



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 05/11-M & V (Branch 1)

Date of award: 7 February 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

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

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

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

DISPUTANT PARTIES

Employer party:

Name: **M & V International Manufacturing Ltd. (Branch 1) (the employer)**

Address: National Road 2, Chak Angre Krom Commune, Meanchey District, Phnom Penh

Telephone: 016 707 046

Fax: N/A

Representatives:

1. Mr Yin Nak Head of Administration
2. Mr Chum Bosan Administration staff
3. Mr Sok Sochet Head of Ironing Section

Worker party:

Name: **Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU)**

Local Union of C.CAWDU

Address: No. 2-3G, Street 26BT, Boeung Tompun Commune, Meanchey District,

Phnom Penh

Telephone: 089 960 860

Fax: N/A

Representatives:

1. Mr Muo Chheang Official of C.CAWDU
2. Mr Lon Pov President of the Local Union of C.CAWDU
3. Mr Prum Punnaray Secretary of the Local Union of C.CAWDU

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

ISSUES IN DISPUTE

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

1. The workers demand that the employer rehire leaders of the Local Union of C.CAWDU, namely Lon Pov, President, and Prum Punnaray, Secretary, and back pay their wages.
2. The workers demand that the employer change the length of employment contracts from six months to one year, or convert the workers' status to permanent workers.
3. The workers demand that the employer stop forcing them to work overtime.
4. The workers demand that the employer convert the contracts of workers who have worked for more than two years to undetermined duration contracts.
5. The workers demand that the employer stop discriminating against union leaders and activists.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the Labour Law (1997); the *Prakas* on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same *Prakas*; and the *Prakas* on the Appointment of Arbitrators No. 133 dated 9 June 2010 (Eighth Term).

An attempt was made to conciliate the collective dispute that is the subject of this award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and non-conciliation report No. 1183 KB/RK/VK dated 31 December 2010 was submitted to the Secretariat of the Arbitration Council on 10 January 2011.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 21 January 2011 at 8:00 a.m.

Procedural issues:

On 16 December 2010, the Department of Labour Disputes received a complaint from C.CAWDU, No. 079/10 SBK dated 29 November 2010, outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 27 December 2010, after which five issues remained unresolved. The five non-conciliated issues were referred to the Secretariat of the Arbitration

Council on 10 January 2011 via non-conciliation report No. 1183 KB/RK/VK dated 31 December 2010.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the five non-conciliated issues, held on 21 January 2011 at 8:00 a.m. Both parties were present at the hearing as summoned by the Arbitration Council. The Arbitration Council conducted a further conciliation of the five non-conciliated issues, resulting in the resolution of issues 2, 3, and 4. As issues 1 and 5 are interconnected, the workers agreed to combine these two issues.

As the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), signed on 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. The parties are not entitled to lodge an objection to an award on rights disputes because they have agreed in the MoU to be bound by these awards. However, the parties are able to object to an award on interests disputes if they choose non-binding arbitration of such disputes.

Any objection lodged by the parties to an award on interests disputes will not affect their obligation to implement an award on rights disputes in accordance with the MoU.

The Arbitration Council will consider the issues in dispute [issues 1 and 5] based on the evidence and reasons below.

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party:

1. Authorisation letter from the company director for Yin Nak and Chum Bosan, dated 5 January 2011.
2. Employer's statement in defence of the claim, dated 25 January 2011.
3. Letter from the head of Department of Labour Disputes to Lon Pov regarding the request for registration of the Local Union of C.CAWDU, No. 1080 KB/RK/VK dated 26 November 2010.
4. Probationary contract of Lon Pov, dated 11 June 2010.
5. Fixed duration contract of Lon Pov, dated 11 August 2010.
6. Probationary performance evaluation form of Lon Pov, dated 5 August 2010.
7. Fixed duration contract of Lon Pov, dated 11 September 2010.
8. Performance evaluation form of Lon Pov, dated 25 August 2010.
9. Notification to Lon Pov regarding his fixed duration contract, dated 31 August 2010.

10. Performance evaluation form of Lon Pov, dated 24 November 2010.
11. Notification of termination of Lon Pov's fixed duration contract, dated 24 November 2010.
12. Record of termination of Lon Pov's fixed duration contract, dated 24 November 2010.
13. Fixed duration contract of Prum Punnaray, dated 9 March 2010.
14. Fixed duration contract of Prum Punnaray, dated 1 June 2010.
15. Performance evaluation form of Prum Punnaray, dated 25 March 2010.
16. Notification to Prum Punnaray regarding his fixed duration contract, dated 25 March 2010.
17. Performance evaluation form of Prum Punnaray, dated 24 November 2010.
18. Record of termination of Prum Punnaray's fixed duration contract, dated 24 November 2010.
19. Notification of termination of Prum Punnaray's fixed duration contract, dated 24 November 2010.
20. Disciplinary record in relation to a first warning given to a worker, ID D197, for a single day absence.
21. Warning letter to Prum Punnaray, dated 19 October 2010.
22. Letter dated 26 January 2011, submitted by the employer to the president and members of the Arbitration Council regarding an objection to C.CAWDU's statement, dated 24 January 2011.
23. Letter submitted by C.CAWDU to the Secretariat of the Arbitration Council accompanying the statement dated 24 January 2010.
24. Letter from C.CAWDU to the company director notifying the employer of the results of the election for the Local Union, dated 14 October 2010.
25. Form requesting an order for provisional relief submitted by the company director to the prosecutor attached to the Phnom Penh Municipal Court, dated 15 September 2010.
26. Order for provisional relief issued by the Phnom Penh Municipal Court, No. 287 dated 15 September 2010.
27. Letter from the Minister in charge of the Office of the Council of Ministers to the Minister who is the president of the Working Group on Industrial Relations in the Ministry of Social Affairs, Veterans and Youth Rehabilitation, reporting on the situation and requesting continued implementation of the Prime Minister's recommendation of 29 September 2012, No. 1105 SCN dated 12 October 2010.
28. Documents in a foreign language.

B. Provided by the worker party:

1. Letter submitted by C.CAWDU to the Secretariat of the Arbitration Council accompanying the statement of C.CAWDU, dated 24 January 2010.
2. Union registration certificate of the Local Union of C.CAWDU, dated 30 December 2010.
3. Acknowledgement of receipt of the case at the Department of Labour Disputes of the Ministry of Labour and Vocational Training, dated 21 October 2010.
4. Letter from C.CAWDU to the company director notifying the employer of the results of the election for the Local Union, No. 148/10 SBK dated 14 October 2010.
5. Minutes of the election to establish the Local Union of C.CAWDU, dated 12 October 2010.
6. List of attendees at the election to establish the Local Union of C.CAWDU, dated 12 October 2010.
7. Notification of termination of Lon Pov's fixed duration contract, dated 24 November 2010.
8. Notification of termination of Prum Punnaray's fixed duration contract, dated 24 November 2010.
9. Employment card of Prum Punnaray.
10. List of workers to be reinstated by the employer.
11. Letter from the head of the Department of Labour Disputes to Lon Pov regarding the request for registration of the Local Union of C.CAWDU, No. 1080 KB/RK/VK dated 26 November 2010.
12. Letter from 18 workers authorising C.CAWDU to resolve the three issues under dispute with the employer, dated 26 November 2010.
13. Letter submitted by C.CAWDU to the Arbitration Council regarding an objection to the employer's statement, No. 006/11 SBK dated 6 January 2011.
14. Letter from C.CAWDU to the company director demanding the reinstatement of workers who participated in a strike from the 13th to the 16th [month not specified], No. 091/11 SBK dated 6 January 2011.

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

1. Report on collective labour dispute resolution at M & V International Manufacturing Ltd. (Branch 1), No. 1183 KB/RK/VK dated 31 December 2010.
2. Minutes of collective labour dispute resolution at M & V International Manufacturing Ltd. (Branch 1), dated 27 December 2010.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the hearing addressed to the employer, No. 041 KB/AK/VK/LKA dated 13 January 2011.

2. Notice to attend the hearing addressed to the workers, No. 042 KB/AK/VK/LKA dated 13 January 2011.
3. Agreement on binding arbitration of rights disputes, dated 21 January 2011.

FACTS

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

The Arbitration Council finds that:

- M & V International Manufacturing Ltd. (M & V) (Branch 1) employs 294 workers. There are six unions at the workplace.
- The Local Union of C.CAWDU, representing 20 workers, is the claimant in this case. The members of the union work in the measurement and quality control sections. They do not work in the ironing section.
- The Local Union of C.CAWDU was registered on 30 December 2010.

Issues 1 and 5: The workers demand that the employer rehire the leaders the Local Union of C.CAWDU, namely Lon Pov, President, and Prum Punnaray, Secretary, and back pay their wages.

- The employer acknowledges that it previously employed Lon Pov and Prum Punnaray and that they worked in the ironing section. There were 63 workers in this section before [a number of] contracts expired on 30 November 2010. After the employer decided not to renew the contracts of all the workers, only 56 workers remained in the section.
- On 12 October 2010, the Local Union of C.CAWDU held an election for its leadership at which Lon Pov was elected President and Prum Punnaray was elected Secretary.
- On 12 October 2010, the union submitted a request for union registration to the Ministry of Labour and Vocational Training.
- On 16 October 2010, the union notified the employer of the results of the election for its leadership.
- On 21 October 2010, the union received a receipt from the Ministry of Labour and Vocational Training acknowledging its request for union registration.

- On 21 October 2010, the employer objected to the union leadership. In particular, it asserted that Prum Punnaray did not work for it.
- On 26 November 2010, the employer was invited by the Ministry of Labour and Vocational Training to clarify its objection to Prum Punnaray's leadership. The union was also invited to clarify the issue on 26 November 2010.
- On 30 December 2010, the Ministry of Labour and Vocational Training issued a certificate of union registration to the Local Union of C.CAWDU. However, the union didn't receive the certificate until two or three days before the hearing date. The employer did not refute this information given by the workers.

Case of Lon Pov

- Lon Pov signed a two month probationary contract with the employer, effective from 11 June 2010 to 10 August 2010. He subsequently signed another one month contract, effective from 11 August 2010 to 31 August 2010. His final contract lasted for three months, from 1 September 2010 to 30 November 2010, under which he received a main wage of US\$ 61 per month.
- On 23 November 2010, the employer sent him a notification of non-renewal of his contract, but he did not sign to accept the notification.
- On 30 November 2010, his fixed duration contract terminated upon expiry.
- Lon Pov stated that during his employment he had not received any warnings from the employer for misconduct.

Case of Prum Punnaray

- Prum Punnaray signed a two month probationary contract with the employer, effective from 1 August 2008 to 31 October 2008. He subsequently signed a three month contract effective from 31 October 2008. In 2009, his contract terminated upon expiry and the employer provided a severance payment equal to 5% of his wages.
- The Arbitration Council finds that the employer gave him seven days off before starting a new term of employment. He was required to complete another probationary period, as his status was that of a new worker. According to the statements of the workers and the employer at the hearing, the employer then offered him another three month contract, effective from 9 March 2010 to 31 May 2010. His final contract was valid for six months, from 1 June 2010 to 30 November 2010.
- On 19 October 2010, the employer issued him a warning letter for an unauthorised one and a half day absence. He did not sign [to acknowledge receipt of] the letter.

- On 23 November 2010, the employer issued him with a notification of non-renewal of his contract. He did not sign [to acknowledge receipt of] the notification.
- On 30 November 2010, his contract terminated upon expiry.

[Facts relating to both workers]

- When their contracts expired, the employer arranged to provide payments in lieu of annual leave and severance pay equal to 5% of their wages. However, they did not accept the payments.
- Lon Pov and Prum Punnaray argue that the reason for their demand is that the employer had renewed the contracts of other workers in the ironing section but, due to union discrimination, it did not renew their contracts after the election for union leadership.
- The employer argues that it did not rehire them because their contracts had expired and there was not enough work. It was not due to union discrimination. Furthermore, it didn't prohibit them from participating in union activities once the union had been registered.
- The Arbitration Council finds that when [Lon Pov and Prom Punnaray's] contracts expired on 30 November 2010, another 28 workers' contracts also expired. On that same date, the employer renewed the contracts of seven of the 30 workers whose contracts had expired.
- On 8 December 2010, another 20 workers were rehired, some at another branch of M & V. The three leaders of the union were not rehired.
- The Arbitration Council finds that the workers whose contracts expired on 30 November 2010, other than Lon Pov and Prum Punnaray, attended the production section for rehiring because they knew that the employer wanted to recruit workers.
- The employer argues that other textile factories as well as M & V have not had much work for workers between October 2010 and March 2011. Thus, for the past few months the employer has not been renewing workers' fixed duration contracts.
- The Arbitration Council finds that when the employer does not renew a worker's contract, it gives the worker prior notice of seven days. The worker must sign [to accept] this notice. The employer tells the worker that if it has work for them, they will be rehired. When the employer wants to recruit workers, it posts a job advertisement on a board at the workplace. Workers who want to be rehired must attend the production section and sign a new probationary contract.

- The workers' statement dated 24 January 2011 lists the workers who were rehired by the employer. According to the statement, the employer rehired seven workers on 30 November 2010, seven or eight workers on 6 December 2010, and another 11 workers on 8 December 2010, namely: (1) Prin Borin, ID D265; (2) Khat Samol, ID D257; (3) Chrek Chamroeun, ID D263; (4) Pin Sopheap, ID D262; (5) Sak Mili, ID D256; (6) Tri Sreyros, ID D255; (7) Him Sopheap, ID D266; (8) Heng Dara, ID D259; (9) Beav Srey, ID D264; (10) Chhean Chhat, ID D261; and (11) Khat Savon, ID D202. In late December 2010 and early January 2011, the employer rehired another five workers, namely: (1) Bic Rina, ID 284; (2) Sok Ron, ID 283; (3) Kong Chanthorn, ID 282; (4) Born Sokhoeun, ID 285; and (5) Om Kosal, ID 286. The employer did not refute the allegations in this statement.

REASONS FOR DECISION

Issues 1 and 5: The workers demand that the employer rehire the leaders the Local Union of C.CAWDU, namely Lon Pov, President, and Prum Punnaray, Secretary, and back pay their wages.

Before considering this issue, the Arbitration Council considers whether the demand gives rise to a rights dispute or an interests dispute.

Article 312, paragraph 2 of the Labour Law states:

The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes.

Based on this article, the Arbitration Council will resolve rights disputes based on law and interests disputes based on equity.

Clause 43 of *Prakas* No. 099 SKBY on the Arbitration Council dated 21 April 2004 states:

An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

In previous arbitral awards, the Arbitration Council has determined a dispute to be an interests dispute if the demand giving rise to it is not based on an entitlement in the Labour Law, an agreement, or a collective agreement (*see Arbitral Awards 119/09-SL Garment, issue 1; 86/10-New Mingda, issue 2; and 02/11-Pou Yuen, issue 2*).

Based on the above, the Arbitration Council considers that an interests dispute does not relate to an existing right in the Labour Law, an agreement, or a collective agreement. A

rights dispute, on the other hand, relates to an existing right in the Labour Law, an agreement, or a collective agreement.

In this case, the workers demand that the employer rehire Lon Pov and Prum Punnaray and back pay their wages on the basis of union discrimination. The Arbitration Council considers that this demand gives rise to a rights dispute because the non-renewal of contracts is subject to provisions in the Labour Law.

Therefore, the Arbitration Council will consider whether: (1) the non-renewal of the fixed duration contracts of the two workers complied with the procedure in the Labour Law and (2) the non-renewal of the contracts was the result of union discrimination.

(1) Did the non-renewal of the fixed duration contracts of the two workers comply with the procedure in the Labour Law?

Article 73, paragraph 1 of the Labour Law provides that “[a] labour contract of specific duration normally terminates at the specified ending date.”

In previous arbitral awards, the Arbitration Council has interpreted this article as follows:

the Arbitration Council considers that a fixed duration employment contract should expire automatically at the [specified end date]. This means that the obligations of the employer and the workers end. Thus, a party cannot force the other party to continue the contract if there is no agreement (*see Arbitral Awards 100/07-Hoyear, issue 2 and 122/10-Meng Yan, issues 1, 2, and 3*).

In this case, the Arbitration Council agrees that a fixed duration contract expires automatically at the specified end date and that the obligations of the employer and the workers also end. Therefore, a party cannot force the other party to renew the contract without agreement.

Based on the findings of fact, the Arbitration Council considers that the fixed duration contracts of Lon Pov and Prum Punnaray expired on 30 November 2010. The employer gave them seven days’ notice before the contracts expired and offered severance payments. However, the two workers did not accept the payments.

Clause 3, paragraph 3 of *Prakas* No. 305 SKBY dated 22 November 2001 states:

All workers who are candidates for union leadership positions shall receive the same protection from work dismissal as worker delegates [i.e. shop stewards]. This protection begins 45 days prior to the election and ends 45 days after the election if the candidate is not elected. The union shall notify the employer of the worker’s candidacy through all reliable means. However, the employer shall only be required to comply with this provision once for each election of union leaders.

In the findings of fact, the Arbitration Council found that Lon Pov was elected president of the union and Prum Punnaray was elected secretary.

In previous arbitral awards, the Arbitration Council has held that:

Article 293 of the Labour Law [which confers special protection upon shop stewards] cannot apply in cases of contract expiration because the article states clearly that the protection is with respect to the *dismissal* of shop stewards and union leaders and does not include situations where a contract has expired [emphasis added] (see *Arbitral Awards 34/05-Jacqsintex, issue 1, and 10/09-New Wide, issue 2*).

The Arbitration Council agrees with the above interpretation in this case. The Arbitration Council considers that this case concerns the termination of the workers' employment contracts upon reaching their expiry date and the non-renewal of such contracts. It does not concern the dismissal of workers, because dismissal would have involved the employer terminating the workers' employment when their contracts had not yet expired and were still in operation.

Therefore, the Arbitration Council considers that this article [which provides protection to workers] does not apply in this case and the employer was not obliged to seek approval from the Labour Inspector before not renewing the contracts of the two workers. Thus, the Arbitration Council considers that the non-renewal of the workers' contracts complied with the legal procedure.

(2) Was the non-renewal of the workers' contracts the result of union discrimination?

Article 12 of the Labour Law states:

Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children...no employer shall consider on account of:...

- membership of workers' union or the exercise of union activities.

to be the invocation in order to make a decision on:...

- discipline or termination of employment contract.

Article 279 of the Labour Law states:

Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.

Based on these articles, the Arbitration Council considers that the employer is prohibited from discriminating against the union by not renewing the workers' contracts (*see Arbitral Awards 10/03-Jacqsintex, issue 2; 34/05-Jacqsintex; 10/09-New Wide, issues 1 and 2; and 155/09-USA, issue 7*).

In Arbitral Award 28/07-Dae Kwang, issue 3, the Arbitration Council considered that even though [the worker's] fixed duration contract has expired, Article 12 and Article 279 of the Labour Law prohibit the employer from making a decision not to renew the contract [in order to discriminate against a] union.

The Arbitration Council agrees with the above interpretation in this case; the employer cannot decide not to renew a worker's contract based on union discrimination.

In relation to allegations of union discrimination in previous cases, the Arbitration Council has held that the workers bear the burden of proving that the employer discriminated against the union (*see Arbitral Awards 112/06-River Rich, issue 1; 01/07-Supreme, issue 1; 158/08-M & V (Branch 4); 10/09-New Wide, issues 1 and 2; and 40/09-Goldfame, issue 1*).

In order to determine whether the employer discriminated against the union by not renewing a worker's contract, the Arbitration Council considers statements made during the hearing and examines the evidence submitted in the case (*see Arbitral Awards 10/09-New Wide, issues 1 and 2; 158/08-M & V (Branch 4); and 40/09-Goldfame, issue 1*).

The Arbitration Council considers in this case that the employer renewed the fixed duration contracts of Lon Pov and Prum Punnaray prior to their election as leaders of the union on 12 October 2010. However, on 30 November 2010 the contracts of 30 workers expired, including the contracts of Lon Pov and Prum Punnaray which were not renewed. Of the 30 workers, seven had their contracts renewed by the employer on the expiry date. On 8 December 2010, another 20 of the workers had been rehired, some being recruited at other branches of M & V. The three union leaders were not rehired.

The Arbitration Council finds that when workers' contracts are not renewed, the employer's practice is to give the workers seven days' notice prior to the expiration of the contract. The workers must sign to accept the notice. When the employer needs to recruit workers, it posts job advertisements on the information board at the workplace. If workers want to be rehired, they must attend the production section in order to participate in the recruitment process. In this case, the Arbitration Council finds that the two workers did not sign to accept the notice of non-renewal of their contracts. Moreover, Lon Pov and Prum Punnaray did not attend the production section as the other workers did.

Based on the foregoing, the Arbitration Council considers that the employer did not discriminate against the union by not renewing the workers' fixed duration contracts. Further, the recruitment of new workers is dependent on the employer's operational requirements.

At the hearing, the Arbitration Council found that on 21 October 2010 the employer submitted a letter to the Ministry of Labour and Vocational Training objecting to the candidacy of Prum Punnaray for union leadership on the grounds that he was not employed by the employer. The Arbitration Council finds that the objection letter was submitted before the notification of non-renewal was issued to Prum Punnaray on 23 November 2010. This means that his employment relationship with the employer had not yet ended. Thus, the Arbitration Council considers that the employer knew about the establishment of the union and expressed dissatisfaction by submitting the letter to the Ministry of Labour and Vocational Training objecting on the grounds that Prum Punnaray was not its worker.

However, the Arbitration Council finds that there is no evidence proving the allegation that the employer discriminated against the union leaders after the letter of objection was submitted to the Ministry of Labour and Vocational Training.

Furthermore, the Arbitration Council finds that even though the contracts of the union leaders have ended, the employer allows them to fulfil their union duties as usual. When the employer needs workers, the two workers can apply for a position and sign employment contracts as the other workers have. The method of recruitment is determined by the production section.

However, the Arbitration Council considers that Article 12 of the Labour Law prohibits the employer from taking into account union membership when deciding not to renew workers' contracts. Hence, if the employer needs to recruit new workers and Lon Pov and Prum Punnaray apply, the employer must not discriminate against them.

In conclusion, the Arbitration Council rejects the demand that the employer renew the fixed duration contracts of Lon Pov and Prum Punnaray and back pay their wages. However, the Council orders that when the employer is recruiting new workers it submit the two workers to the same recruitment process as other workers, without discrimination.

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

DECISION AND ORDER

Part I. Rights dispute:

Issues 1 and 5:

- Reject the demand that the employer renew the fixed duration contracts of Lon Pov and Prum Punnaray and back pay their wages.
- Order the employer to submit the two workers to the same recruitment process as other workers, without discrimination, when it is recruiting new workers.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is immediately enforceable by the parties in accordance with the MoU dated 28 September 2010.

Part II. Interests dispute: N/A

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 MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: