nhean Chantha, dated 22 August 2007.
12. Warning letter to Mr. Chuon Vanna by Kingsland Company, dated 31 August 2008, regarding failure to pay attention to work.

13. Warning letter to Mr. Chuon Vanna by Kingsland Company, dated 28 August 2008, regarding he sat reading book and did not pay attention to work.
14. Warning letter to Mr. Chuon Vanna by Kingsland Company, dated 28 August 2008, regarding he sat chatting and did not do his work.
15. Notification of Kingsland Company regarding termination of contract of Mr. Chuon Vanna, dated 31 August 2007.
16. Warning letter to Mr. Hin Thea, first time, at 7:25 a.m., by Kingsland Company, dated 17 August 2008, regarding his disobedience to the supervisor's command.
17. Warning letter to Mr. Hin Thea, second time, at 10:37 a.m., by Kingsland Company, dated 17 August 2008, regarding he sat chatting and did not do his work.
18. Warning letter to Mr. Hin Thea, second time, at 1:20 p.m., by Kingsland Company, dated 17 August 2008, regarding he sat chatting and did not do his work.
19. Letter to request for visa on the Internal Work Rules of Kingsland Company, dated 20 November 1998.
20. Internal Work Rules of Kingsland Company, dated 25 November 1998.
21. Letter by full-right worker delegate of Kingsland Company regarding having read and reviewed the Internal Work Rules, dated 19 November 1998.
22. Letter No. 040/07 SBKK, dated 01 August 2007, regarding request to help to resolve collective labour dispute at Kingsland Company.
23. Minutes of labour dispute resolution at Kingsland Company, dated 13 December 2006.
24. Certificate of commercial and company registration of Kingsland Company, dated 4 March 2006.

Provided by the worker party:

1. Letter about submission of statement of labour dispute at Kingsland Factory, dated 06 November 2007.
2. Statute of local union of C.CAWDU, dated 13 July 2007.
3. Certification letter No. 103 KB, dated 13 July 2007, regarding certification of legality of local union of C.CAWDU at Kingsland Company.
4. Certificate of registration of local union of C.CAWDU at Kingsland Company, dated 13 July 2007.
5. Name list of union leaders, activists, and members at Kingsland Company whom the Company terminated from work and are demanding to be reinstated.
6. Letter of complaint by the local union of C.CAWDU at Kingsland Company, dated 23 July 2007.
7. Letter of complaint by local union of C.CAWDU at Kingsland Company, dated 2 July 2007.

8. Letter of complaint by local union of C.CAWDU at Kingsland Company, dated 28 August 2007.
9. Table of information about total number of workers and number of members in production lines at Kingsland Company in 2007.
10. List of names of union leaders whom the Company terminated.
11. Letter of complaint by local union of C.CAWDU at Kingsland Company, dated 11 September 2007.
12. Letter by local union of C.CAWDU at Kingsland Company regarding request for meeting with director of the Company to resolve collective dispute, dated 14 July 2007.
13. Letter by local union of C.CAWDU at Kingsland Company regarding request for meeting with director of the Company to resolve collective dispute, dated 16 July 2007.
14. Letter No. 048, 07/SBKK, dated 05 October 2007, regarding a request for rejection of the decision by Mr. Koy Tep Daravuth, Chief of Department of Labour Dispute.
15. Letter No. 107/07 SBKK, dated 19 October 2007, regarding request for consideration to have a rejection of the decision by Mr. Koy Tep Daravuth, Chief of Department of Labour Dispute.
16. Letter No. 047/07 SBKK, dated 23 May 2007, regarding notification of the result of election of local C.CAWDU at Kingsland Factory.
17. Letter No. 063/07 SBKK, dated 21 June 2007, regarding sending of names of candidates for the election of the third mandate worker delegate at Kingsland Company.
18. Complaint by Mr. Chuon Vanna to complain about the director of the Company who terminated him from work, dated 3 September 2007.
19. Note by Mr. Chuon Vanna regarding the Company does not allow him to come to work on 3 September 2007.
20. Notification by Kingsland Company regarding termination of Mr. Chuon Vanna, dated 31 September 2007.
21. Court invitation letter for a civil case No. 218 to Mr. Ly Bunyin, dated 23 October 2007.
22. Court invitation letter for a civil case No. 218 to Mr. Ly Bunyin, dated 08 October 2007.
23. Letter No. 1092 KB/AK/VK, dated 3 October 2007 regarding the termination of Mr. Ly Bunyin, chief of local C.CAWDU at Kingsland Company.
24. Letter of complaint by Mr. Ly Bunyin to complain about the Company director who terminated him from work, dated 4 September 2007.

25. Note by Mr. Ly Bunyin regarding the Company asked him to go to get money instead of coming back to work, dated 4 September 2007.
26. Letter by local C.CAWDU at Kingsland Company regarding request for help to respond to some request by the union, dated 4 September 2007.
27. Letter of complaint by Ms. Vann Huon to complain about the Company director who terminated her from work, dated 28 September 2007.
28. Note by Ms. Vann Huon regarding the Company terminated her without any reasons, dated 28 September 2007.
29. Notification by Kingsland Company regarding termination of Ms. Vann Huon, dated 29 September 2007.
30. Note by Ms. Vann Huon regarding the Company forced her to work, dated 24 August 2007.
31. Letter of complaint by Ms. Vorn Samnang to complain about Cambodian and Chinese supervisors who forced her to sign as a witness, dated 27 September 2007.
32. Letter of complaint by Mr. Hin Dieng to complain about the Company director who terminated him from work, dated 24 July 2007.
33. Note by Mr. Hin Dieng regarding the Company terminated him without any reasons, dated 24 July 2007.
34. Letter of complaint by Ms. Chan Simhan to complain about the Company director who terminated her from work, dated 17 September 2007.
35. Note by Ms. Chan Simhan regarding the Company terminated her without any reasons, dated 17 September 2007.
36. Notification by Kingsland Company regarding termination of Ms. Chan Simhan, dated 05 October 2007.
37. Medical certificate No. 27/07 by Neak Loeung Referral Hospital of Ms. Chan Simhan, dated 25 September 2007, regarding her admission in the Hospital of Ms. Chan Simhan.
38. Letter of complaint by Ms. Prak Sam Art to complain about the Company director who forced her to be a witness for the Company, dated 17 September 2007.
39. Letter of complaint by Long Chhun Leng to complain about the Company director who terminated her/him from work, dated 27 September 2007.
40. Note by Long Chhun Leng regarding the Company terminated her/him without any reasons, dated 27 September 2007.
41. Notification by Kingsland Company regarding termination of employment contract of Mr. Long Chhun Leng, dated 26 September 2007.
42. Letter of complain by Sao Khatda to complain about the Company director who terminated him from work, dated 7 September 2007.

43. Note by Sao Khatda regarding the Company terminated him from work without any reasons, dated 7 September 2007.
44. Warning letter to Mr. Sao Khatda by Kingsland Company, dated 03 September 2007, regarding he turned off the light which caused chaos.
45. Note by Ms. Sao Khatlorn regarding the Company terminated her from work without any reasons, dated 7 September 2007.
46. Letter of complaint by Se Seng to complain about the Company director who terminated her from work, dated 18 July 2007.
47. Note by Se Seng regarding the Company terminated her from work without any reasons, dated 18 July 2007.
48. Letter of complain by Miss Phann Touch to complain about the Company director who terminated her from work, dated 15 October 2007.
49. Note by Phann Touch regarding the Company terminated her from work without any reasons, dated 15 October 2007.
50. Notification by Kingsland Company regarding termination of employment contract of Phann Touch, dated 6 October 2007.
51. Warning letter to Mr. Nhean Chantha, second time, by Kingsland Company, dated 21 August 2007, regarding [the conditions] if he make a mistake for the third time.
52. Note by Nhean Chantha regarding the Company terminated him from work without any reasons, dated 22 August 2007.
53. Notification by Kingsland Company regarding termination of employment contract of Nhean Chantha, dated 22 August 2007.
54. Letter of complain by Sao Khatdoeun to complain about the Company director who terminated him from work, dated 4 September 2007.
55. Note by Sao Khatdoeun regarding the Company terminated him from work without any reasons, dated 4 September 2007.
56. Letter No. 1068 KB/AK/VK, dated 28 September 2007 regarding the case of termination of Ms. Phal Savin, vice-head of local C.CAWDU at Kingsland Factory.
57. Letter of complain by Phal Savin to complain about the Company director who terminated her from work, dated 10 September 2007.
58. Note by Phal Savin regarding the Company terminated her from work without any reasons, dated 10 September 2007.
59. Note by Phal Savin regarding the Company suspended her employment without any reasons, dated 28 August 2007.
60. Certification letter No. 16170/07 RB by Chey Chomnas referral hospital regarding having checked and treated Phal Savin, dated 27 August 2007.

61. Warning letter to Mr. Long Chhun Eng, first time, by Kingsland Company, dated 16 October 2007, regarding he used his phone to take picture of new [workers].
62. Warning letter to Mr. Long Chhun Eng, second time, by Kingsland Company, dated 30 October 2007, regarding he posted papers to propagate for workers to go on strike.
63. Letter of complain by Long Chhun Eng to complain about the Company director who terminated her from work, dated 01 November 2007.
64. Note by Long Chhun Eng regarding the Company terminated him from work without any reasons, dated 1 November 2007.
65. Notification by Kingsland Company regarding termination of employment contract of Long Chhun Eng, dated 30 October 2007.
66. Warning letter to Mr. Say Oun, third time, by Kingsland Company, dated 26 September 2007, regarding he did not pay attention to his work.
67. Notification by Kingsland Company regarding termination of employment contract of Say Oun, dated 30 October 2007.
68. Warning letter to Mr. Say Oun, second time, by Kingsland Company, dated 30 October 2007, regarding he posted papers to propagate for workers to go on strike
69. Letter of complain by Say Oun to complain about the Company director who terminated her from work, dated 1 November 2007.
70. Note by Say Oun regarding the Company terminated him from work without any reasons, dated 1 November 2007.
71. Note by Hin Thea regarding the Company terminated him from work without any reasons, dated 17 August 2007.
72. Letter of complain by Say Oun to complain about the Company director who terminated her from work, dated 1 November 2007.
73. Letter by C.CAWDU regarding objection to some documents [submitted by] Kingsland Company, dated 15 November 2007.
74. Letter No. 115/07 SBKK, dated 13 November 2007 regarding request to have decision of Mr. Koy Tep Daravuth, chief of Labour Dispute Department, rejected.

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

1. Report of collective labour dispute resolution at Kingsland Company, No. 1107 KB/AK/VK, dated 08 October 2007.
2. Minutes of collective labour dispute conciliation at Kingsland Company, dated 21 September 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 489 KB/AK/VK/LKA dated 22 October 2007 to invite the worker party to attend the first hearings.

2. Invitation letter No. 488 KB/AK/VK/LKA dated 22 October 2007 to invite the employer party to attend the first hearings.
3. Invitation letter No. 509 KB/AK/VK/LKA dated 27 October 2007 to invite the worker party to attend the third hearings.
4. Invitation letter No. 508 KB/AK/VK/LKA dated 27 October 2007 to invite the employer party to attend the third hearings.
5. Invitation letter No. 520 KB/AK/VK/LKA dated 5 November 2007 to invite the worker party to attend the fourth hearings.
6. Invitation letter No. 519 KB/AK/VK/LKA dated 5 November 2007 to invite the employer party to attend the fourth hearings.

FACTS

- Having reviewed documents the parties submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by the representatives of the worker party

The Arbitration Council finds that:

- Kingsland Company employs approximately 600 workers.
- Local C.CAWDU at Kingsland Company is the complainant in this case. According to the statement of the representatives of the union and the employer, in this factory there is no union with most representative status.

Issue 7: The workers demand that the Company pay workers who take maternity leave half of their three months wages and perquisites in advance of the commencement of their maternity leave

- The workers demand that the Company pay workers who take maternity leave half of their three months' wages and perquisites in advance [of the commencement of their maternity leave] in accordance with the Labour Law.
- According to [the company] practice, the employer pays wages and perquisites for maternity leave once a month.
- The employer does not agree but continues to pay once a month because it is afraid that if it pays all the workers, [they] will not come back to work.
- The two parties mention that at the moment there are about 10 workers who are on maternity leave.

Issue 27: The workers demand that the Company reinstate Se Seng and pay [her] wages and perquisites for the period the Company dismissed her.

- Se Seng commenced work on 18 August 2003.
- On 16 July 2007 at 9:00 a.m., Ms. Se Seng gave [working slips] with the same number to the Company. The Company alleges that Ms. Se Seng cheated by recording repeated numbers. Ms. Se Seng, on the other hand, acknowledges that the number of the [working slips] was repeated but she did not intend to cheat the Company; it was an unintentional mistake. Based on Ms. Se Seng's claim, the amount in the mistaken slips was very little, less than one US dollar. The representative of the Company who attended the hearing did not mention how much the amount was.
- The Company considers the cheating of the [working slip] is serious misconduct and terminated Ms. Se Seng from work on 17 July 2007.
- The Company did not state whether Ms. Se Seng had committed any misconduct in the past.
- The Arbitration Council found that Clause 10 of the Company's Internal Work Rules regarding disciplinary [action] does not state clearly that recording wrong [working slip] amounts to serious misconduct.
- The Arbitration Council found that Clause 10 of the Company's Internal Work Rules states that: *"Where there is actual evidence that workers have committed misconduct intentionally, the Company will punish the person based on the degree of the misconduct as follows:*
 - o *Minor misconduct: The first time, the person will receive an oral warning and it will be recorded in the [workers] personal file. In the case the misconduct is repeated, the person will receive a warning in writing. If the misconduct is repeated a third time, the person will be terminated from work.*
 - o *Medium misconduct: The first time, the person will receive a warning in writing and it will be recorded in the [workers] personal file. The second time, the person will be suspended without wages for a period of time (not exceeding 7 days). In the event the misconduct is repeated a third time, the person will be terminated from work.*
 - o *Serious misconduct as stated in the Labour Law, the person will be terminated from work. If necessary, the Company will forward the case to authority to resolve the case according to the law in effect".*

Issue 31: The workers demand that the Company increase the wages of workers in the cutting section who are skillful and have many years of seniority by US\$ 20 per month.

- The workers demand that the Company increase the wage of workers in the cutting section such as Say Oun, Sao Khatda, Sao Khatdoeun, Long Chhunleng, Vit Vin and Dy Sambath by US\$ 20 because these workers have skill and many years of seniority; and the new workers whom the Company has just recruited receive a similar wage to them. The workers mention that the demand does not have any legal ground. The union intended to withdraw the issue from this case but the workers who are present at the hearing requested that this be maintained.
- The Company mentions that it is incapable of increasing their wage.
- Clause 5 of the Internal Work Rules states, *“The Company pays wages based on the [quality of] work, ability and work results of each worker. The Company will consider increasing the wage of each worker at the end of each year by looking at the work results, [the workers] respect of discipline and the [quality] of work of each worker and the ability of the Company [to pay].”*

Issue 35: The workers demand that the Company reinstate Nhean Chantha and Hin Thear and provide [their] wages and perquisites for the period of their termination.

1. Worker named Nhean Chantha

- Nhean Chantha is a worker who commenced work on 11 June 2005.
- On 22 August 2007, the Company terminated Mr. Nhean Chantha giving the reason that he had a bad attitude and the Company had warned him three times already. The Company does not mention when the Company warned Mr. Nhean Chantha for the first time and what was the reason. The Arbitration Council received a document regarding the second warning to Mr. Nhean Chantha dated 20 August 2007 and the third warning on 21 August 2007. The reason that the Company warned Mr. Nhean Chantha was because he was lazy and slept during working hours. The Arbitration Council required the Company to explain more about the warning documents to Mr. Nhean Chantha but it could not.
- Nhean Chantha, the worker, explain in the hearing that he was not lazy or slept during working hours but the Company made this up to accuse him and he does not acknowledge the warning letter. The Company does not respond to what was raised by Mr. Nhean Chantha

2. Worker named Hin Thea

- Hin Thea is a worker who commenced work on 21 October 2002.
- On 17 August the Company warned him three times within one day giving the reason that he did not follow the Company's order. The Arbitration Council asks the Company to explain more about the warning documents to Mr. Hin Thea but it could not.
- Hin Thea who was present at the hearing mentioned that he did not follow [the order] because it was not part of his job responsibilities. The Company does not respond to what was raised by Hin Thea.

Issue 38: The workers demand that the Company reinstate Chuon Vanna, cashier of local C.CAWDU, and provide [his] wages and perquisites for the period of termination.

- Mr. Chuon Vanna, ID 837, who works in Group B, was terminated from work on 31 August 2007 for the reason that he did not respect the discipline in the Factory and he had received many warnings already but did not change his behaviour and this affected the Company's production assembly line.
- Mr. Chuon Vanna acknowledged that he had received three warning letters but he did not sign those letters because he did not do [what the company had] accused him of.
- The Arbitration Council received the three warning letters by the Company as follows:
 - o The first warning letter is dated 22 August 2007. The Company accused Mr. Chuon Vanna of talking to Pou Tha and not working. The Arbitration Council found that this warning letter contained the signature of a person named Keo who was a witness to this incident. But Keo did not come to give testimony in the hearing. In the hearing, Mr. Chuon Vanna denies this and does not acknowledge the accusation by the Company. The Company does not mention what time Mr. Chuon Vanna sat down and did not do any work and it does not mention what time in the [warning] letter either.
 - o The second letter is dated 28 August 2007. The Company accused Mr. Chuon Vanna of reading a book without paying any attention to his work and behaving badly towards other people. The Arbitration Council found that this warning letter contained the signature of a person named Keo who was a witness to this incident. But Keo did not come to give testimony in the hearing. In the hearing, Mr. Chuon Vanna denies this and does not acknowledge the accusation by the Company. The Company does not

mention what time Mr. Chuon Vanna sat reading a book idly and it does not state this in the [warning] letter either.

- The third warning letter dated 31 August 2007. The Company accused Mr. Chuon Vanna of not working and sitting down idly for about forty minutes. The Arbitration Council found that this warning letter contained the signatures of persons named Keo and Amei who were witnesses to this incident. But Keo and Amei did not come to give testimony in the hearing. In the hearing, Mr. Chuon Vanna denies this and does not acknowledge the accusation by the Company. The Company does not mention what time Mr. Chuon Vanna did not work and sat down idly and it does it state this in the [warning] letter either.
- On 31 August 2007 the employer gave Mr. Chuon Vanna notice of termination. The employer terminated Mr. Chuon Vanna on 03 September 2007.
- The Company alleges that this labour dispute is an individual dispute. However, the Company does not provide any legal argument to support this claim.
- The company does not mention whether Mr. Chuon Vanna's misconduct amounts to minor misconduct, medium misconduct or serious misconduct.
- The Arbitration Council found that Clause 10 of the Company's Internal Work Rules states that: *"Where there is specific evidence that workers have committed misconduct intentionally, the Company will punish the person based on the degree of the misconduct as follows:*
 - *Minor misconduct: The first time, the person will receive an oral warning and it will be recorded in the [workers] personal file. In the case the misconduct is repeated, the person will a receive warning in writing. If the misconduct is repeated a third time, the person will be terminated from work.*
 - *Medium misconduct: The first time, the person will receive a warning in writing and it will be recorded in the [workers] personal file. The second time, the person will be suspended without wages for a period of time (not exceeding 7 days). In the event the misconduct is repeated a third time, the person will be terminated from work.*
 - *Serious misconduct as stated in the Labour Law, the person will be terminated from work. If necessary, the Company will forward the case to authority to resolve the case according to the law in effect".*

Issue 39: The workers demand that the Company terminate the Head of Mechanic and Head of Security

- The union alleges that the Head of Security for the day shift (both parties do not remember the name) caught Mr. Say Oun for the Head of Mechanic and beat him on 3 September 2007 at around 1:30 p.m. during the time the electricity was cut off. The union adds that the Head of Mechanic called Lin Shao Guing physically beat Mr. Say Oun and Mr. Ly Bunyin.
- Mr. Lin Sao Guing who was present in the hearing replies that he did not beat these workers.
- The worker party does not provide any evidence such as photos, evidence of scarring or bruises on the worker, certificate from doctor, complaint letter to police or police record regarding the beating to the Arbitration Council to support their claim that the Head of Mechanic beat them and they were injured.

Issue 40: The workers request that the company reimburse 17 C.CAWDU union leaders and activists their full wages and bonus payments deducted by the company on 03 September 2007

- The 17 workers are: 1. Khin Sreymom, 2. Porn Neary, 3. Say Oun, 4. Sao Khatna, 5. Eou Bona, 6. Sy Net, 7. Yung Malis, 8. Hong Theary, 9. Sao Khadeoun, 10. Lok Seiha, 11. Seoum Sam En, 12. Ly Bunyin, 13. Ko Kimleng, 14. San Thi, 15. Hong Kimly, 16. Vin Horn, 17. Ros Sothea.
- On 3 September 2007 at about 12 noon, Ly Bunyin and Sao Khatdoeun, workers, walked to the Company's office to negotiate with the Company regarding the termination of Mr. Chuon Vanna. Mr. Li Bunyin asked the Company three times about the reason of the termination. According to the claim by the workers, the employer said, "terminate or not is my business. If I am not happy, I will terminate." But in the hearing the Company says that it does not know about this.
- The Company claims that on 3 September 2007 at 1:00p.m. Ly Bunyin, Sao Khatdoeun and Sao Khatda turned off the electricity in the factory for two hours. The factory had no electricity until 3:00pm. The Company does not have a witness to prove who or which worker among the three turned off the electricity. The Company provided a video CD to the Arbitration Council to support its claim. However, the Company requested the Arbitration Council not to give this document to the worker party. In the hearing the Company does not allow the Arbitration Council to play this video for the union to see for the reason that [it

wants to] keep this evidence to use in court. During the time the electricity was cut off, all workers did not work. They cheered and clapped their hands and did not work for about forty minutes because there was no electricity from around 1:05 p.m. to 1:45 p.m. The employer party alleges that the workers wanted to go on strike because they turned off the electricity and clapped their hands.

- Based on the employer party's claim, after the electricity returned at around 3:00 p.m., all workers went back to work except 17 workers who did not agree to work for about another hour. The worker party responds that when the electricity was back all of them went back to work normally. The employer party does not provide any specific evidence to show that the 17 workers did not work for another hour from 3:00 p.m.
- The Company deducted the attendance bonus of the 17 workers in an amount of US\$2.5 and two hours of wages for the reason that the workers intentionally did not work. There was no electricity was from 1:00 p.m. to 3:00 p.m.
- The Company did not deduct the wage and attendance bonus from the other workers who could not work during the time the electricity was cut off.

Issue 41: The workers demand that the Company to terminate Mr. Hatt Matt, Head of warehouse section

- Mr. Hatt Matt, ID 857, is the manager of the cloth warehouse. The worker party alleges that on 3 August 2007, Mr. Hatt Matt did not come to work but his [work record] shows that he came to work. The Company mentions that on 3 August 2007, the Company assigned him to go to work outside. That was why his [work record] shows that he came to work.
- The worker party also alleges that Mr. Hatt Matt reported incorrect information to the Company to terminate workers without a valid reason. The Company rejects this assertion and states that it is not Mr. Hatt Matt's role to report to the Company regarding the termination of any worker. The workers do not respond to this claim by the employer and did not state any reason why [Mr Hatt Matt] would have provided incorrect information.

Issue 44: The workers demand that the Company reinstate Ly Bunyin, President of the local C.CAWDU, and provide [his] wages and perquisites for the period of termination

- Mr. Ly Bunyin commenced work on 10 May 2004 on an undetermined duration contract.

- The Company claims that on 3 September 2007, at about 1:00 p.m. [Mr Ly Bunyin] turned off the main electrical switch and all workers in the whole factory could not work for about two hours. The Company provided a CD which recorded the incident when the electricity was switched off to the Arbitration Council to support this accusation. However, the Company does not provide this CD to the workers claiming that this is important evidence to be used in the court. The Arbitration Council informed the employer party that in principle the Arbitrators cannot consider evidence unless it is provided to the other party to have a chance to review and respond. Thus, if the employer party cannot provide this to the worker party, the Arbitration Council cannot consider the evidence. In this case, the Arbitration Council does not consider the CD.
- However, the Company provided minutes which recorded that the local C.CAWDU union caused chaos in the factory. Based on this report, the Company mentions that Mr. Ly Bunyin was the inciter and the one who turned off the electricity. The Arbitration Council found that these minutes were completed at 5:40 p.m. on 3 September 2007 with signatures of the [director] of the factory and some workers as witnesses.
- The Company provided a police report dated 4 September 2007, which mentioned that Mr. Ly Bunyin was the sole agitator in this case.
- On 4 September 2007, the Company applied to the Department of Labour Disputes to request the suspension of employment of Mr. Ly Bunyin for the reason that he turned off the main electrical switch on 3 August 2007.
- On 5 September 2007, the Company suspended Mr. Ly Bunyin's employment to wait for decision from the Department of Labour Disputes.
- On 7 September 2007, the Company submitted a letter to the Department of Labour Disputes requesting the dismissal of Mr. Ly Bunyin from work.
- On 3 October 2007, the Department of Labour Disputes issued a letter No. 1092 KB/AK/VK, dated 03 October 2007, agreeing to the Company's request to terminate Mr. Ly Bunyin, President of local C.CAWDU at Kingsland Factory for it considered that the accusation by the Company that Mr. Ly Bunyin turned off the main electrical switch was correct. The letter stated Mr. Ly Bunyin could appeal to the Minister of Labour within 2 months.
- On 13 November 2007, C.CAWDU made an appeal to the Minister of Labour regarding the decision by the chief of the Department of Labour Dispute, No. 1092

KB/AK/VK, dated 03 October 2007 through a letter by C.CAWDU, No. 115/07/SBKK, dated 13 November 2007. However, up to the hearing day, the Minister of Labour has not replied to the appeal by C.CAWDU.

Issue 45: The workers demand that the Company reinstate Phal Savin, Vice-President of local C.CAWDU and Mr. Sao Khatdoeurn, union secretary, and provide [their] wages and perquisites for the period of termination

1. Case of Ms. Phal Savin

- Ms. Phal Savin, ID 084 in the sewing section, commenced work on 24 November 2005 and she has an undetermined duration contract.
- On 25 August 2007, the Company applied to the Department of Labour Disputes to request the suspension of her employment based on a minute about Ms. Phal Savin's activities, dated 24 August 2007 and thumbprints of workers who witnessed that Ms. Phal Savin undertook her own activities during working hours and quarreled with the Chinese supervisor; such activities are contrary to Article 83 of the Labour Law, clauses 2 and 3 and to the Company's Internal Work Rules that it affects the production assembly line of the Company. This report mentions that the Company requested suspension of Ms. Phal Savin's work from 27 August 2007 to allow them time to find a solution.
- Union representatives and Ms. Phan Savin who were present at the hearing mentioned that she did not use Company's working hours to do her own work but she helped to resolve a problem a union advisor [had] with a Chinese supervisor who did not agree to record working hours when there was no work to do and she talked to the Chinese supervisor to ask for the reasons [and] then she went back to work normally. The Company does not respond to her claim.
- The Company issued a letter, no date, to inform the company security not to allow Ms. Phal Savin to enter the factory because the Company suspended her work for a period of time, commencing from the morning of 28 August 2007 to allow the company time to find a solution.
- On 28 August 2007, the Company applied to the Department of Labour Disputes to request the termination of Ms. Phal Savin from work.
- On 28 September 2007, the chief of the Department of Labour Disputes issued a letter No. 1068 KB/AK/VK, dated 28 September 2007 agreeing to the request of the Company to terminate Ms. Phal Savin, Vice-President of the local C.CAWDU at Kingsland Company for it considered that the accusation about Ms. Phan Savin

was correct. The letter opened a way for her to appeal to the Minister of Labour within 2 months.

- On 13 November 2007, C.CAWDU made an appeal to the Minister of Labour regarding the decision by the chief of the Department of Labour Dispute, No. 1068 KB/AK/VK, dated 28 September 2007 through a letter from C.CAWDU, No. 115/07/SBKK, dated 13 November 2007. However, up to the hearing day, the Minister of Labour had not replied to the appeal by C.CAWDU.

2. Case of Mr. Sao Khatdoeun

- Mr. Sao Khatdoeun commenced work on 17 February 2003 and he has an undetermined duration contract. He has a role as a union advisor and is preparing himself to be promoted to union secretary.
- The Company terminated Mr. Sao Khatdoeun from work on 4 September 2007 as the Company accused him of inciting workers to go on strike on 3 September 2007 in a minute regarding the local union of C.CAWDU causing chaos in the factory. In the hearing, Mr. Sao Khatdoeun denies inciting [workers] as accused by the Company but, he states, the workers went on strike by themselves.
- The Company does not provide any evidence or witnesses to certify that Mr. Sao Khatdoeun incited workers to go on strike.
- The Company did not give Mr. Sao Khatdoeun prior notice of his termination.

Additional point: The workers demand that the Company reinstate seven workers whom the Company terminated during the arbitration procedure.

- The workers demand that the Company reinstate seven workers whom the Company terminated during the arbitration procedure.
- The workers do not mention that this demand [has arisen as] a direct consequence of the labour dispute in this case.
- The employer states that it won't talk about this issue because it is not listed in the Non-conciliation report by the Ministry of Labour and the termination of these workers is an individual dispute, not a collective dispute.

REASONS FOR DECISION

Issue 7: The workers demand that the Company pay [workers who take maternity leave] half of their wages and perquisites for three months of maternity leave in advance of the commencement of the leave

Article 182 of the Labour Law states, *“In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”*

Based on the findings of fact, the Arbitration Council found that the Company allows women who have been working for at least one year for the Company to take 90 days maternity leave. Thus, the practice of 90 days maternity leave is in accordance with Article 182 of the Law.

Article 183, paragraph 1, states, *“During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.”* In the findings of fact, the Arbitration Council found that the Company pays workers on maternity leave an amount equal to 50% of their wage including perquisites. The Arbitration Council also considers that what the employer has done is in accordance with Article 183 of the Law.

However, in this case the Company pays the maternity payment to women workers once a month, but the workers demand that it pays for three months in advance of the commencement of the leave in accordance with the Labour Law. The Arbitration Council will consider this issue as follows:

Article 116 of the Labour Law in paragraphs 1 and 2 states, *“Laborers' wages shall be paid at least two times per month, at a maximum of sixteen-day intervals. Employees' wages must be paid at least once per month.”*

In addition, paragraph 3 of Article 115 of the Labour Law states, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

In Arbitral Award No. 57/06-Evergreen, Issue 6, the Arbitration Council explains that *“according to Article 182, women workers are legally entitled to 90 days leave. If they go to work normally, they will receive the monthly wage on the 07th of each month. But the payday determined by the company falls on dates when the women workers take maternity leave for 90 days. Therefore, according to Article 115, the Arbitration Council considers that women workers are entitled to receive 50% pay including perquisites for the 90 days of maternity leave before the leave starts.”*

In this case, the Arbitration Council also agrees with the interpretation of the arbitrators in the above mentioned case. Therefore, the Arbitration Council decides that the

Company should pay 50% of three months of wage and perquisite to women workers in advance of the commencement of the leave.

Issue 27: The workers demand that the Company reinstate Se Seng and pay [her] wages and perquisites for the period that the Company terminated her.

In this case the workers demand that the Company reinstate Se Seng and pay her wages and perquisites for the period that the Company terminated her because of recording repeated numbers. The Company does not agree because this worker had an intention to cheat the Company. The Arbitration Council will consider this issue as follows:

In this case, the Arbitration Council found that the Internal Work Rules of the Company do not explicitly provide a procedure to terminate a worker because he or she has cheated on the [working slip]. The Internal Work Rules just mention about minor misconduct, medium misconduct and serious misconduct. The Internal Work Rules do not state either whether recording repeated numbers on the [working slip] is a minor misconduct, medium misconduct or serious misconduct. In this case, the Company considers this is serious misconduct and decides to terminate this worker.

Article 27 of the Labour Law states, *“Any disciplinary sanction must be proportional to the seriousness of the misconduct..”*

Based on Article 27 as mentioned above, the Arbitration Council considers that the employer can discipline or take measures to terminate a worker but the disciplinary sanction must be proportionate to the weight of the misconduct.

Based on the findings of fact above, the worker named Se Seng mentions that the misconduct of recording repeated numbers of [working slip] involves a very little amount of money of less than one US dollar; and the employer does not show any evidence to object to what has been raised by the worker and it does not show that Se Seng has been warned before.

Thus, the Arbitration Council considers that the misconduct of incorrectly recording [repeated numbers] on the [working slip] involves a small amount of money and is not proportionate to the sanction of termination. The Arbitration Council considers that the employer should warn her in writing rather than terminating her.

In conclusion, the Arbitration Council orders the employer to give a first warning to Se Seng and reinstate this worker and provide her wages and perquisites from the day of termination.

Issue 31: The workers demand that the Company increase [the wages of] workers in the cutting section who are skillful and have many years of seniority by US\$ 20 per month.

Point 1 of Notification No. 745 KKBV, dated 23 October 2006, states, *“The minimum wage for garment textile workers and shoe making workers is set at US\$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US\$ 50 per month.”*

Paragraph 2 of point 2 of the above mentioned Notification also states, *“The new Notification regarding minimum wage shall be in effect from 01 January 2007 on”*

Based on this Notification No. 745, the Ministry of Labour and Vocational Training issued a Notification No. 806 KKBV, dated 15 December 2006 regarding the implementation of the minimum wage for garment textile workers and shoe making workers.

Workers in this case receive a main wage of at least US\$ 50 per month. This means that the Company has already followed Notification 745 KKBV, dated 23 October 2006.

In this case, the Arbitration Council found that no workers receive a wage of less than US\$ 50. In addition, there is no agreement between the workers and the employer regarding increasing the wage by US\$ 20. Therefore, the Arbitration Council considers that the workers' demand does not have any legal basis. Thus, the Arbitration Council considers this demand of the workers is an interests dispute because it demands something which is above what is provided by the Law.

Generally, the Arbitration Council rejects an interests dispute if the union does not have most representative status in the factory. The most representative status of the union provides legal standing to negotiate to create a collective bargaining [agreement] in a company (See Article 96, paragraph 2-B and Prakas 305, clause 9, paragraph 1) and a legal right to bring an interests dispute to the Arbitration Council for resolution. In order to obtain most representative status, Article 277 of the Labour Law 1997 states that the union has to be registered and follow other conditions as stated in this Article. (See Arbitral Award No. 57/04-Evergreen; 60/04-United Arts, Issue 3; 08/07-Siu Quinh, Issue 3; and 33/07-Goldfame, Issue 2).

In this case, the union does not have most representative status. Therefore, the Arbitration Council decides to reject the demand of the union that the Company increase the wages for workers in the cutting sections who are skillful and have many years of seniority by US\$ 20 per month.

Issue 35: The workers demand that the Company reinstate Nhean Chantha and Hin Thear and provide [their] wages and perquisites for the period of their termination

Article 27 of the Labour Law states, *“Any disciplinary sanction must be proportional to the seriousness of the misconduct...”*

Based on Article 27 as mentioned above, the Arbitration Council considers that an employer can discipline or take action to terminate a worker but the disciplinary action must

be proportional to the weight of the misconduct. The Arbitration Council considers the case of Mr. Nhean Chantha and Mr. Hin Thea as follows:

For the case of Mr. Nhean Chantha

In this case, the Company terminated Mr. Nhean Chantha from work for the reason that he has a bad attitude and the Company had warned him three times already. The Company does not mention when the Company warned him the first time and for what reason. The second warning of Nhean Chantha was on 20 August 2007 and the third time was on 21 August 2007. The reason that the Company warned Mr. Nhean Chantha was because he was lazy and slept during working hours. However, Mr. Nhean Chantha mentions that he was not lazy and did not sleep during working hours. The Arbitration Council asked the Company to explain more about the warning letters to Nhean Chantha but the Company could not explain further. In addition, the employer does not provide clear evidence regarding the dismissal.

In previous awards the Arbitration Council held that the party who makes the accusation has the burden of proof. (See Arbitral Awards 17/07-Charm Textile, Issue 1; 35/07-Flying Dragon, Issue 2).

In this case, the Arbitration Council considers that there is not enough evidence to prove that the dismissal of Mr. Nhean Chantha is proportional to the misconduct, which the employer accused him of.

For the case of Mr. Hin Thea

On 17 August the Company warned him three times in one day for the reason that he did not follow the Company's command. The Arbitration Council required the Company to provide further explanation about the warning document to Mr. Hin Thea but the Company could not explain it. The worker named Hin Thea who is present at the hearing mentions that he did not do [the work assigned to him by the employer] because it was not his job. The Company did not respond to what was raised by Hin Thea and does not mention which clause of the Company's Internal Work Rules this warning is in accordance with.

In previous awards, the Arbitration Council held that the party who makes the accusation has the burden of proof. (See Arbitral Awards 17/07-Charm Textile, Issue 1; 35/07-Flying Dragon, Issue 2).

In this case, the Arbitration Council considers that there is not enough evidence to prove that the dismissal of Mr. Hin Thea is proportional to the misconduct, which the employed accused him of.

In conclusion, the Arbitration Council decides that the employer [should] reinstate the workers named Nhean Chantha and Hin Thea and provide [their] wages and perquisites from the date of termination because the terminations are not legally valid.

Issue 38: The workers demand that the Company reinstate Chuon Vanna, cashier of local C.CAWDU, and provide [his] wage and perquisites for the period of termination.

In this case, the Company mentions that the dispute relating to the termination of Mr. Chuon Vanna is an individual dispute. However, the Company does not provide any legal evidence to prove this.

Article 302 of the Labour Law states, *“A collective labor dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peace.”*

Based on Article 302 of the Labour Law, in order to say that a dispute is a collective dispute, it has to fulfill three conditions as stated in the Labour Law in Article 302.

The three conditions are:

- a. the dispute that arises is between one or more employers and a certain number of their staff
- b. the issue in dispute is related to working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers
- c. this dispute could jeopardize the effective operation of the enterprise or social peace.

In Arbitral Award No. 45/07-Wilson, Issue 4, the Arbitration Council determined that *“the Arbitration Council presumes that all claims contained in the MoLVT non-conciliation report are collective. As the employer has made an objection against this presumption, they have the burden of proving their claim....”*

As the employer party did not provide any evidence or reasons to rebut the Arbitration Council’s presumption that based on the MoLVT’s classification that this dispute is collective, the Arbitration Council determines that this dispute is within its jurisdiction and will therefore consider the workers’ claim.”

In this case, the Arbitration Council also agrees with the interpretation in the above mentioned case. Besides its claim, the employer does not provide evidence to prove that this labour dispute is not a collective dispute. The Arbitration Council considers that it has jurisdiction over this case. Thus, the Arbitration Council will consider the case of Mr. Chuon Vanna as follows:

Article 27 of the Labour Law states, *“Any disciplinary sanction must be proportional to the seriousness of the misconduct...”*

Based on Article 27 as mentioned above, the Arbitration Council considers that the employer can discipline or take measures to terminate a worker but the disciplinary sanction must be proportionate to the weight of the misconduct.

Clause 10 of the Company’s Internal Work Rules states, *“Where there is specific evidence that workers have committed misconduct intentionally, the Company will punish the person based on the degree of the misconduct as follows:*

- *Minor misconduct: The first time, the person will receive an oral warning and it will be recorded in the [workers] personal file. In the case the misconduct is repeated, the person will receive warning in writing. If the misconduct is repeated a third time, the person will be terminated from work.*
- *Medium misconduct: The first time, the person will receive a warning in writing and it will be recorded in the [workers] personal file. The second time, the person will be suspended without wages for a period of time (not exceeding 7 days). In the event the misconduct is repeated a third time, the person will be terminated from work.*
- *Serious misconduct as stated in the Labour Law, the person will be terminated from work. If necessary, the Company will forward the case to authority to resolve the case according to the law in effect”.*

Based on the above mentioned Internal Work Rules, the Arbitration Council considers that the employer has the right take disciplinary action; [the action taken depends on] the degree of the misconduct of workers who have intentionally committed the misconduct and the actual evidence. However, the Internal Work Rules do not [define what is] minor misconduct, medium misconduct and serious misconduct and what amounts to sufficient evidence.

Thus, for the disciplinary action of a worker, the employer has to show actual evidence. In addition, according to Article 27 of the Labour Law, the disciplinary action has to be proportional to the misconduct.

Based on the finding of facts above, the Company terminated Mr. Chuon Vanna because it had already warned him three times. Mr. Chuon Vanna admits there are three warning letters to him. However, he did not sign [the letters] to acknowledge [the warnings] as he [claimed] that he did not do what the Company accused him of. The Company, on the other hand, does not provide any actual evidence related to Mr. Chuon Vanna’s misconduct regarding the three warnings. Moreover, the witnesses who witnessed the three incidences were not present at the hearing.

In relation to the employer and the workers' claim, the Arbitration Council considers that three warning letters were given to Mr. Chuon Vanna. Nonetheless, the Company does not provide actual evidence or bring witnesses, to clarify [what] misconduct Mr. Chuon Vanna [conducted on the three occasions], to the Arbitration Council.

In previous awards, the Arbitration Council held that the party who makes the allegation has the burden of proof. (See Arbitral Awards 17/07-Charm Textile, issue 1 and 35/07, issue 2).

In this case, the Arbitration Council agrees with the previous decision that the party who makes the allegation has the burden of proof. In this case, the Arbitration Council considers that the Company does not have evidence to prove that the dismissal of Mr. Chuon Vanna is proportional to the weight of the misconduct, which the employer accused him of in the three warnings.

Therefore, the Arbitration Council considers that the action of terminating Mr. Chuon Vanna in this case is not proportional to his misconduct because there is not sufficient evidence in relation to each warning. The Arbitration Council considers that the Company should find another measure which is proportional to the misconduct to discipline Mr. Chuon Vanna rather than terminating him from work.

In conclusion, the Arbitration Council decides that the employer should reinstate Mr. Chuon Vanna.

Issue 39: The workers demand that the Company terminate the Head of Mechanic named Lin Shao Qing and Head of Security

Article 65 of the Labour Law determines that *“A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.”*

Based on the content of Article 65 of the Labour Law as mentioned above, the Arbitration Council considers that a contract is an agreement between an employer party and a worker party and the employment contract must be under common law. Therefore, the Arbitration Council considers that Decree 38 referring to Contract and Other Liabilities also applies to this employment contract.

Clause 22 of Decree 38 referring to Contract and Other Liabilities of 1988 states, *“A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties. ...A contract binds only the parties to the contract.”*

Based on the content of Clause 22 of Decree 38 referring to Contract and Other Liabilities of 1988 as mentioned above, the Arbitration Council considers that only the contracting parties have the right to discontinue the contract. In this case, only the Company

party and the worker party (the Head of Mechanic and Head of Security) have the right to request the termination of the contract. The union and the workers who are making the demand in this case are not the contracting parties. Thus, they do not have the right to demand the contracting parties cancel their contract.

However, in previous awards, the Arbitration Council held that workers do not have the right to demand that the employer terminate a worker from work unless the workers who are demanding that the employer terminate another worker from work can provide evidence to prove that that worker is a danger to the safety and health of other workers in the factory (see Arbitral Awards 73/04-Genuine, Issue 5 and 79/06-Woo Su, Issue 2).

In this case, the worker party does not have any actual evidence to provide to the Arbitration Council to prove that the chief of mechanic and the chief of security are dangerous to the safety and health of other workers in the factory.

Therefore, in order to be consistent with previous arbitral awards, the Arbitration Council decides to reject the demand of the Company to terminate the Head of Mechanic named Lin Shao Qing and Head of Security.

Issue 40: The workers request that the company pay 17 C.CAWDU union leaders and activists the full wages and bonuses that were deducted by the company on 3 September 2007

Based on the above findings of fact, the workers request that the Company pay 17 C.CAWDU union leaders and activists their wages and bonuses which the Company deducted on 3 September 2007; but [did not deduct] from other workers even though all of the [workers] joined the strike together. The Arbitration Council considers this case as follows:

1. The demand for [payment of] two hours wages deducted by the employer

Article 318 of the Labour Law states, “A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work...”

In this case, on 3 September 2007 [from] 1:00 p.m. [to] 3:00 p.m. the electricity was switched off and workers in the factory stopped working to demand that the employer provide a solution regarding the dismissal of Mr. Chuon Vanna. The Arbitration Council considers that the period of two hours where workers did not perform work was a strike under Article 318 of the Labour Law.

Article 332 of the Labour Law states, “A strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid...”

In this case, during the strike, the 17 workers and other workers did not perform work for the employer. According to Article 332 of the Labour Law as mentioned above, their employment contract was suspended [which means that] their wage shall not be paid for the duration of the two hour strike.

In this case, the employer did not provide a wage to the 17 workers because they did not work for the two hours. The Arbitration Council considers that the employers act is not contrary to the Labour Law and the Labour Law does not prohibit an employer from maintaining the wage for workers who join the strike. The decision to maintain wages for a worker is [consistent with the] right to manage and supervise as stated in Article 2 of the Labour Law.

Therefore, the Arbitration Council decides to reject the demand of the workers to request the employer to provide wages to the 17 workers during the strike.

2. For the demand to maintain the attendance bonus

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, *“Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained.”*

Point 3 of Notification 017 SKBY, dated 18 July 2000 states, *“Workers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month.”*

In Arbitral awards 44/07-Winner Knitting, Issue 2, the Arbitration Council interprets that *“Arbitration Council considers that the words “work regularly” have two meanings, as below:*

(a) work 26 days per month if there is no national festival or leave set by the state.

(b) work less than 26 days per month for national festival or leave set by the state which is leave with proper permission and also employer’s permission.”

Thus, the Arbitration Council will consider whether the workers’ strike means that the workers worked regularly for the employer as follows:

The Labour Law requires that the workers follow some procedures when conducting a strike. These procedures include:

Article 323 of the Labour Law states, *“A strike shall be declared according to the procedures set out in the union’s statutes, which must state that the decision to strike is adopted by secret ballot.”*

Article 324 of the Labour Law states, *“A strike must be preceded by prior notice of at least seven working days and be filed with the enterprise or establishment. If the strike affects an industry or a sector of activity, the prior notice must be filed with the corresponding employer’s association, if any. The prior notice must precisely specify the demands which constitute the reasons for the strike.”*

The prior notice must also be sent to the Ministry in Charge of Labor.”

Article 320, paragraph 4, of the Labour Law specifies that the right to strike can be exercised only when there is no means to solve the problem peacefully with the employer.

In this case, the Arbitration Council found that the workers conducted a strike without giving prior notice and did not try their best to negotiate to solve this labour dispute. This means that the worker party did not follow all the procedures for striking when they conducted the strike on 3 September 2007. Thus, the strike did not follow the procedures stated in the Labour Law.

Thus, the Arbitration Council considers that when workers conduct a strike which is not in accordance with the [correct] procedures, they do not work regularly for the employer. Thus, the workers are not entitled to receive their regular attendance bonus under the content of Notification 017 of year 2000. (See Arbitral Awards 04/03-Lida, Issue 1; 15/04-Lucky Zone, Issue 4; and 03/05-Flying Dragon, Issue 3).

In addition, the Labour Law does not prohibit an employer from not paying an attendance bonus for workers who join a strike. The decision to decline to pay an attendance bonus for a worker is [consistent with] the right to manage and supervise as stated in Article 2 of the Labour Law.

Therefore, the Arbitration Council decides to reject the workers' demand for the Company to pay the regular attendance bonus for the 17 workers.

Issue 41: The workers demand the Company to terminate Mr. Hatt Matt, Head of Warehouse section

Article 65 of the Labour Law determines that *“A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.”*

Based on the content of Article 65 of the Labour Law as mentioned above, the Arbitration Council considers that a contract is an agreement between the employer party and the worker party and the employment contract must be under common law. Therefore, the Arbitration Council considers that Decree 38 referring to Contracts and Other Liabilities also covers this employment contract.

Clause 22 of Decree 38 referring to Contract and Other Liabilities of 1988 states, *“A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties. ...A contract binds only the parties to the contract.”*

Based on the content of Clause 22 of Decree 38 referring to Contract and Other Liabilities of 1988 as mentioned above, the Arbitration Council considers that only the contracting parties have the right to discontinue the contract. In this case, only the Company

party and the worker party (Mr. Hatt Matt) have the right to request the termination of the contract. The union and the workers who are making the demand in this case are not contracting parties. Thus, they do not have the right to demand the contracting parties cancel their contract.

However, in previous cases, the Arbitration Council held that workers do not have the right to demand that the employer terminate a worker unless the workers who are demanding that the employer terminate another worker can provide evidence to prove that that worker is a danger to the safety and health of other workers in the factory. (See Arbitral Awards 73/04-Genuine, Issue 5 and 79/06-Woo Su, Issue 2).

In this case, the worker party does not have any explicit evidence to provide to the Arbitration Council to prove that Mr. Hatt Matt is a danger to the safety and health of other workers in the factory.

Therefore, in order to be consistent with previous arbitral awards, the Arbitration Council rejects the demand for the Company to terminate Mr. Hatt Matt.

Issue 44: The workers demand that the Company reinstate Ly Bunyin, President of local C.CAWDU, and provide [his] wages and perquisites for the period of termination

Article 293 of the Labour Law states, "The dismissal of a shop steward or a candidate for shop steward can take place only after authorization from the Labor Inspector...."

Clause 4 of Prakas 305 SKBY, dated 22 November 2001, states, "...From the time that the application for registration is submitted, all workers who are founding members of a union, as well as those workers who voluntarily join the union during the application period, shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 days following the date of registration of the union. Beyond the date specified in the preceding paragraph, this protection shall cover, under the conditions specified in Articles 282 and 293 of the Labor Law, the three union leaders ..."

Based on the content of Article 293 and Clause 4 of Prakas 305 SKBY, dated 22 November 2001, the Arbitration Council considers that the employer has to get permission from the Labour Inspector for the termination of all union leaders. In this case, the employer applied to the Department of Labour Dispute to terminate Mr. Ly Bunyin and received approval from the Department regarding this termination on 3 October 2007.

Paragraphs 3 and 4, Article 293, of the Labour Law state, "On receipt of the decision, the employer, the worker in question, or the union organization to which the worker belongs has a period of two months to appeal to the Minister in Charge of Labor. The Minister in Charge of Labor can cancel or reverse the decision of the Labor Inspector.

If there is no notification of the Labor Inspector's decision within the allotted time, or if there is no notification of the decision of Minister in Charge of Labor within two months upon receipt of the appeal, the case and the appeal are considered to be rejected.”

In this case, on 13 November 2007, C.CAWDU lodged an appeal against the decision of the chief of the Department of Labour Dispute No. 092 KB/AK/VK, dated 03 October 2007, with the Minister of Labour through a letter from C.CAWDU No. 115/07/SBKK, dated 13 November 2007. However, up to the hearing day the Ministry in charge of Labour has not issued any response to the appeal of C.CAWDU. The Arbitration Council considers that this labour dispute is currently within the authority of the Minister in charge of Labour and the two months appeal period is not yet over. This means that this dispute is still within the authority of the Ministry of Labour and cannot be considered by the Arbitration Council yet.

In case 79/06-Woo Su, the Arbitration Council decided to reject the demand for the employer to reinstate union leader because the dispute was still within the authority of the Labour Inspector. (See Arbitral Award 79/06-Woosu, Issue 1).

In this case, the Arbitration Council agrees with the decision in the above mentioned case. In this case, the dispute regarding the termination of this union leader is still within the authority of the Ministry in charge of Labour and the Arbitration Council cannot make a decision yet because C.CAWDU has made an appeal against the decision of the chief of Department of Labour Disputes.

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the Company to reinstate Mr. Ly Bunyin, President of local C.CAWDU, and provide [his] wages and perquisites for the period of termination.

Issue 45: The workers demand that the Company reinstate Phal Savin, Vice-President of local C.CAWDU and Mr. Sao Khatdoeurn, union secretary, and provide [their] wages and perquisites for the period of termination

1. Case of Ms. Phal Savin

Based on the above findings of fact, on 13 November 2007, C.CAWDU lodged an appeal against the decision of the chief of the Department of Labour Dispute No. 1068 KB/AK/VK, dated 28 September 2007 with the Ministry of Labour through a letter from C.CAWDU No. 115/07/SBKK, dated 13 November 2007. However, up to the hearing date the Ministry in charge of Labour has not responded to the appeal of C.CAWDU regarding the case of Ms. Phal Savin.

The Arbitration Council considers that this labour dispute is still within the authority of the Minister in charge of Labour and the two month appeal period is not over yet. This means that this dispute is still within the authority of the Ministry in charge of labour and the Arbitration Council is not able to give consideration [to this issue].

Thus, the Arbitration Council decides to decline to consider the demand of the workers for the Company to reinstate Ms. Phal Savin, Vice-President of local C.CAWDU, and provide [her] wages and perquisite for the period of termination. (See further reasons in the Reasons for Decision, Issue 4 above.)

2. Case of Mr. Sao Khatdoeun

In this case, the Company terminated Mr. Sao Khatdoeun from work on 4 September 2007 as the Company accused him of inciting workers to go on strike on 3 September 2007 in the minutes regarding the cause of chaos in the factory by local C.CAWDU. In the hearing, Mr. Sao Khatdoeun denies that he incited workers as accused by the employer but [claims that] the workers went on strike by themselves. The Company does not provide any evidence or witnesses to prove that [Mr. Sao Khatdoeun] incited the workers to go on strike.

Article 27 of the Labour Law states, “*Any disciplinary sanction must be proportional to the seriousness of the misconduct...*”

In this case, the employer accused Mr. Sao Khatdoeun of inciting workers to go on strike. Mr. Sao Khatdoeun objects to this accusation. The employer does not provide any other evidence to prove that Mr. Sao Khatdoeun committed the misconduct sufficient to warrant his dismissal.

Thus, in this case, the Arbitration Council considers that there is not enough evidence to prove that Mr. Sao Khatdoeun committed a misconduct sufficient to warrant his dismissal from work.

In conclusion, the Arbitration Council decides that the employer should reinstate Mr. Sao Khatdoeun and provide [his] wages and perquisite for the period of his illegal dismissal. (See for further reasons in Reasons for Decisions, Issue 27, above).

Additional point: The workers demand that the Company reinstate seven workers whom the Company terminated during the arbitration procedure

In the hearing the workers sought to add an additional issue that the Company reinstate seven workers whom the Company terminated during the Arbitration procedure.

Article 312 of the Labour Law states, “*The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, are the direct consequence of the current dispute...*”

In this case, the employer states that the workers’ demand for the employer to reinstate seven workers is not mentioned in the non-conciliation report referred to the Arbitration Council by the Ministry of Labour. The Arbitration Council agrees with this.

In addition, the worker party does not mention that the issue, which arose after the report was made was the direct consequence of the labour dispute in this case.

Therefore, based on Article 312 of the Labour Law as mentioned above, the Arbitration Council declines to consider this demand of the workers.

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

DECISION AND ORDERS

Issue 7: Order the employer to pay [workers who take maternity leave] 50% of their wages and perquisites for three months of maternity leave in advance of the commencement of the leave

Issue 27: Order the employer to give a first warning to Se Seng and reinstate this worker and provide her wages and perquisites from the day of termination.

Issue 31: Reject the demand of the union for the Company to increase the wages of the workers in the cutting section who are skillful and have seniority by US\$ 20 per month.

Issue 35: Order the employer to reinstate workers named Nhean Chantha and Hin Thea and provide [their] wages and perquisites for the period the Company terminated them.

Issue 38: Order the employer to reinstate Mr. Chuon Vanna.

Issue 39: Reject the demand for the Company to terminate the chief of mechanic named Lin Shao Qing and chief of security.

Issue 40:

- a. Reject the demand for the Company to maintain wages for the 17 workers.
- b. Reject the demand for the Company to maintain a regular attendance bonus for the 17 workers.

Issue 41: Reject the demand for the Company to dismiss Mr. Hatt Matt from work.

Issue 44: Decline to consider the demand for the Company to reinstate Ly Bunyin, President of local C.CAWDU, and provide [his] wages and perquisites during the period of termination.

Issue 45:

- a. Decline to consider the demand of the workers for the Company to reinstate Ms. Phal Savin, Vice-President of local C.CAWDU, and provide [her] wages and perquisites for the period of termination.
- b. Order the employer to reinstate Mr. Sao Khatdoeun and provide [his] wages and perquisites for the period of illegal dismissal.

Additional Issue: Decline to consider the workers' demand for the Company to reinstate 7 workers whom the Company terminated during the arbitration procedure.

Type of Award: Non-binding award

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written 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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: