KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 028/14 - NagaWorld

Date of award: 3 March 2014

Dissenting Opinion: Arbitrator You Suonty

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **You Suonty**

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

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

DISPUTANT PARTIES

Employer party:

Name: **NagaWorld Limited**

Address: Samdech Hun Sen Park, Sangkat Tonle Bassac, Khan Chamkar Mon, Phnom Penh

Representatives attending the first hearing:

1. Mr Robert Cho	Deputy Director-General of Human Resources Department
2. Mr Jams Ma	Head of Staff Relations Section
3. Mr Long So Vithyea	Deputy Head of Staff Relations Section
4. Ms Mao Sam Vutheary	Attorney at Law
5. Ms Dy Seiha	Executive of Staff Relations Section
6. Mr Eng Mony Rith	Assistant to Attorney at Law

Representatives attending the second hearing:

1. Mr Robert Cho	Deputy Director General of Human Resources Department
2. Mr Jams Ma	Head of Staff Relations Section
3. Mr Long So Vithyea	Deputy Head of Staff Relations Section
4. Ms Mao Sam Vutheary	Attorney at Law

5. Ms Dy Seiha	Executive of Staff Relations Section
6. Mr Eng Mony Rith	Assistant to Attorney at Law

Worker party:

Name: **- Khmer Workers' Labour Right Supports Union at NagaWorld (the union)**

Address: Samdech Hun Sen Park, Sangkat Tonle Bassac, Khan Chamkar Mon, Phnom Penh

Telephone: 012 92 72 83 Fax: N/A

Representatives attending the first hearing:

1. Ms Chun Sokha	President of the union
2. Ms Cheum Sithor	Vice-President of the union
3. Ms Cheum Sokhon	Secretary of the union
4. Mr Sok Narith	Assistant to the union
5. Ms Pech Sophan Dara	Assistant to the union
6. Mr Chea Samros	member of the union
7. Mr Choun Kimhong	member of the union
8. Mr Jesus M. Pingul	member of the union
9. Ms Sem Sophanna	member of the union
10. Ms Chorn Chenda	member of the union
11. Mr Sun Vantheth	member of the union
12. Ms Seng Thida	member of the union
13. Ms Tang Sokha	member of the union
14. Ms Pov Chun Muny	Consultant to the union
15. Ms Ang Phearak	member of the union
16. Ms Pech Salang	member of the union
17. Ms Klaing Soben	Treasurer of the union
18. Ms Nob Tithboravy	member of the union
19. Ms Um Phalla	member of the union

Representatives attending the second hearing:

1. Ms Pech Sophan Dara	Assistant to the union
2. Ms Cheum Sithor	Vice-President of the union
3. Ms Chun Sokha	President of the union
4. Ms Cheum Sokhon	Secretary-General of the union
5. Ms Klaing Soben	Treasurer of the union
6. Ms Chorn Chenda	member of the union
7. Ms Sem Sophanna	member of the union
8. Mr Sun Vantheth	member of the union
9. Mr Jesus M. Pingul	member of the union

10. Mr Sok Narith	Assistant to the union
11. Ms Pech Salang	member of the union
12. Ms Tang Sokha	member of the union
13. Ms Nob Tithboravy	member of the union
14. Mr Chea Samros	member of the union

ISSUES IN DISPUTE

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

1. The workers demand that the employer refrain from discriminating against staff members taking part in strike action organised by the union and respect the right of staff members dismissed based on strike participation, to join union activities. The employer claims they do not discriminate based on race, in promotion, wage increase or dismissal.
2. The workers demand that the employer comply with the internal work rules and the Labour Law on taking disciplinary action and clearly define misconduct. The employer claims it has complied with the internal work rules and Labour Law.
3. The workers demand that the employer reinstate 8 staff members including Chorn Chenda (ID:3174)-staff member of Casino Section, Seim Sophanna (ID: 3328)-staff member of Casino Section, Chea Samros (ID: 7563)-staff member of Casino Section, Choun Kimhong (ID: 5375)-staff member of Casino Section, Jesus M. Pingul (ID: 304), staff member of Casino Section, Ms Um Phalla (ID: 8642), Sun Sovantheth (ID: 5185), staff member of Security Section, and Tang Sokha (ID: 7142), staff member of VIP Service Section, and provide all reinstated employees with back pay. The employer claims it does not dismiss the workers based on discrimination as alleged. The dismissals were each based on different misconduct of each individual.
4. The workers demand that the employer pay striking staff members wages during strike. The employer claims it will not meet the demand.
5. The workers demand that the employer pay full 13th month bonus for 2012 to 32 staff members, whose bonus was docked fifty per cent. The employer claims it provides full bonus unless those staff members fulfill a number of conditions (excluding conditions set out in the final warning).

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the *Labour Law* (1997); the *Prakas* on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same

Prakas; and the *Prakas* on the Appointment of Arbitrators No. 155 dated 17 June 2013 (Eleventh Term).

An attempt was made to conciliate the collective dispute that is the subject of this award, as required by Chapter XII, Section 2A of the *Labour Law*. The conciliation was unsuccessful, and non-conciliation report No. 136 dated 5 February 2014 was submitted to the Secretariat of the Arbitration Council on 6 February 2014.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: - 21 February 2014 (at 2 p.m.)
- 27 February 2014 (at 2 p.m.)

Procedural issues:

On 19 December 2013, the Department of Labour Disputes (the department) received a complaint from the union, outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 27 January 2014, resulting in one of six issues being resolved. The five non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 6 February 2014.

Upon receipt of the case, an Arbitration Panel was formed on 10 February 2014. The SAC summoned the employer and the workers to the first hearing and conciliation of the five non-conciliated issues, held on 21 February 2014 at 2 p.m. and the second hearing was held on 27 February 2014 at 2 p.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the five non-conciliated issues, but they remained unresolved. The workers decided to withdraw Issues 1 and 5 as well as merge Issues 2 and 3 into a single issue. Therefore, the Arbitration Council considers the remaining Issues 2&3 and 4.

Therefore, the Arbitration Council will consider the issues in dispute in this case based on the evidence and reasons below.

EVIDENCE

This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.

FACTS

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

The Arbitration Council finds that:

- NagaWorld Limited ("NagaWorld") is registered under no. Co. 176 Br/2000 dated 23 August 2000. According to the non-conciliation report no. 136-NagaWorld dated 5 February 2014 of the Ministry of Labour and Vocational Training, the company employs 5,000 workers.
- The union is the claimant in this case. The union received a certificate of union registration dated 20 April 2000 from the Minister of Labour and Vocational Training and a Letter no. 518 dated 29 April 2013 from the department recognising its union leaders in its 7th term including: (1) Ms Chun Sokha-President, (2) Ms Cheum Sithor-Vice-President, and (3) Ms Cheum Sokhon-Secretary.

Issue 2&3: The workers demand that the employer reinstate 8 staff members including (1) Chorn Chenda, (2) Seim Sophanna, (3) Chea Samros, (4) Choun Kimhong, (5) Jesus M. Pingul, (6) Um Phalla, (7) Sun Sovantheth (ID: 5185) and (8) Tang Sokha.

- At the hearing, the workers clarify their demand that the employer reinstate 4 staff members including (1) Chorn Chenda, (2) Seim Sophanna, (3) Chea Samros, (4) Um Phalla and provide back pay of wages and compensation from the date of dismissal to the date of reinstatement. The workers also demand that the employer pay termination compensation in accordance with the law to staff members including (1) Jesus M. Pingul, (2) Sun Vantheth, (3) Tang Sokha, and (4) Choun Kimhong. The workers do not demand for reinstatement of the latter 4 staff members.

A. Staff members demanding reinstatement, back pay of wages, and compensations from the date of dismissal to the date of reinstatement.

A. 1. Ms Um Phalla

- Ms Um Phalla-ID: 8642 served in the Casino Section.
- Ms Um Phalla commenced her job with the company on 1 August 2011 *(according to a document submitted by the employer to the Arbitration Council on 27 February 2014).*
- The workers claim the employer dismissed Um Phalla on 16 September 2013.
- The workers claim Um Phalla picked up his dismissal letter from the employer on 16 September 2013. The employer notified him of his dismissal on 13 September 2013. According to the dismissal letter, the employer dismissed on

11 September 2013. Um Phalla picked up the notification of his dismissal from Human Resources Department on 16 September 2013.

The employer's and the workers' claim in relation to Um Phalla's dismissal

- At the hearing, the employer claims:
    - Um Phalla has taken five unauthorised leave days:
        - The first one was taken on 15 April 2012. It was considered a minor misconduct and a verbal warning was given.
        - The second one was taken on 9 December 2012. It was considered a minor misconduct and a written warning was given.
        - The third one was taken on 16 December 2012. It was considered a minor misconduct and a written warning was given.
        - The fourth one was taken on 10 March 2013. It was considered a medium misconduct and the final written warning was given; the contract of employment was suspended for 7 days.
        - The fifth one was taken on 10 September 2013. It was considered a serious misconduct and Um Phalla was immediately dismissed.
- The workers argue:
    - Ms Um Phalla's dismissal was not in compliance with the MoU in which the staff members are authorised to be absent four times a year without penalty.
    - According to the *Labour Law*, misconduct can be accumulated within only one calendar year.
- The employer claims the dismissal was made in accordance with the company's internal work rules:
    - According to Clause 6 (B), a single day unauthorised leave is considered a minor misconduct. The clause states:
        - An absence for less than 2 days is considered a minor misconduct.
        - An absence from 2 to less than 6 days is considered a medium misconduct.
        - An absence from 6 days onwards is considered job abandonment.
    - Point 1 of Clause 10 (6) (Punishment Measures) states:

        (1). Minor Misconduct

        (A). The first minor misconduct is verbally questioned for correction and record.

        (B). The second minor misconduct is warned in writing.

        (C). The third minor misconduct is a week of job suspension.

- The employer presumes that the fourth minor misconduct is a medium misconduct. According to Point 2 (23), Clause 10 (6) (Rules of Punishment):

  (2) Medium misconduct

  The medium misconduct includes:

  (23) Absence without notification or failure to attend work in time.

  According to Point 6 (2C) (Rules of Punishment) of Clause 6:

  (2) Medium misconduct

  (A). The first medium misconduct is warned in writing.

  (B). The second medium misconduct is an at least 3 days of job suspension.

  (C). The third medium misconduct is a week of job suspension. Beyond this suspension is a dismissal.

- The employer maintains that Ms Um Phalla's dismissal complied with the company's internal work rules. According to Point 5 (1&2) of Clause 10:

  (1) Any misconduct committed within the past 6 months will be taken into consideration during the job performance evaluation.

  (2) Any medium misconduct committed the past 1 year will be taken into consideration during the job performance evaluation.

  The employer claims "1 year" is a 12 month period, without specific starting and finishing point, within the calendar year.

- On 19 February 2014, the employer submitted evidence to the Arbitration Council including:
  - A memorandum dated 10 September 2013:

    Casino Operation Department

    Date: 10 September 2013

    To: Ms Um Phalla, ID: 8642

    …

    Re: Termination of Employment Contract due to unauthorised absence

    Casino Operation Department recommends termination of employment contract of Um Phalla-Cards Distributor, ID: 8642 who was absent without authorisation on 10 September 2013 (the fifth misconduct). This recommendation takes effect from 11 September 2013.

    The first misconduct on 15 April 2012 was verbally questioned for correction and record.

    The second misconduct on 9 December 2012 was warned in writing due to absence without authorisation.

    The third misconduct on 16 December 2012 was warned in writing and job was suspended for 3 days.

The fourth misconduct was given final warning in writing and job was suspended for 7 days.

…

- On 13 September 2013, a letter notifying termination of Um Phalla's contract of employment:

  To: Ms Phalla

  Re: Termination of Employment Contract

  This letter confirms the termination of your employment contract at NagaWord which takes effect from 11 September 2013 due to:

  Job Abandonment

  You failed to attend work on 10 September 2013 and you failed to communicate with your Section Head about your absence. Also, you had been given a final written warning letter and a job suspension of 7 days for the fourth misconduct on 10 March 2013.

  …

- The employer's claim during the hearing and evidence submitted to the Arbitration Council showed different procedures of punishment imposed on this particular staff member. Therefore, the Arbitration Council decides to uphold the employer's claim at the hearing.

A.2. Ms Chorn Chenda, Ms Seim Sophanna, and Mr Chea Samros

1) Ms Chorn Chenda

- Ms Chorn Chenda (ID: 3174) was a staff member of Casino Department.
- Ms Chorn Chenda commenced her job with the company on 4 December 2006 *(according to the employer's evidence submitted to the Arbitration Council on 27 February 2014).*
- The employer dismissed Ms Chorn Chenda on 1 November 2013.

2) Ms Seim Sophanna

- Ms Seim Sophanna (ID: 3328) was a staff member of Casino Department.
- Ms Seim Sophanna commenced her job with the company on 8 January 2007 *(according to the employer's evidence submitted to the Arbitration Council on 27 February 2014).*
- The employer dismissed Ms Seim Siphanna on 1 November 2013.

3) Mr Chea Samros

- Mr Chea Samros (ID: 7563) was a staff member of Casino Department.
- Mr Chea Samros commenced his job on 12 April 2010 *(according to the employer's evidence submitted to the Arbitration Council on 27 February 2014)*.
- The employer dismissed Mr Chea Samros on 1 November 2013.

The employer's claim in relation to staff members (1) Ms Chorn Chenda, (2) Ms Seim Sophanna, and (3) Mr Chea Samros:

- The employer claims it dismissed the three staff members on the ground of serious misconduct because they disclosed payslips.
- The Arbitration Council finds that there was a wage increase for some staff members in August 2013; subsequently, the workers discussed their wages between the three of them. Upon realising that their wages were less than the wages of other staff members in the same team, they decided to enquire with the Human Resources Department about the issue.
- The workers argued:
  - The employer's allegation of serious misconduct due to the disclosure of the three staff members' wages is not right because wages are not confidential.
  - The three staff members were not aware of the memorandum in which the disclosure of their monthly wages was deemed serious misconduct.
- The employer claims it dismissed the three staff members on the basis of:
  - Point 3 (14) (serious misconduct) of Clause 10 (6) (Rules of Punishment) states: *"Unauthorised disclosure of confidential information affecting the company's interest".*
  - A memorandum dated 2 May 2012 states:

    To all staff members,

    Be kindly reminded that **details of each staff member's monthly wages** are confidential for staff members and the company. It cannot be disclosed or shared among staff members or other relevant persons. The company deems violation of confidentiality serious issue and encourages cooperation to safeguard and comply with the confidentiality…
  - A memorandum dated 23 January 2010 states:

    To all staff members,

    Please be cautious of information management as follows:

    A. Projects and partnership agreement of Naga

    B. Internal disputes or issues that come to your knowledge.

    C. Financial figures, statistics, and operational index which have not been disclosed to the public.

    D. **Personal details and staff members' wages (including yours)**

    …

- The three staff members violated Point 3 (14) (serious misconduct) of Clause 10 (6) (Rules of Punishment) of internal work rules and the two memoranda above by discussing their payslips among the three of them.
- The three staff members caused chaos in the company by collecting payslip information from 30 other staff members. Such an action led to many staff members approaching the Human Resources Department enquiring about the difference in monthly wages of staff members working in the same team; thus affecting the company's interests.
- The employer maintains determination of staff members' wages is the employer's management prerogative. All staff members do not receive equal wages because there are many factors involved in determining staff members' wages.

- At the hearing, (1) Ms Chorn Chenda, (2) Ms Seim Sophanna, and (3) Mr Chea Samros agree that they did disclose payslips among the three of them. The workers claim staff members have no knowledge about memoranda dated 23 January 2012 and 2 May 2012 as the employer claims. The workers assert that it is really easy to disclose monthly wages or payslips among staff members. Therefore, the employer's claim that disclosure of monthly wages or payslips deemed serious misconduct affects collective job security. The employer may use it as an excuse to dismiss staff members.
- The workers claim on 9 September 2013, (1) Ms Chorn Chenda, (2) Ms Seim Sophanna, and (3) Mr Chea Samros spoke to a staff member of Human Resources Department namely Dy Seiha, and enquired about the different wages of staff members in the same team *(see the workers' complaint submitted to the Arbitration Council on 26 February 2014)*.
- Subsequently, the staff member of Human Resources Department instructed the three workers to collect staff members' names whose wages were different. The three workers collected staff members' names, IDs, and information about wages. On 18 September 2013, the three workers submitted a list of workers names to Human Resources Department. The workers claim that (1) Chorn Chenda, (2) Seim Sophanna, and (3) Chea Samros did not cause chaos because before the three workers collected staff members' names, ID, and information

of wages, some staff members had already approached the Administration Department multiple times to enquire about unequal wages.

- The employer agrees that the staff member of Human Resources Department instructed the three staff members to collect staff members' IDs who received different wages, but not information about wages.
- The employer claims the company disseminates the information through Section Head, and the Human Resources Department displays it on a board in front of the company. The employer claims the two memoranda are still displayed on the board.
- The workers maintain that they have no knowledge of the memoranda. The employer did not discuss with the staff delegate to approve the two memoranda; they were made at the employer's discretion.

B. Staff members who demand that the employer pay termination compensation in accordance with the Labour Law

B. 1. (1) Mr Jesus M. Pingul, (2) Ms Tang Sokha, (3) Mr Sun Vantheth:

The parties' claim in relation to individual and collective labour disputes in Mr Jesus M. Pingul's, Ms Tang Sokha's, and Mr Sun Vantheth's instances:

- The employer claims Mr Jesus's, Ms Tang Sokha's, and Mr Sun Vantheth's instances are individual disputes because the three staff members' instances do not meet the conditions of a collective dispute set out in Article 302 of the *Labour Law*:
    - The three staff members were dismissed at different times.
    - The reasons for dismissal were different for each and solely related to each individual.
    - Three staff members' dismissals do not concern the union because they are not union members. An authorisation letter in which the three workers authorised the union to represent them was made before the date of dismissal.
    - The three staff members' dismissals do not affect company's production line.
- Concerning Jesus's dismissal, the employer claims:
    - In the two meetings with the union held on 24 August 2013 and 30 September 2013, the employer had not raised the issue in relation to Mr Jesus's dismissal.

- During the conciliation at the Ministry, the union raised an issue in relation to Mr Jesus' dismissal; however, the employer refused to talk about the issue.

- The workers argue that Mr Jesus', Ms Tang Sokha's, and Mr Sun Vantheth's instances were collective labour disputes because:
  - The three staff members are union member:
    - Mr Jesus had been a union member since 2005 and he became a union member once again on and from 1 October 2010 due to the change in union contribution fee deduction in 2009. Also, Jesus fulfilled his obligation to pay union contribution fees in accordance with Article 07 of Union Charter.
    - Tang Sokha has been a union member since 1 January 2013; he has receipts of union contribution fee payments dated 7 January 2013 and 1 January 2013.
    - Sun Vantheth has been a union member since 29 July 2013; he has receipts of union contribution fee payments dated 1 August 2013 and 1 August 2014 (the employer raises that there was an error in writing in the receipt dated 1 August 2014).
  - The three staff members' dismissals affect the production line because many other staff members are demanding fairness and for their reinstatement. The workers submitted a Supporting Petition including the signatures of 624 workers. The workers claim there is no protest now because all staff members are complying with collective dispute resolution procedures; upon the completion of the collective dispute resolution, strike action may occur.
- The workers argue that the union did not raise Mr Jesus' dismissal in the two meetings with the employer's attorney because Mr Jesus solicited help from the Philippines Embassy before authorising the union to represent him in resolving the dispute. Therefore, the union did not raise Mr Jesus' dismissal and inform the employer's attorney about the dismissal.

1) Jesus

- Information in relation to Jesus:

- Jesus (ID: 304) is a Pilipino national and worked in the Casino Department.
- The parties' make different claims in relation to Jesus' job commencement date.
  - At the hearing, the workers claim Jesus commenced his employment in 1995 which is similar to his union membership application dated 1 January 2010 in which it is stated that his job commencement was on 2 April 1995 *(according to the workers' document submitted to the Arbitration Council on 26 February 2014).*
  - At the hearing, the employer claims Mr Jesus commenced his job on 15 October 1997 *(according to the employer's document submitted to the Arbitration Council on 27 February 2014).*
  - The employer dismissed Jesus on 22 July 2013.

- Concerning Jesus' actual commencement date, the Arbitration Council decided to accept the fact submitted by the workers which is 2 April 1995 because it is consistent with what is written in Jesus' union membership application dated 1 January 2010. However, the employer did not have any other documentation supporting its alternate claim that Mr Jesus commenced his job in 1997.
- The workers argue that Jesus was not dismissed in accordance with the internal work rules and Article 27 of the *Labour Law*. According to the workers' complaint dated 26 February 2013:

  …Fact: On 22 June 2013, Jesus's Section Head Florian Pastiu reprimanded Jesus while he was on duty and before his subordinates and customers. Mr Jesus requested not to reprimand him before customers. Subsequently, Mr Jesus was summoned to his Section Head's office while he was released from his duty, so he was not heading for the office; instead, he informed his Shift Manager that he had not eaten anything yet and he would like to have a cup of coffee during the break. 10 minutes later, he went to Section Head's office and Shift Manager was also there. Section Head questioned him "Do I have any problem with you?" Mr Jesus did not respond and stared at Lita-Shift Manager's desk. Section Head continued "If you cannot talk and behave like this; the door is open, so you can leave." Mr Jesus questioned back "Are you serious?" His Section Head repeated himself; then Mr Jesus left for his predetermined work post. At 12:35

a.m., Mr Jesus was escorted out of the company by two security guards…

- The employer maintains Mr Jesus was dismissed based on misconduct:
    - His behavior and performance were poor and he had been given verbal warning.
    - Mr Jesus was suspended.
    - He failed to follow the employer's instruction and abused his supervisor *(according to Point 2 (5) (serious misconduct) of Clause 10 (6) (Rules of Punishment) inappropriate and immoral acts in the company premise.*
    - Mr Jesus has been given 40 written warnings within his 18 years of service. The employer failed to provide evidence supporting this claim to the Arbitration Council.
- On 19 February 2014, the employer submitted evidence in relation to Mr Jesus' dismissal including:
    - On 22 July 2013, a Notification Letter of the termination of Mr Jesus's employment contract which states:

      …The company will terminate your employment contract from 22 July 2013. This Notification Letter is made based on the following misconduct:

      1. According to your record of behaviour and performance in the past, you have been warned many times including: verbal warning for correction, warning in writing, and job suspension.

      2. Also, on 22 June 2013, you are still committing misconduct by refusing to show up at Casino Shift Manager's Office for a discussion on a number of important matters and you took a break instead as well as verbally abused and showed rude behavior towards your manager. Those acts violate Clause 10.5 (ii) & (iii) of the company's internal work rule.

      …

2) Mr Sun Vantheth

- Mr Sun Vantheth-Security Guard (ID: 5185) commenced employment on 1 April 2008.
- The employer dismissed Mr Sun Vantheth on 30 August 2013.
- The employer maintains:

- Point 3 (13) (serious misconduct) and Clause 10 (6) (Rules of Punishment) of the internal work rules states: *"Have intent to keep information which affects or damages the company's interests."*
- On 24 July 2013, Sun Vantheth permitted Sok Narith to enter the company without notifying the employer and without the employer's permission. Mr Sok Narith was prohibited from entering the company because Mr Sok Narith was a former staff member of the company, who was dismissed because he was a union activist causing strike action throughout the country.
- In practice, access to the company premises by guests, staff members, or others requires permission from the company. This practice is to ensure the security for guests staying in and visiting the hotel.

- The workers argue:
  - Mr Sun Vantheth's was not dismissed in accordance with the *Labour Law* because, the employer's allegation that Mr Sun Vantheth kept information which affected or damaged the company's interests, was false. Mr Sun Vantheth was not aware that Mr Sok Narith was prohibited from entering the company premises, so he allowed Mr Sok Narith in.
  - Mr Sok Nairth claims he entered the premises on the employer's invitation to resolve a dispute between the company and staff members. However, he mistook the date and returned home.
  - Mr Sun Vantheth's dismissal was unfair because another Security Guard namely Theng Cheng Meng was on duty in the same shift but the employer only dismissed Mr Sun Vantheth.
- On 19 February 2014, the employer submitted evidence in relation to Mr Sun Vantheth's dismissal to the Arbitration Council:
  - On 29 July 2013, the employer issued a letter suspending Mr Sun Vatheth stating:

    To: Mr Vantheth

    Job Suspension: Suspension for Investigation

We are sad to let you know that through a phone conversation with you on 29 July 2013, management decides to suspend your job for a while for investigation. The suspension will take effect from 29 July 2013 onwards…

- On 3 September 2013, the employer issued a dismissal letter stating:

  …To Vantheth:

  Re: Termination of Employment Contract

  This letter confirms the termination of your employment contract at Nagaworld taking effect from 30 August 2013 on the ground of:

  Violation of the company's policy

  Based on evidence, you had violated the company's policy: Have an intent to keep information which affects or damages the company's interests…

3) Ms Tang Sokha

- Mr Tang Sokha (ID: 7142) commenced his job in the Premium Hall Department on 5 November 2009.
- The employer dismissed Mr Tang Sokha on 31 August 2013.
- The employer maintains:
  - Mr Tang Sokha violated Point 3 (6) (serious misconduct) and Clause 10 (6) (Rules of Punishment): *"Ask for things from suppliers or customers."*
  - Tang Sokha agrees that he did ask for tips from customers.
  - According to a record of an interview with Tang Sokha conducted by Human Resources Department:

    Tang Sokha: I was just joking with [a customer] that "you win, so you have anything for us?" After opening his/her wallet, [a customer] replied he did not have small bank notes. [the customer] said he/she would give later. When I asked: "you have anything for us?" I meant tips because normally, when [the customer] won, he/she gave us tips…
- The workers argue:
  - Tang Sokha agrees he did ask for tips from the customer; however, the customer did not give him the tips.
  - According to the workers' statement dated 26 February 2014,

On 3 August 2013, I fulfilled my duty in the shift. At 6:17 p.m., I was accused of receiving tips from customers *(the company's record). During the interview with staff member of Human Resources Department, I did ask for tip from a customer; however, he/she did not give…*

- On 19 February 2014, the employer submitted evidence to the Arbitration Council regarding Ms Tang Sokha's dismissal including:
    - On 3 August 2013, the employer issued a letter suspending Ms Tang Sokha stating:

      To Ms Tang Sokha

      Job Suspension: Suspension for Investigation

      We regret to inform you that according to an incident occurred on 3 August 2013, the management decides to suspend your job for a while for investigation. The suspension takes effect from 5 August 2013…
    - On 5 August 2013, the employer issued a letter dismissing Ms Tang Sokha stating:

      …To Ms Sokha

      Re: Termination of Employment Contract

      This letter confirms termination of your employment contract at NagaWorld taking effect from 31 August 2013 on the ground:

      Violating the company's policy

      Based on the evidence, you have violated the company's policy as follows:

      Asking for things from suppliers or customers

      …

B.2. Mr Choun Kimhong

- Mr Choun Kimhong (ID: 5375) was a Shift and Leave Record Handler in the Casino Department.
- Mr Choun Kimhong commenced employment at the company on 17 April 2008. He was on an undetermined duration contract and received a monthly wage of US$340 or $350.
- The employer dismissed Mr Choun Kimhong on 23 July 2013 on the grounds of serious misconduct.
- The workers argue:

- Choun Kimhong's was not dismissed in accordance with the *Labour Law* because he had not committed serious misconduct as alleged by the employer.
- On 3 July 2013, Choun Kimhong made a phone call to Ly Baoloc, his Section Head to reschedule his leave date from 6 July 2013 to 3 July 2013. On 3 July 2013, Choun Kimhong's Section Head informed him by phone call that Choun Kimhong should send an email about rescheduling his leave to Mr. Cliffort Chang-Casino Manager. Therefore, on the same date, Choun Kimhong sent an email to Mr. Cliffort Chang-Casino Manager. The workers did not submit evidence of this email.
- On 4 July 2013, Choun Kimhong attended work according to the shift schedule. Mr Ly Baoloc claims he was on leave on 3 July 2013 and asked Choun Kimhong to meet Cliffort Chang to resolve this leave issue *(according to the workers' complaint submitted to the Arbitration Council on 26 February 2014)*.
- On 5 July 2013, Choun Kimhong asked Ly Baoloc whether he should submit a request for leave taken on 3 July 2013. Mr Ly Baoloc told Choun Kimhong that he did not need to submit request for leave taken on 3 July 2013 because he was marked as absent; therefore, Choun Kimhong was required to make up his work in the afternoon of 6 July 2013. Therefore, Choun Kimhong really worked 6 July 2013 p.m. because he was required by his Section Head to make up the time.
- Choun Kimhong did reschedule his leave from 6 July 2013 to 3 July 2013.

- The employer maintains:
  - It dismissed Mr Choun Kimhong on 23 July 2013 on the ground that he committed serious misconduct set out in Point 3 (9) (serious misconduct), Clause 10 (6) (Rules for Punishment) stating: *"Counterfeiting personal or company documents."* On 3 July 2013, Choun Kimhong rescheduled his leave without approval from Mr. Ly Baoloc-Section Head and Mr. Cliffort Chang-Casino

Manager. Mr Choun Kimhong was the 'Shift Schedule Record and Leave Keeper' for the Casino Department. Leave rescheduling can be done according to the following procedure:

- Filling in the 'Leave Reschedule Form'
- Receiving approval from Mr. Ly Baoloc-Section Head and Mr. Cliffort Chang-Manager which are indicated by their signatures on the 'Leave Reschedule Form'.
- In special cases, staff members can send an email to Section Head. For instance, there were two to three workers who rescheduled their leave on 'Shift Schedule and Leave Record' under the approval from Mr Ly Baoloc and Mr Cliffort Chang.

  - The employer sent Choun Kimhong a small note instructing him to see Mr Cliffort Chang, but Choun Kimhong failed to follow the instruction.

- The employer failed to provide evidence of the note instructing Choun Kinhong to see Mr Cliffort Chang.
- The workers argue that there is a special case in which staff members can submit a written form later if Mr Ly Baoloc and Mr Cliffort Chang fail to provide approval before any rescheduled leave on the Shift Schedule Record. However, the workers failed to prove whether or not Mr Choun Kimhong's leave reschedule from 6 July 2013 to 3 July 2013 was a special case.
- On 19 February 2014, the employer submitted evidence in relation to Mr Choun Kimhong including:

  - On 8 July 2013, the employer issued a letter notifying Choun Kimhong of his job suspension pending investigation:

    To Mr Choun Kimhong

    Job Suspension: Suspension for Investigation

    We are sad to inform you that according to an event occurred on 3 July 2013, management decided to suspend your job for a while for investigation. The suspension will be effective from 8 July 2013.

    …

- On 23 July 2013, the employer issued a letter dismissing Choun Kimhong:

  To Choun Kimhong

  Re: Termination of Employment Contract

  This letter confirms the termination of your employment contract at NagaWorld, which will be effective from 23 July 2013…

- According to Point 2 (23) (serious misconduct) of Clause 10 (6) (Rules of Punishment), *"Leave without notice or failure to attend work in accordance with the schedule."*

- The Arbitration Council finds that according to Point 2 (Medium Misconduct) of Clause 10 (6) (Rules of Punishment):

  (A) First misconduct is warned in writing.

  (B) Second misconduct is three days of job suspension.

  (C) Third misconduct is a week of job suspension or dismissal if there is no change.

  Point 2 (23) (serious misconduct) of Clause 10 (6) (Rules of Punishment), *"Leave without notice or failure to attend work in accordance with the schedule."*

Issue 4: The workers demand that the employer maintain wages for staff members on strike.

- Strike action was staged from 13 to 25 June 2013. At the second hearing, the workers claimed there were 2,000 staff members on strike. However, only 963 staff members are claimants in this case.
- The workers specify their demand that the employer maintain wages for 963 workers who had been on strike from 13 to 25 June 2013.
- The workers claim strike action was staged to put pressure on the employer to negotiate on two demands:
  - The employer complies with Arbitral Award No. 10/10 dated 16 February 2010, and 78/10 dated 6 September 2010, and 184/12.
  - The employer increases the workers' wages.
- The workers contend that the strike was staged in accordance with strike procedures:
  - A survey on strike was conducted at the entrance of NagaWorld on 29 May 2013. 1,039 staff members participated in the survey; 1,029 of whom supported the strike action, 9 of whom did not support strike action, and 1 other casted an invalid vote.

- Issued a letter notifying the employer of strike and provided copies of the letter to stakeholders on 4 June 2013. The workers provided a Notification Letter no. 34/13 on Notification of Non-Violent Strike at NagaWorld staged from 13 June 2013.

- At the second hearing, the workers claim the employer recruited 113 new staff members during strike staged from 13-25 June 2013. Also, according to the complaint submitted by the workers to the Arbitration Council on 26 February 2014, the workers claim the employer recruited new staff members and hired new staff members on a daily basis to backfill roles in the Casino and Cooking Departments.
- The employer maintains it will not meet the demand because:
  - According to Article 332 of the Labour Law, staff members shall not be paid during strike.
  - Strike was staged not in accordance with the procedures:
    - On 13 June 2013, the parties negotiated eleven issues at the Ministry of Labour and Vocational Training.
    - On the same 13 June 2013, staff members abruptly staged strike and asserted that they would simultaneously stage strike and continue negotiation.
- The employer asserts that:
  - According to Injunction No. 09 dated 13 June 2013 issued by the Primary Court of Phnom Penh:

    Order staff members and union at NagaWorld to put strike on hold and temporarily return to work according to their roles and duties… within 48 hours starting from the date of this injunction issuance to the completion of the case resolution.
  - According to Letter No. 110 dated 25 June 2013 issued by the Prosecutor at the Primary Court of Phnom Penh, *"Strike is illegal and order staff members and union at NagaWorld who are on strike to immediately stop the strike."* The prosecutor read the letter on 25 June 2013. After a negotiation, staff members returned to work on 26 June 2013.
  - The employer agreed it recruited new staff members before the strike, during the strike, and after the strike because it is the employer's right to do so. However, it claims the recruitment was not related to the strike. The employer claims it is always recruiting new staff members regardless of strike action.

REASONS FOR DECISION

Issues 2 & 3: The workers demand that the employer reinstate four staff members including (1) Um Phalla, (2) Chorn Chenda, (3) Seim Sophanna, (4) Chea Samros and provide back pay of wages and termination compensation from the date of dismissal

to the date of reinstatement as well as pay termination compensation to staff members including (1) Mr Jesus M. Pingul, (2) Mr Sun Vantheth, (3) Tang Sokha, and (4) Mr Choun Kimhong in accordance with the Labour Law.

The Arbitration Council considers:

A. Staff members who demand for reinstatement, back pay of wages, and termination compensation from the date of dismissal to the date of reinstatement.

A. 1. Mr Um Phalla

What type of employment contract that binds employment relations between Mr Um Phalla and the employer?

Article 67(2) of the Labor Law (1997) states:

> A labor contract made by agreement for a fixed duration cannot have a duration of over two years. Such a contract may be renewed one or more times so long as the renewals have a maximum duration not exceeding two years.
>
> Any violation of this rule leads the contract to become a labour contract of undetermined duration.

In Arbitral Award *10/03-Jacquintex*, Reasons for Decision, Issue 1, the Arbitration Council interpreted Article 67(2) to mean that fixed duration contracts are converted into undetermined duration contracts where a renewal causes the total length of the employment contract to exceed two years. The Arbitration Council notices that:

> The Cambodian labour law has a bias toward contracts of undetermined duration as expressed in Art. 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 increased commitment to their work from employees. Further, Art. 73(5) provides that contracts of 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." Because Art. 73(5) refers to the total length of time specified in Art. 67(2) the Arbitration Council understands that the period of two years specified in Art. 67(2) is also a maximum total duration and not the duration of an individual renewal.
>
> This interpretation is also supported by international labor 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. Though this Recommendation is not binding it is a useful instrument to assist in the interpretation of Article 67…

In this case, the Arbitration Council finds that the above interpretation of Article 67 (2) of the Labour Law above means fixed duration contracts are converted into undetermined

duration contracts where a renewal causes the total length of the employment contract to exceed two years or total duration of the rolling contracts exceeds 2 years.

According to the findings of fact, Mr Um Phalla commenced his job on 1 August 2011 and was dismissed on 11 September 2013. The total duration of Mr Um Phalla's employment contracts exceed 2 years. Therefore, the Arbitration Council finds that Mr Um Phalla's employment contract is an undetermined duration contract.

Did the employer dismiss Um Phalla in accordance with the Labour Law and the company's internal work rules?

Article 74 of the Labour Law states,

> The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.
>
> However, no layoff can be taken without a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group.

Based on the contents of this Article, the Arbitration Council considers that the employer party has a right to terminate a worker at will but the employer needs to notify the workers by providing valid reasons in relation to the worker's aptitude or behaviour or based on the requirements of the operation of the enterprise or group *(see Arbitral Award No. 51/08-ASD, Reasons for Decision, Issue 3 and Arbitral Award No. 160/13-PSI)*.

According to the findings of fact, the employer maintains that it dismissed Um Phalla because he had been absent five times without the Section Head's approval. The employer claims the dismissal was in accordance with the company's internal work rules in which Point 1 of Clause 10 (6) (Rules of Punishment) states that disciplinary actions taken against Minor Misconduct includes:

> (A) The first minor misconduct is verbally questioned for correction and record.
>
> (B) The second minor misconduct is warned in writing.
>
> (C) The third minor misconduct is job suspension (not exceeding 1 week).

The employer regards the fourth minor misconduct as medium misconduct and according to Point 2 (C) (Medium Misconduct) of Clause 10 (6) (Rules of Punishment) of the internal work rules disciplinary action taken against medium misconduct includes: *(C). The third medium misconduct is a week of job suspension. Beyond this suspension is a dismissal.* The fifth medium misconduct is regarded as a serious misconduct leading to dismissal.

The Arbitration Council finds that Mr Um Phalla's first absence on 15 April 2012 was regarded as a minor misconduct and verbal warning was given to him. Mr Um Phalla's second absence on 9 December 2012 was regarded as a minor misconduct and he was warned in writing. The Arbitration Council finds that the employer took action in accordance

with Point 1 (A) and (B), Clause 10 (6) (Rules of Punishment) of the company's internal work rules.

The employer regarded Mr Um Phalla's third absence on 16 December 2012 as a minor misconduct and Mr Um Phalla was warned in writing. The Arbitration Council finds that the employer did not comply with Point 1 (C) of Clause 10 (6) (Rules of Punishment) stating that the third minor misconduct is job suspension (not exceeding 1 week). The employer did not suspend Mr Um Phalla's job and Mr Um Phalla was only given a written warning.

The employer regarded Mr Um Phalla's fourth absence on 10 March 2013 as a medium misconduct and Mr Um Phalla was given a final warning and his job was suspended for 7 days. The employer claims Mr Um Phalla's fourth misconduct was regarded a medium misconduct and disciplinary action was taken in accordance with Point 2 (C) of Clause 10 (6) of the internal work rules which states that the third misconduct is 1 week of job suspension or dismissal if there is no change.

The Arbitration Council finds that there is no clause of the internal work rules stating that the fourth minor misconduct is regarded as a medium misconduct. There is also no clause of the internal work rules stating that the fifth misconduct is regarded as a serious misconduct. Therefore, the Arbitration Council finds that Mr Um Phalla's dismissal is not specifically in accordance with the internal work rules.

Article 27 of the Labour Law states: *"Any disciplinary sanction must be proportional to the seriousness of the misconduct..."*

In Arbitral Award No. 109/07-King Land, Reasons for Decision, Issue 35, the Arbitration Council held: *"Based on Article 27 above, the Arbitration Council find that the employer can punish or dismiss each individual worker; however, punishment must be proportional to misconduct."*

The Arbitration Panel in this case also agrees with the interpretation made in previous cases.

Based on Article 27 of the Labour Law above, the Arbitration Council finds that the employer who intends to punish any worker for any misconduct, must ensure that the punishment is proportional to each worker's misconduct. In this case, Mr Um Phalla's fourth absence was regarded as the third medium misconduct. However, Point 2 (C) of Clause 10 (6) (Rules of Punishment) divided medium misconduct into the first, second, and third medium misconduct. The Arbitration Council finds that if the fourth minor misconduct is regarded as a medium misconduct, the same misconduct shall have gone through the first, second, and third sequential order. The same misconduct shall not be immediately regarded as the third medium misconduct. Therefore, the Arbitration Council finds that the fact that the employer regarded Mr Um Phalla's fourth minor misconduct as the third medium misconduct

and the fifth minor misconduct as a serious misconduct leading to Mr Um Phalla's dismissal is not proportional to the seriousness of his misconduct.

Additionally, the Arbitration Council finds that the evidence of a letter from the employer notifying Mr Um Phalla of the termination of his employment contract on 13 September 2013 states that the employer terminates Mr. Um Phalla's contract of employment because of "job abandonment". At the hearing, the employer claims it dismissed Mr Um Phalla because he was absent without authorisation five times. In this case, the Arbitration Council finds that the employer's claims are not consistent. Moreover, at the hearing, the employer claims a 1 day absence is regarded as a minor misconduct according to Clause 6 (B) of the internal work rules stating: *"an absence of less than two days is regarded as a minor misconduct." An absence from 2 days to less than 6 days is regarded as a medium misconduct, and an absence from 6 days onwards is regarded as job abandonment."* Therefore, the Arbitration Council finds that "job abandonment" used as the grounds for dismissing Mr Um Phalla by a Notification Letter dated 13 September 2013 is not an appropriate reason and such a ground is not proportional to the punishment which is Mr Um Phalla's dismissal while Mr Um Phalla was absent five times in separate periods.

According to the above interpretation, the Arbitration Council finds that Mr Um Phalla was not dismissed in accordance with the internal work rules and the decision to dismiss was not proportional to the seriousness of Mr Um Phalla's misconduct.

In conclusion, the Arbitration Council decides to order the employer to reinstate Mr Um Phalla as well as provide back pay and compensation from the date of dismissal to the date of reinstatement. The Arbitration Council decides to order the employer to punish Mr Um Phalla in accordance with the internal work rules.

A. 2. (2) Ms Chorn Chenda, (3) Ms Seim Sophanna, and (4) Mr Chea Samros

(2) What type of employment contract binds employment relations between (2) Ms Chorn Chenda, (3) Ms Seim Sophanna, and (4) Mr Chea Samros and the employer?

(2) Ms Chorn Chenda

Based on Paragraph 2, Article 67 of the Labour Law *(see the interpretation on type of Mr Um Phalla's employment contract above),*

According to the findings of fact, Chorn Chenda commenced her job at the company on 4 December 2006 and he was dismissed on 1 November 2013. The total duration of Chorn Chenda's contracts is 6 years and 11 months. The Arbitration Council finds that Chorn Chenda's contract of employment is an undetermined duration contract.

(3) Seim Sophanna

Based on Paragraph 2, Article 67 of the Labour Law *(see the interpretation on type of Mr Um Phalla's employment contract above),*

According to the findings of fact, Ms Seim Sophanna commenced her job at the company on 8 January 2007 and he was dismissed on 1 November 2013. Total duration of Ms Seim Sophanna's contracts of employment is 6 years and 10 months. Therefore, the Arbitration Council finds that Seim Sophanna's contract of employment is an undetermined duration contract.

(4) Mr Chea Samros

Based on Paragraph 2, Article 67 of the Labour Law *(see the interpretation on type of Mr Um Phalla's employment contract above),*

According to the findings of fact, Chea Samros commenced his job at the company on 12 April 2010 and he was dismissed on 1 November 2013. Total duration of Mr Chea Samros's contract of employment is 3 years and 6 months. Therefore, the Arbitration Council finds that Mr Chea Samros's contract of employment is an undetermined duration contract.

Did the employer dismiss (2) Ms Chorn Chenda, (3) Ms Seim Sophanna, and (4) Mr Chea Samros in accordance with the Labour Law and internal work rules?

Based on Article 74 of the Labour Law *(see the interpretation on type of Mr Um Phalla's employment contract above),*

According to the findings of fact, the employer claims it dismissed the 3 workers because they committed serious misconduct by disclosing payslips among themselves. The employer maintains that disclosure of payslips is serious misconduct leading to dismissal according to Point 3 (14) (serious misconduct) of Clause 10 (6) (Rules of Punishment) stating: *"Unauthorised disclosure of confidential information affecting the company's interests"* and the two memoranda: (1) a memorandum dated 2 May 2012 stating:

> To all staff members,
>
> Be kindly reminded that **details of each staff member's monthly wages** are confidential for staff members and the company. It cannot be disclosed or shared among staff members or other relevant persons. The company deems violation of confidentiality serious issue and encourages cooperation to safeguard and comply with the confidentiality…

And (2) a memorandum dated 23 January 2010:

> To all staff members,
>
> Please be cautious of information management as follows:
>
> A. Projects and partnership agreement of Naga
>
> B. Internal disputes or issues that come to your knowledge.
>
> C. Financial figures, statistics, and operational index which have not been disclosed to the public.
>
> D. **Personal details and staff members' wages (including yours)**
>
> …

The Arbitration Council will consider the validity of the company's memorandum stipulating that details of each staff member's monthly wages are confidential for staff

members and the company and it cannot be disclosed or shared among staff members or other relevant persons.

Concerning confidential information, Paragraph 2 of Article 239 of the Labour Law states:

> Health records of the workers collected by medical personnel are confidential, and the information contained in the records cannot be given to the employer, to a union, or to any third party in a manner that could identify the employee. However, data extracted from the files that do not identify the individuals can be used for the purposes of research on labour health or public health.

The Arbitration Council finds that there is no provision in the Labour Law stating that details about each worker's wages are confidential and cannot be disclosed to other workers.

Moreover, the Arbitration Council finds that details of wages are each worker's personal information; they belong to each worker. Therefore, each staff member has right to decide whether to keep the information confidential or not.

Therefore, the Arbitration Council finds that the provision in the two memoranda stating that **details of each worker's wages** are confidential information, which cannot be shared or disclosed among staff members, is not valid.

Concerning wages, the Arbitration Council finds that the employer has the right to provide wages to each worker as long as its decision complies with the law and is reasonable.

In this case, the employer alleges that by disclosing details about their wages among themselves, the three workers violated Point 3 (14) (serious misconduct) of Clause 10 (6) (Rules of Punishment) stating: *"Unauthorised disclosure of confidential information affecting the company's interests".*

In jurisprudence, the Arbitration Council finds that *"the party making allegations bears the burden of proof" (see Arbitral Award no. 79/05-Evergreen, 101/08-GDM, Reasons for Decision, Issue 1 & 2, 168/089-Teok Tla Plaza, Issue 2, 115/10-G-Formost, Issue 18, and 148/11-Dai Young).*

In previous arbitral awards, the Arbitration Council rejected the parties' demands if the parties making the demand do not have specific evidence to support their claims *(see Arbitral Award no. 63/04-Sunwell Shoes, Reasons for Decision, Issue 4, 99/06-South Bay, Issue 5, 33/07-Goldfame, Issue 4, and 51/07-Goldfame, Issue 3).*

The Arbitration Council finds that the employer fails to prove specific damages to the company's interests inflicted by the three workers' actions or any serious damage leading the three workers' dismissals.

At the hearing, the parties' gave different accounts of chaos in relation to wages. Without additional evidence from the parties, the Arbitration Council cannot presume authenticity of the facts.

Based on Article 74 of the Labour Law and reasoning above, the Arbitration Council finds that the employer does not have proper reasons to dismiss Chorn Chenda, Seim Sophanna, and Chea Samros.

In conclusion, the Arbitration Council decides to order the employer to reinstate Ms Chorn Chenda, Ms Seim Sophanna, and Mr Chea Samros and provide back pay of wages and compensation from the date of dismissal to the date of reinstatement.

B. Staff members who demand that the employer pay termination compensation in accordance with the Labour Law

The Arbitration Council considers whether or not the issue is a collective dispute under the Arbitration Council's jurisdiction.

Article 302 of the Labour Law states:

> A collective labour 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 recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardise the effective operation of the enterprise or social peace.

In previous awards, 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, it has the burden of proving its claim *(see Arbitral Award no. 45/07-Wilson, Reasons for Decision, Issue 4 and 13/08-Teratex, Issue 2).*

Article 302 states that to be a collective labour dispute the following three conditions must be fulfilled:

1. It is a dispute between some workers and one or more employers.
2. The subject of the dispute relates to working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, or issues regarding relations between employers and workers.
3. The dispute could jeopardise the effective operation of the enterprise or social peace.

In this case, the Arbitration Council finds that the first condition is fulfilled because it is a dispute between some workers including (1) Mr. Jesus M. Pingul, (2) Mr. Tang Sokha, (3) Mr. Sun Vantheth and the employer.

The Arbitration Council finds that the second condition is fulfilled because the dispute is concerned with relations between the staff members and the employer.

For the third condition, the employer claims the dismissals do not affect production of the three sections in which (1) Mr. Jesus M. Pingul, (2) Mr. Tang Sokha, and (3) Mr. Sun Vantheth were serving, and do not affect the production of the company. The workers object to the employer's claim on the ground that the 3 workers' dismissals affected the production line because many staff members support the demand for the 3 workers' reinstatement and 624 staff members' thumbprints were provided on a petition letter in which the 624 staff members expressed their concern about job security after the three workers' dismissals.

Also, the workers claim there are currently no protesting activities because the workers are complying with collective labour dispute resolution procedures and after the conclusion of the procedures, strike action will be staged at some point in time. Therefore, the Arbitration Council finds that the third condition is fulfilled because there are 624 workers expressing their support of the demand for the 3 workers' reinstatement as well as their concerns about job security after the 3 workers' dismissals. Therefore, the three workers' dismissal can cause disruption to the production line of the company because the workers claim the 624 staff members will stage strike action upon the conclusion of the dispute resolution.

Therefore, the Arbitration Council finds that the issue is a collective dispute under the Arbitration Council's jurisdiction.

1) Mr. Jesus M. Pingul

What type of employment contract that binds the employment relationship between Mr. Jesus M. Pingul and the employer?

Based on Paragraph 2, Article 67 of the Labour Law *(see the interpretation on Mr. Um Phalla's type of contract of employment above),*

According to the findings of fact, the total duration of Mr. Jesus M. Pingul is 18 years and 3 months starting from 1 April 1995. Therefore, Mr. Jesus M. Pingul's contract of employment is an undetermined duration contract.

Was Mr Jesus M. Pingul's dismissed in accordance with the company's internal work rule?

According to the findings of fact, the employer claims it dismissed Mr. Jesus M. Pingul on the following grounds: 1) poor behaviour and performance, concerning which he has been given verbal warning, 2) Mr. Jesus M. Pingul's job suspension, 3) his refusal to follow the employer's instruction and abusing his Manager (Point 2 (5) (Serious Misconduct) of Clause 10 (6) (Rules of Punishment states: *"Committing improper and immoral acts in the factory premise*) and 4) he had been given 40 warning letters within 18 years of his service. The workers object to the employer's claim by alleging that Mr. Jesus M. Pingul's dismissal did not comply with the internal work rules and Article 27 of the Labour Law.

In jurisprudence, the Arbitration Council finds that *"the party making allegations bears the burden of proof" (see Arbitral Award no. 79/05-Evergreen, 101/08-GDM, Reasons for Decision, Issue 1 & 2, 168/089-Teok Tla Plaza, Issue 2, 115/10-G-Formost, Issue 18, and 148/11-Dai Young).*

In previous arbitral awards, the Arbitration Council rejected the parties' demand if the parties making the demand do not have specific evidence to support their claims *(see Arbitral Award no. 63/04-Sunwell Shoes, Reasons for Decision, Issue 4, 99/06-South Bay, Issue 5, 33/07-Goldfame, Issue 4, and 51/07-Goldfame, Issue 3).*

Also, Arbitral Award no. 107/04-Jacqintex, Reasons for Decision, Issue 4, the Arbitration Council held: *"The employer is under the burden of proof proving the workers' serious misconduct."*

The Arbitration Panel in this case also agrees with the interpretation made in the previous cases. In this case, the employer claims Mr. Jesus M. Pingul usually talked to his Manager inappropriately and that he had been given 40 warning letters during his 18 years of service. However, the employer failed to provide evidence written in Khmer proving its claim.

Clause 23 of Prakas 099 SKBY dated 21 April 2004 on Arbitration Council states that *"[t]he language to be used during the arbitral proceedings shall be Khmer…"*

In Arbitral Award no. 54/11-June Textile, the Arbitration Council held: *"the Arbitration Council will not consider the evidence provided by the company in a language other than the Khmer language."*

The Arbitration Council finds that the employer failed to provide evidence proving Mr Jesus M. Pingul's improper words with evidence written in Khmer which is the formal language used in the arbitration process according to Clause 23 of Prakas no. 99 above proving the 40 warning letters. Moreover, the Arbitration Council finds that the employer is under the burden of proof to prove its allegation that Mr Jesus M. Pingul did violate Point 2 (5) (Medium Misconduct) of Clause 10 (6) (Rules of Punishment) of the internal work rules stating: *"Committing improper and immoral acts in the company premise."* The employer failed to provide specific facts in relation to Mr Jesus M. Pingul's misconduct and evidence proving such misconduct. The Arbitration Council finds a letter notifying of Mr Jesus M. Pingul's dismissal dated 22 July 2013; however, the letter mentions only the reasons for dismissing Mr Jesus M. Pingul. The Arbitration Panel in this case finds that the employer failed to fulfill the obligation to provide evidence proving its allegation of Mr Jesus M. Pingul's serious misconduct. Therefore, Mr Jesus M. Pingul's dismissal was not based on serious misconduct.

Article 74 of the Labour Law *(see the interpretation on termination of an undetermined duration contract of Mr Um Phalla above),*

In this case, the employer failed to provide specific reasons for its allegation. To come to the conclusion about whether the reasons for dismissal were appropriate as stipulated in Article 74, the Arbitration Council needs specific facts in relation to the reasons for dismissal. Therefore, the Arbitration Council finds that the employer does not have proper reasons for dismissing Mr Jesus M. Pingul.

Therefore, the Arbitration Council will consider termination compensation, which will be paid by the employer to Mr Jesus M. Pingul for the termination of his undetermined duration contract according to the Labour Law:

1-Compensation in lieu prior notice

Article 75 of the Labour Law states:

The minimum period of a prior notice is set as follows:

- …
- 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 then years.

In this case, total duration of Mr Jesus M. Pingul's contract of employment is 18 years and 3 months.

Therefore, the employer was obliged to notify Mr Jesus M. Pingul of the termination of his contract 3 months prior to the termination of his contract on 22 July 2013.

According to a letter dated 22 July 2013 notifying Mr Jesus M. Pingul of the termination of his contract of employment, the employer dismissed Mr Jesus M. Pingul on 22 July 2013 without providing prior notice. Therefore, the Arbitration Council finds that the employer failed to fulfill its obligation to provide 3 months' notice prior to the termination of Mr Jesus M. Pingul's contract of employment on 22 July 2013. Therefore, the employer is obliged to provide compensation in lieu of the 3-month prior notice to Mr Jesus M. Pingul.

2- Indemnity for dismissal

Article 89 of the Labour Law states:

If the labour contract is terminated by the employer alone, except in the case of a serious offence by the worker, the employer is required to give the dismissed worker, in addition to the prior notice stipulated in the present Section, the indemnity for dismissal as explained below:

- …

- 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. If the worker's length of service is longer than one year, time fractions of service of six months or more shall be counted as an entire year.

In this case, Mr. Jesus M. Pingul commenced his job on 1 April 1995 and he was dismissed on 22 July 2013; therefore, the total duration of his contract of employment is 18 years and 3 months. Based on Article 89 above, the employer must pay Mr Jesus M. Pingul termination compensation equal to 15 days' worth of wages and perquisites multiplied by 18 years totaling 270 days. As termination compensation for Mr Jesus M. Pingul exceeds 6 months, Mr Jesus M. Pingul must receive only 6 months' worth of wages and perquisites.

3- Payment in lieu of annual leave

Paragraph 1, Article 166 of the Labour Law states:

> Unless there are more favorable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.

Paragraph 4, Article 166 states: *"The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service."*

Paragraph 2, Article 167 of the Labour Law states: *"If 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."*

Paragraph 4, Article 167 states:

> Acceptance by the worker to defer all or part of his rights to paid leave until the termination of the contract is not considered as renunciation. Deferment of this leave cannot exceed three consecutive years and can only apply to leave exceeding twelve working days per year.

According to the findings of fact, the employer has not paid Mr Jesus M. Pingul payment in lieu annual leave. Therefore, the Arbitration Council finds that the employer must pay Mr Jesus M. Pingul payment in lieu of unused annual leave.

4-Damages

Paragraph 1, Article 91 of the Labour Law states: *"The termination of a labour contract without valid reasons, by either party to the contract, entitles the other party to damages."*

Paragraph 3, Article 91 states: *"The worker, however, can request to be given a lump sum equal to the dismissal indemnity..."*

Based on the above interpretation, the employer did not have sufficient reason to dismiss Mr. Jesus M. Pingul on 22 July 2013.

Therefore, the employer must pay Mr Jesus M. Pingul damages equal to an indemnity for dismissal.

5-Outstanding wages

Article 116 of the Labour Law states*: "…In 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."*

According to the findings of fact, the employer has paid outstanding wages for Mr Jesus M. Pingul. The Arbitration Council finds that the employer has fulfilled its obligation to pay outstanding wages in accordance with the Labour Law.

In conclusion, the Arbitration Council decides to order the employer to pay Mr Jesus M. Pingul termination compensation including:

1. Compensation in lieu of the 3-month prior notice
2. Indemnity for dismissal which is equal to 6 months' worth of wages and perquisites
3. Payment in lieu of unused annual leave
4. Damages which is equal to the indemnity for dismissal
5. Outstanding wages

2) Mr Sun Vantheth

What contract of employment does Mr Sun Vantheth have?

According to paragraph 2 of Article 67 of the Labour Law (*see the interpretation of types of employment contract in Mr Um Phalla above*),

According to the findings of fact, the employer claims Point 3 (13) (serious misconduct) and Clause 10 (6) (Rules of Punishment) of the internal work rules states: *"Have intent to keep information which affects or damages the company's interests."* On 24 July 2013, Mr Sun Vantheth permitted Mr Sok Narith to enter the company without notifying the employer and without the employer's permission. Mr Sok Narith was prohibited from entering the company because Mr Sok Narith was a former staff member of the company, who was dismissed because he was a union activist and caused strike action throughout the country. The employer alleged that Mr Sun Vantheth failed to fulfill his duty in his capacity as a Security Guard of the company.

The Arbitration Council finds that by permitting Mr Sok Narith to enter the company, Mr Sun Vantheth did not intentionally '…keep information which affects or damages the company's interests'. Mr Sun Vatheth did permit Mr Sok Narith to enter the company premises on 24 July 2013, but neither party proved that Mr Sok Narith's entering the company premises caused damages to or affected the company's interests. Therefore, the Arbitration Council finds that the employer's allegation against Mr. Sun Vatheth based on Point 3 (13) (serious misconduct) and Clause 10 (6) (Rules of Punishment) of the internal work rules is unsubstantiated.

Also, Paragraph 2, Article 26 of the Labour Law states: *"The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question."*

Article 27 of the Labour Law states: *"Any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labour Inspector is empowered to control this proportionality."*

According to Paragraph 2 of Article 26 and Article 27 of the Labour Law, the Arbitration Council finds that any employer who wishes to dismiss any worker based on serious misconduct must provide evidence proving the serious misconduct and it must also proves that the serious misconduct is committed within a punishable period. The employer can dismiss worker(s) who committed serious misconduct only within 7 days starting from the day the employer is aware of the misconduct *(see Arbitral Award 36/04, Reasons for Decision, Issue 1 and 74/04-M & V)*.

The Arbitration Panel in this case also agrees with the interpretation made in the previous cases.

According to the findings of fact, Mr Sun Vantheth was suspended on 29 July 2013 which was 5 days after the employer's allegation against Mr Sun Vantheth that he committed serious misconduct based on Point 3 (13) (serious misconduct) and Clause 10 (6) (Rules of Punishment) of the internal work rules above.

Therefore, the Arbitration Council finds that the employer punished Mr Sun Vantheth with the punishable period; however, the Arbitration Council finds that punishment on Mr Sun Vantheth is not proportionate to his misconduct. Therefore, the Arbitration Council finds that the employer does not have sufficient reasons to dismiss Mr Sun Vantheth.

Therefore, the Arbitration Council will consider termination compensation that the employer must pay Mr Sun Vantheth in accordance with the Labour Law.

1-Compensation in lieu of prior notice

Article 75 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

In this case, the total duration of Mr Sun Vantheth's employment contract is 5 years and 4 months starting from 1 April 2008.

Therefore, the employer must provide 2-month prior notice of dismissal on 30 August 2013 to Mr. Sun Vantheth.

According to a notification letter of Mr Sun Vantheth's dismissal on 3 September 2013 submitted by the employer, the employer dismissed Mr Sun Vantheth on 30 August 2013. According to the notification letter above, the Arbitration Council finds that the employer had already decided to dismiss Mr Sun Vantheth before providing the notification letter. Therefore, the Arbitration Council finds that the employer failed to provide a 2-month prior notice of his dismissal on 30 August 2013. Therefore, the Arbitration Council is under an obligation to pay Mr Sun Vatheth compensation in lieu of the 2-month prior notice.

2-Indemnity for dismissal

Article 89 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

In this case, the total duration of Mr Sun Vantheth's employment contract is 5 years and 4 months starting from 1 April 2008.

According to Article 89 of the Labour Law above, the employer must pay Mr. Sun Vantheth indemnity for dismissal which is equal to 75 days' (15 days' worth of wages and perquisites multiplies by 5 years) worth of wages and perquisites.

3-Payment in lieu of annual leave

According to Paragraph 1 of Article 166 and Paragraph 2 & 4 of Article 167 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

According to the findings of fact, the employer has not paid Mr Sun Vantheth payment in lieu of unused annual leave. Therefore, the Arbitration Council finds that the employer must pay Mr Sun Vantheth payment in lieu of unused annual leave.

4-Damages

Paragraph 1 & 3 of Article 91 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

According to the reasoning above, the employer does not have sufficient reasons to dismiss Mr Sun Vantheth on 30 August 2013.

Therefore, the employer must pay Mr Sun Vantheth damages which is equal to the indemnity for dismissal.

5-Oustanding wages

According to Article 116 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

According to the findings of fact, the employer already paid outstanding wages to Mr Sun Vantheth. The Arbitration Council finds that the employer has fulfilled its obligation to provide outstanding wages in accordance with the law.

In conclusion, the Arbitration Council decides to order the employer to pay Mr Sun Vantheth termination compensation including:

1. Compensation in lieu of the 2-month prior notice
2. Indemnity for dismissal which is equal to 75 days' worth of wages and perquisites
3. Payment in lieu of unused annual leave
4. Damages which is equal to the indemnity for dismissal
5. Outstanding wages

3) Tang Sokha

What type of employment contract does Tang Sokha have?

Paragraph 2, Article 67 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in Mr Um Phalla above),*

In the findings of fact, Tang Sokha commenced his job at the company on 5 November 2009. The Arbitration Council finds that the total duration of Mr Tang Sokha's employment contract is over two years; therefore, his contract of employment is an undetermined duration contract.

Is Tang Sokha dismissed based on serious misconduct set out in the internal work rules?

According to Article 74 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in Mr. Um Phalla above)*

According to the findings of fact, the employer claims Tang Sokha asked for tips from customers. The employer asserts that on 12 August 2013, Human Resources Department interviewed Tang Sokha and he admitted he did ask for tips from the customer; however, the workers claim that while he asked for a tip from the customer, the customer did not give him any tips. A statement dated 26 February 2014 states:

> …On 3 August 2013, I fulfilled my duty in the shift. At 6:17 p.m., I was accused of receiving tips from customers *(the company's record). During the interview with staff member of Human Resources Department, I did ask for tip from a customer; however, he/she did not give…*

According to Point 3 (6) (serious misconduct) and Clause 10 (6) (Rules of Punishment): *"Ask for things from suppliers or customers."*

The Arbitration Panel in this case finds that asking for tips from customers violates Point 3 (6) (serious misconduct) and Clause 10 (6) (Rules of Punishment). Therefore, Tang Sokha did commit serious misconduct.

Therefore, the Arbitration Council finds that Tang Sokha's dismissal was done in accordance with Article 27 of the Labour Law and internal work rules.

The Arbitration Council considers termination compensation that must be paid to Tang Sokha in accordance with the Labour Law:

1-Payment in lieu of annual leave

According to Paragraph 1 of Article 166 and Paragraph 2 & 4 of Article 167 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr. Jesus M. Pingul" above)*

According to the findings of fact, the employer has not paid Tang Sokha payment in lieu of unused annual leave. Therefore, the Arbitration Council finds that the employer must pay Tang Sokha payment in lieu of unused annual leave.

2-Oustanding wages

According to Article 116 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

According to the findings of fact, the employer already paid outstanding wages for Tang Sokha. The Arbitration Council finds that the employer has fulfilled its obligation to pay outstanding wages in accordance with the law.

B.2. Choun Kimhong

What type of employment contract does Choun Kimhong have?

According to Paragraph 2, Article 67 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in Mr. Um Phalla above),*

According to the findings of fact, Choun Kimhong commenced his job at the company on 17 April 2008. The Arbitration Council finds that total duration of Choun Kimhong's employment contract is over 2 years; therefore, his employment contract is an undetermined duration contract.

Was Choun Kimhong's dismissed for serious misconduct in accordance with the internal work rules?

According to Article 74 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in Mr Um Phalla above),*

Point 3 (9) (serious misconduct), Clause 10 (6) (Rules for Punishment) states: *"Counterfeiting personal or company documents."*

The Arbitration Council finds that in the Casino Department, leave rescheduling must be completed in accordance with the following procedure:

- Filling in Leave Reschedule Form
- Obtain approval from Mr Ly Baoloc-Section Head and Mr Cliffort Chang-Manager in the form of their signatures on the Leave Reschedule Form.
- In special cases, staff members can send an email to Section Head. For instance, there were two to three workers who had rescheduled their leave on Shift Schedule and Leave Record under the approvals from Mr Ly Baoloc and Mr Cliffort Chang.

The workers argue that there is a special case where staff members can submit a written form later if Mr Ly Baoloc and Mr Cliffort Chang fail to provide approval before any reschedule on Shift Schedule Record. The Arbitration Council finds that Choun Kimhong's leave reschedule from 6 July 2013 to 3 July 2013 without the two supervisors' approval is not a special case.

According to the findings of fact, Choun Kimhong was supposed to be on leave on 6 July 2013. Later, Choun Kimhong changed his mind to take leave on 3 July 2013 instead. On 3 July 2013, Choun Kimhong made a phone call to (Ly Baoloc)-his Section Head to reschedule his leave date from 6 July 2013 to 3 July 2013. On 3 July 2013, Choun Kimhong's Section Head informed him over the phone that Choun Kimhong should send an email about his leave rescheduling to Mr Cliffort Chang-Casino Manager. Therefore, on the

same date, Choun Kimhong sent an email to Mr Cliffort Chang-Casino Manager. The workers did not submit the evidentiary email. On 4 July 2013, Choun Kimhong attended work according to the shift schedule. Mr Ly Baoloc claims he was on leave on 3 July 2013 and asked Choun Kimhong to meet Cliffort Chang to resolve this leave issue *(according to the workers' complaint submitted to the Arbitration Council on 26 February 2014)*. On 5 July 2013, Choun Kimhong asked Ly Baoloc about whether or not he should submit retrospective request for leave taken on 3 July 2013. Mr Ly Baoloc told Choun Kimhong that he did not need to submit request for leave taken on 3 July 2013 because he was regarded to be absent, so Choun Kimhong was required to make up his work in the afternoon of 6 July 2013. Therefore, Choun Kimhong really worked 6 July 2013 p.m. because he was authorised by his Section Head to make up the time he was absent.

Choun Kimhong did reschedule his leave from 6 July 2013 to 3 July 2013.

The employer alleged that Choun Kimhong rescheduled his leave without approval from Mr Ly Baoloc-Section Head and Mr Cliffort Chang-Manager.

The Arbitration Council finds that it is not right that the employer dismissed Choun Kimhong on 23 July 2013 on the ground that he has committed serious misconduct set out in Point 3 (9) (serious misconduct), Clause 10 (6) (Rules for Punishment) stating: *"Counterfeiting personal or company documents."*

According to the findings of fact, Mr Ly Baoloc told Choun Kimhong that he did not need to submit request for leave taken on 3 July 2013 because he was regarded to be absent. The Arbitration Council finds that it is not right that Choun Kimhong change his leave schedule in the record on his own. Nonetheless, the Arbitration Council finds that even though Mr Ly Baoloc did not instruct Mr Choun Kimhong to make change on the leave record, he did tell Mr Choun Kimhong that the latter did not need to submit a request for his leave taken on 3 July 2013 which means Mr Choun Kimhong received verbal approval from his supervisor for his leave rescheduling.

The Arbitration Council finds that according to Point 2 (23), Clause 10 (6) (Rules of Punishment) Medium misconduct:

(A). The first medium misconduct is warned in writing.

(B). The second medium misconduct is an at least 3 days of job suspension.

(C). The third medium misconduct is a week of job suspension. Beyond this suspension is a dismissal.

According to Point 2 (23), Clause 10 (6) (Rules of Punishment): *"Absence without notification or failure to attend work in time."*

Therefore, the Arbitration Panel in this case finds that Mr. Choun Kimhong's misconduct shall be regarded as a medium misconduct set out in Point 2 (23), Clause 10 (6) (Rules of Punishment) above.

Also, Paragraph 2 of Article 26 and 27 of the Labour Law *(see the interpretation on punishable period and proportional punishment in "Sun Vantheth" above),*

According to the findings of fact, Mr Choun Kimhong was suspended on 8 July 2013 which was five days after the employer alleged he had committed serious misconduct according to Point 3 (9) (serious misconduct), Clause 10 (6) (Rules for Punishment).

Therefore, the Arbitration Council finds that the employer punished Mr Choun Kimhong within the punishable period; however, the Arbitration Council finds that Mr Choun Kimhong's punishment was not proportional to his misconduct. Therefore, the Arbitration Council finds that the employer does not have sufficient reasons to dismiss Mr Choun Kimhong.

Therefore, the Arbitration Council will consider termination compensation for Mr Choun Kimhong:

1-Compensation in lieu of prior notice

Article 75 of the Labour Law *(see the interpretation on compensation in lieu of prior notice in "Mr Jesus M. Pingul" above),*

In this case, the total duration of Mr Choun Kimhong's employment contract is 5 years and 3 months starting from 17 April 2008.

Therefore, the employer must provide prior notice of dismissal to Mr Choun Kimhong 2 months before on 23 July 2013.

According to a letter dated 23 July 2013 notifying Mr Choun Kimhong of his dismissal, the employer dismissed Mr Choun Kimhong on 23 July 2013. According to the above notification, the Arbitration Council finds that the employer decided to dismiss Mr Choun Kimhong on the day of the notification. Therefore, the Arbitration Council finds that the employer failed to provide notice to Mr Choun Kimhong 2 months before his dismissal on 23 July 2013. Therefore, the employer is under an obligation to pay Mr Choun Kimhong compensation in lieu of the 2-month prior notice.

2-Indemnity for dismissal

Article 89 of the Labour Law *(see the interpretation on indemnity for dismissal in "Mr Jesus M. Pingul" above),*

In this case, the total duration of Mr Choun Kimhong's employment contract is 5 years and 3 months starting from 17 April 2008.

According to Article 89 of the Labour Law, the employer must pay Mr Choun Kimhong termination compensation equal to 75 days' worth of wages and perquisites (15 days' worth of wages and perquisites multiply by 5 years).

3-Payment in lieu of annual leave

According to Paragraph 1&4 of Article 166 and Paragraph 2&4 of Article 167 of the Labour Law *(see the interpretation on payment in lieu of annual leave in "Mr Jesus M. Pingul above),*

According to the findings of fact, the employer has not yet paid Mr Choun Kimhong payment in lieu of unused annual leave. Therefore, the Arbitration Council finds that the employer must pay Mr Choun Kimhong payment in lieu of unused annual leave.

4-Damages

Paragraph 1 & 3, Article 91 of the Labour Law *(see the interpretation on damages in "Mr Jesus M. Pingul above),*

According to the interpretation above, the employer does not have sufficient reasons to dismiss Mr Choun Kimhong on 23 July 2013.

Therefore, the employer must pay Mr. Choun Kimhong damages which is equal to 75 days' worth of wages and perquisites.

5-Oustanding wages

Article 116 of the Labour Law *(see the interpretation on outstanding wages in "Mr Jesus M. Pingul" above),*

According to the findings of fact, the employer has paid outstanding wages for Mr Choun Kimhong. The Arbitration Council finds that the employer has fulfilled its obligation to pay outstanding wages in accordance with the Labour Law.

In conclusion, the Arbitration Council decides to order the employer to pay Mr Choun Kimhong termination compensation including:

1. Compensation in lieu of the 2-month prior notice
2. Indemnity for dismissal which is equal to 75 days' worth of wages and perquisites
3. Payment in lieu of unused annual leave
4. Damages which is equal to the indemnity for dismissal
5. Outstanding wages

Issue 4: The workers demand that the employer maintain wages for 963 staff members who participated in strike action from 13 to 25 June 2013

The Arbitration Council considers whether or not the employer is under an obligation to maintain wages for 963 staff members who participated in strike action from 13 to 25 June 2013.

Paragraph 1, Article 332 of the Labour Law states: *"A strike suspends the labour contract. During a strike, the allowance for work is not provided and the salary is not paid."*

Paragraph 1, Article 72 of the Labour Law states that:

The suspension of a labour contract affects only the main obligations of the contract, that are, those under which the worker has to work for the employer, and the employer has to pay the

worker, unless there are provisions to the contrary that require the employer to pay the worker.

Article 334 of the Labour Law states:

During a strike, the employer is prohibited from recruiting new workers for a replacement for the strikers... Any violation of this rule obligates the employer to pay the salaries of the striking workers for the duration of the strike.

Paragraph 1, Article 72 of the Labour Law states:

The suspension of a labour contract affects only the main obligations of the contract, that are, those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

In Case 27/10-Heart Enterprise, the Arbitration Council held:

According to Article 332 and 72 (1) of the Labour Law regardless of the fact that strike is staged in accordance with strike procedure or not, the employer is not required to pay workers wages or bonuses during strike period. Therefore, the Arbitration Council finds that the employer is not under an obligation to pay striking workers wages during strike *(see Arbitral Award 49/05-Ocean Garment, Reasons for Decision, Issue 3).*

In Case 08/04-Wash Concept Enterprise, Reasons for Decision, Issue 1, the Arbitration Council held:

The employer's act of recruiting new workers during the strike was in violation of Article 334 of the Labor Law… However, the employees [in this case] failed to give prior notice and started their strike immediately upon receipt of notice on the two workers' suspension. According to Article 320 (4), "The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out." In fact, the [workers went on] strike at the company without giving any notice or trying out all peaceful method of resolving the dispute in accordance with Article 320 (4), because the workers went on strike precedent to the procedures and during the process of the resolution of the dispute by conciliation and arbitration by the Arbitration Council, which is an institution for peaceful resolution of the collective labor disputes. Therefore, as the strike was not in accordance with the procedures, the workers are not entitled to their wages during the strike. It should be noted that this Article 334 can be applied only when the workers comply with such legal procedures as are set out in Chapter 13 of the Labor Law in conducting a strike *(see Arbitral Award 04/03-Ly Da Garment, 47/04-Dai Young, 12/05-P & E, Reasons for Decision, Issue 2, and 178/12-Decoro, Reasons for Decision, Issue 1, 2, and 3)*.

The Arbitration Panel in this case also agrees with the interpretation made in the previous cases.

According to the findings of fact, the employer recruited 113 new workers during strike staged from 13 to 25 June 2013. The employer agrees that it recruited new workers during the strike, but that the recruitment was not related to the strike action. The Arbitration

Council finds that the parties' claims are contradictory and the employer does not have specific evidence proving their claim.

According to the Arbitration Council's jurisprudence, the fact that the employer recruited new workers to replace striking workers during strike violates Article 334 of the Labour Law. Therefore, the employer is under an obligation to pay wages to striking workers if strike was staged in accordance with strike procedures.

The Arbitration Council considers whether or not strike was staged in accordance with strike procedures.

Article 319 of the Labour Law states: *"The right to strike and to a lockout is guaranteed…"*

Paragraph 4, Article 320 of the Labour Law states: *"The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out."*

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… The prior notice must also be sent to the Ministry in Charge of Labour."*

The workers claim strike action was staged to put pressure on the employer to negotiate on two demands including: (1) employer compliance with Arbitral Award No. 10/10 dated 16 February 2010, No. 78/10 dated 6 September 2010, and No. 184/12 and (2) increase of workers' wages. The workers assert that a survey was conducted before the strike and a notification was sent to the employer as well as stakeholders. However, the workers do not claim staff members tried to negotiate with the employer before the strike. Also, the workers did not try their best to resolve the issues with the employer by peaceful means because the workers staged the strike before the Arbitration Council process which is the main body for resolving labour disputes by peaceful means.

Therefore, strike staged from 13-15 June 2013 did not comply with the procedures because the workers did not try their best to resolve the issues. Therefore, the workers are not entitled to wages during the strike because the strike was not staged in accordance with the procedures.

In conclusion, the Arbitration Council rejects the workers' demand that the employer maintain wages for 963 workers who participated in strike action staged from 13 to 25 June 2013.

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

DECISION AND ORDER

Issue 2 & 3:

- Order the employer to reinstate Um Phalla and provide back pay for wages and benefits from the date of dismissal to the date of reinstatement and order the employer to punish Um Phalla in accordance with the internal work rules.
- Order the employer to reinstate Chorn Chenda, Seim Sophanna, and Chea Samros and provide back pay of wages and benefits from the date of dismissal to the date of reinstatement.
- Order the employer to pay Mr Jesus M. Pingul termination compensation:
    1) Compensation in lieu of the 3-month prior notice
    2) Indemnity for dismissal which is equal to 6 months' worth of wages and perquisites
    3) Payment in lieu of unused annual leave
    4) Damages which is equal to the indemnity for dismissal
    5) Outstanding wages
- Order the employer to pay Mr Sun Vantheth termination compensation:
    1) Compensation in lieu of the 2-month prior notice
    2) Indemnity for dismissal which is equal to 75 days' worth of wages and perquisites
    3) Payment in lieu of unused annual leave
    4) Damages which is equal to the indemnity for dismissal
    5) Outstanding wages
- Order the employer to pay Tang Sokha termination compensation including payment in lieu of unused annual leave and outstanding wages.
- Order the employer to pay Choun Kimhong termination compensation:
    1) Compensation in lieu of the 2-month prior notice
    2) Indemnity for dismissal which is equal to 75 days' worth of wages and perquisites
    3) Payment in lieu of unused annual leave
    4) Damages which is equal to the indemnity for dismissal
    5) Outstanding wages

Issue 4: Reject the workers' demand that the employer maintain wages for 963 workers who participated in the strike staged from 13 to 25 June 2013.

Type of award: non-binding award

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

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **You Suonty**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....

Dissenting Opinion

Clause 37 of Prakas No. 099, dated 21 April 2004, issued by the Ministry of Labour and Vocational Training states:

> The arbitral panel shall record its decisions in an award which shall be signed by all three arbitrators. If one of the arbitrators does not agree with the decision of the majority, the dissenting arbitrator may record his dissent as an annex to the award.

Based on this clause, I, Arbitrator **You Suonty**, would like to record my dissent on **Issue 2 & 3, Arbitral Award no. 028/14-NagaWorld Limited** ordering the employer to reinstate (1) Mr Sun Vantheth, (2) Ms Chorn Chenda, (3) Ms Seim Sophanna, and (4) Mr Chea Samros and provide back pay as well as pay Mr Chun Kimhong termination compensation.

I would like to explain the reasons for my dissent:

- **Mr. Sun Vantheth's dismissal based on serious misconduct**

According to the finding of fact, Mr Sun Vantheth did permit Mr Sok Narith to enter the company without notifying or seeking approval from the employer. Such an act violates the employer's management measures for ensuring safety of customers' stay at the hotel and visit the casino as well as all staff members.

Mr Sun Vantheth, a security guard having duty to maintain safety and security for assets and customers who stay at the hotel and visit the casino as well as staff members shall question customers who enter and exit point of entry that he was guarding and report any incident to his management to prevent any loss or damages on the employer, customers, and staff members' interests. Such a measure is applied to all customers. However, Mr Sun Vantheth failed to fulfill his obligation when Mr Sok Narith walked through the point of entry guarded by Mr Sun Vantheth though he entered the company to resolve issues for the individual.

Though the internal work rules do not set out punishment for such a violation, the employer has right to punish staff member who violates safety and security measures for customers. The employer was worried about acts committed by those who entered the company which may affect customers' safety and security. The employer expressed such a concern in an email sent to Mr Sun Vantheth on 3 September 2013.

Paragraph B, Article 83 of the Labour Law includes failure to implement labour health and safety measures in the workplace as the workers' serious misconduct. Also, according to

Paragraph 2, Article 73 of the Labour Law, the employer can terminate employment contract of worker committed serious misconduct.

Based the reasoning above, Mr Sun Vantheth failed to fulfill his obligation as a security guard and violated the employer's safety and security measures. Therefore, the employer has right to terminate Mr Sun Vantheth's employment contract based on serious misconduct.

- Mr Choun Kimhong's dismissal based on serious misconduct

According to Point 3 (9) (serious misconduct), Clause 10 (6) (Rules for Punishment) stating: *"Counterfeiting personal or company documents."* The employer dismissed Mr. Choun Kimhong on 23 July 2013 based on the clause above.

According to the findings of fact, the workers did not submit an evidentiary email sent by Mr Choun Kimhong to Mr Cliffort Chang-Casino Manager. The employer also failed to submit an evidentiary note given to Mr Choun Kimhong instructing him to meet Mr Cliffort Chang about Mr Choun Kimhong's leave rescheduling. Due to insufficient evidence for considering an instruction given to Mr Choun Kimhong to meet Mr Cliffort Chang, whether or not Mr Choun Kimhong actually rescheduled his leave without the two managers' approval is not considered.

At the hearing, the parties agreed that Mr Choun Kimhong was a Shift Schedule Record and Leave Keeper of Casino Department. Mr Choun Kimhong can reschedule work shifts of staff members of the Casino Department only with approval from both Mr Ly Baoloc and Mr Cliffort Chang following the procedures raised in the fact finding of the award.

In special cases, staff members can seek the Section Head's response via email under the approval of Mr Ly Baoloc and Mr Cliffort Chang. On 3 July 2013, Mr Choun Kimhong rescheduled his leave in the Shift Reschedule Record without complying with the procedures raised in the fact finding. Mr Choun Kimhong also rescheduled his leave at his discretion and without the two managers' approvals. The rescheduling without requisite approval is regarded as counterfeiting the company documents. Therefore, the employer has the right to dismiss Mr Choun Kimhong in accordance with Point 3 (9) (serious misconduct), Clause 10 (6) (Rules for Punishment) stating: *"Counterfeiting personal or company documents."* Therefore, the employer is not under an obligation to provide termination compensation to Mr Choun Kimhong.

- **Dismissals of Ms Chorn Chenda, Ms Seim Sophanna, and Mr Chea Samros**

At the hearing, the Arbitration Council finds that during August 2013, a certain number of workers' wages were increased. Subsequently, the 3 workers discussed among themselves about wages and made enquiries with the Head of Human Resources Department upon hearing that other staff members in the same team received wages more than them. After receiving an instruction to collect names of staff members in his section

whose wages were increased from Administration Department, the 3 workers submitted payslips and prepared a table listing 30 workers' wages and IDs to the Administration Department. Such an act caused other staff members to make enquires with the Human Resources Department about their wages.

Point 3 (14) (serious misconduct) of Clause 10 (6) (Rules of Punishment) of the internal work states: *"Unauthorised disclosure of confidential information affecting the company's interest".* Also, a memorandum dated 2 May 2012 and the other memorandum dated 23 January 2010 indicate each staff member shall keep confidential information and avoid sharing confidential information with other staff members.

Although staff members claim wages are not confidential information, sharing of wage details should be kept at a minimum. Collection of 30 workers' wage details is beyond the minimum level of information sharing and deserves punishment. Also, the employer's requirement that staff members keep their wage details confidential is the employer's right to direct and supervise to ensure good operations because the employer has also taken other factors as the basis for determining staff members' wages; that is why staff members did not receive the same wages even though they have the same positions. Moreover, leak of wage details caused concerns for the employer and affected staff members' performance as well as company operation.

Based on the findings of fact and reasoning above, the employer has right to dismiss Chorn Chenda, Seim Sophanna, and Chea Samros on the ground of serious misconduct.

Phnom Penh, 3 March 2014
Signature

You Suonty