



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 101/11-Angkor Village

Date of Award: 30 August 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

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

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

DISPUTANT PARTIES

Employer party:

Name: **Angkor Village Botanical Resort (the employer)**

Address: Trang Village, Slorgram Commune, Siem Reap City, Siem Reap Province

Telephone: 012 655 391 Fax: N/A

Representatives:

- | | |
|--------------------|--------------------|
| 1. Ms Tep Vouthou | Owner of the Hotel |
| 2. Mr Piot Olivier | Owner of the Hotel |
| 3. Ms Om Sophany | Secretary |

Worker party:

Name: **Cambodian Tourism and Service Workers Federation (CTSWF)**

Address: #2.3G, St.26 BT, Tnortchrum Village, Beoung Tompun Commune, Meanchey
District, Phnom Penh

Telephone: 012 411 755 Fax: N/A

Representatives:

- | | |
|------------------|---|
| 1. Mr Sok Kruy | Lawyer |
| 2. Mr Mom Rithy | Vice-President of CTSWF |
| 3. Mr Sok Narith | General Secretary of CTSWF |
| 4. Mr Kong Atith | Officer of the Cambodian Labour Confederation |

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5. Mr David John Welsh In-Country Manager of the American Center for International Labor Solidarity (ACILS)
6. Ms Yun Sinat Program Officer of ACIL
7. Ms Chey Phy President of the union at Angkor Village Resort and Spa
8. Ms Kang Kimsan President of the union at Angkor Village Hotel
9. Ms Chea Vanny Vice-President of the union at Angkor Village Resort and Spa
10. Ms Chan Charya Treasurer of the union at Angkor Village Resort and Spa
11. Ms Chean Sovannisa Secretary of the union at Angkor Village Resort and Spa
12. Ms Has Seam Vice-President of the union at Angkor Village Resort and Spa

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate the workers who participated in a strike on 2 August 2011, and backpay their wages. The employer will not reinstate those 66 workers because they staged a strike in front of the hotel in order to prevent Chan Charya from being dismissed. The employer claims that Chan Charya threatened to put poison in the food at the hotel, and that the strike frightened the owners and tourists staying at the hotel.
2. The workers demand that the employer refrain from discriminating against activists and leaders of the union at Angkor Village Hotel. The workers claim that the employer previously dismissed both activists and leaders. The employer states that there is no union discrimination as alleged.
3. The workers demand that the employer provide them with their outstanding annual leave, public holidays, and other entitlements.

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 the non-conciliation report No. 019 KB/RK/VK dated 8 August 2011 was submitted to the Secretariat of the Arbitration Council on 9 August 2011.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: Kravan Room of Allson Angkor Paradise Hotel, National Road 6, Sala Kansen Village, Svay Dongkom Commune, Siem Reap City, Siem Reap Province

Date of hearing: 18 August 2011 at 8:30 a.m.

Procedural issues:

On 28 July 2011, the provincial Department of Labour Disputes of Siem Reap Province received a complaint from CTSWF outlining the workers' five demands. Upon receiving the claim, the provincial Department of Labour Disputes of Siem Reap Province assigned an expert officer to resolve the dispute, and the last conciliation session was held on 6 August 2011. As a result, two of the five issues were conciliated. The three non-conciliated issues were referred to the Secretariat of the Arbitration Council on 9 August 2011 via non-conciliation report No. 019 MKB dated 8 August 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the three non-conciliated issues, held on 18 August 2011 at 8:30 a.m. at Allson Angkor Paradise Hotel.

Both parties were present at the hearing. The Arbitration Council attempted to conciliate the three issues, resulting in issue 3 being resolved and issues 1 and 2 being combined.

As neither party is a signatory to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU) dated 28 September 2010, and they have not chosen binding arbitration on rights disputes, the decision in this case will not be binding in relation to either rights or interests disputes. Consequently, the parties are able to object to the award within eight days of notification.

The Arbitration Council will consider the issues in dispute based on evidence and reasoning as follows.

EVIDENCE

Witnesses and Experts:

A. Witnesses of the worker party:

- Chan Charya Cook
- Lao Tith Gardener

B. Witness of the employer party:

- Yao Yung Head of the Gardening Section

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

A. Provided by the employer party:

1. Photographs of workers on strike.
2. Brief statement on the labour dispute in case 101/11, dated 16 August 2011.
3. Letter from the employer to the Ministry of Tourism, requesting temporary shutdown of Angkor Village Hotel, dated 8 August 2011.
4. Complaint from the employer to the Prosecutor of Siem Reap Court, accusing Mom Rithy and Vorn Ravan, the Vice-Presidents of CTSWF, and 13 other workers of participating in unlawful strikes, inciting the commission of offences, and voluntary damages, dated 8 August 2011.
5. Complaint from the employer to the Prosecutor of Siem Reap Court, accusing Chan Charya of attempted murder of staff at Angkor Village Hotel, dated 9 August 2011.
6. Letter from the provincial Department of Tourism of Siem Reap Province to the Minister for Tourism, regarding the request for temporary shutdown of Angkor Village Hotel, No. 1822 MTX dated 9 August 2011.
7. Notification of shutdown of Angkor Village Hotel and provision of termination payment, dated 8 August 2011.
8. Directive regarding the right to strike, No. 005 SKBY dated 6 March 2000.
9. Letter from the owner of the hotel, dated 21 August 2011, objecting to the brief statement dated 16 August 2011 submitted by the Vice-President of CTSWF.
10. Passport and visa of Tep Vouthou.
11. List of names of 67 workers at the workplace on 4 July 2011.
12. List of ID of security guards from Protect Security Ltd who worked on 4 July 2011.
13. Internal Work Rules of the employer, No. 057 MKB dated 17 August 2011.
14. List of workers who were not paid termination payments and were involved in the criminal matter at the Siem Reap Court, and list of workers who were paid termination payments in accordance with the Labour Law.
15. Letter confirming the commercial registration of Angkor Village Hotel, No. 1111 PN/PKB/KN dated 14 May 1996.
16. Patent certificate of the employer for 2011, No. 00468 dated 15 March 2011.
17. Tourism license of Angkor Village Resort and Spa, effective from 15 June 2011 to 14 June 2012, No. 126/11 dated 31 May 2011.
18. Tourism license of Angkor Village Hotel, effective from 15 June 2011 to 14 June 2012, No., 128/11 dated 31 May 2011.

19. Certificate of commercial registration of Angkor Village Hotel, No.5813 dated 30 December 2010.

B. Provided by the worker party:

1. Authorisation letter from CTSWF for lawyer Sok Kruey to represent the workers in case 101/11 at the Arbitration Council, dated 17 August 2011.
2. Authorisation letter from Mom Rithy for Sok Kruey and David John Welsh to represent the workers in the process at the Arbitration Council, dated 17 August 2011.
3. Authorisation letter from the 66 workers of the hotel for the President of CTSWF to help them resolve their issues both in and outside the court.
4. Brief statement on the labour dispute in case 101/11, dated 16 August 2011, submitted by the President of CTSWF.
5. Brief statement on the labour dispute in case 101/11, dated 20 August 2011, submitted by the President of CTSWF.
6. Notification of election for union leadership at the hotel, from CTSWF to the employer, dated 4 July 2011.
7. Notification of newly-elected union leaders for the first term, from Mom Rithy to the employer, dated 4 July 2011.
8. Record of the union election at the hotel.
9. Ballot paper for the election, in which there were four candidates.
10. Ballot paper for the election, in which there were five candidates.
11. Attendance list of 47 workers who participated in the election, dated 4 July 2011.
12. Attendance list of 18 workers who participated in the election, dated 4 July 2011.
13. Statement of gardening workers Mao Sophy, Chea Sin, Doung Samroeurn, Chea Sokea, Lao Tith, Som Youn, Korn Khan, Sok Sinat, Lach Theurn, Thong Chen, Som Tak, Vei Chea, Pron Sareuy, and Neang Lon, alleging that the employer threatened them so that they would withdraw their membership from the union.
14. List of names of workers complaining against the dismissal of 67 workers on 2 August 2011.
15. Application for registration of the union at Angkor Village Hotel, dated 10 July 2011.
16. Application for registration of the union at Angkor Village Resort and Spa, dated 10 July 2011.
17. Receipt of acknowledgement of the registration, dated 29 July 2011.
18. Content of an email sent by the employer on 1 August 2011, expressing its concerns to workers.
19. Letter from CTSWF, No. 44/11 dated 24 August 2011, rebutting claims contained in the employer's objection dated 21 August 2011.

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

1. Report of collective labour dispute resolution at Angkor Village Botanical Resort, No. 019 MKB, dated 8 August 2011.
2. Record of collective labour dispute resolution at Angkor Village Botanical Resort, dated 6 August 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend to the hearing addressed to the employer, No. 578 KB/AK/VK/LKA, dated 11 August 2011.
2. Notice to attend the hearing addressed to the workers, No. 579 KB/AK/VK/LKA, dated 11 August 2011.

FACTS

- Having examined the report of 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:

- Angkor Village Botanical Resort commenced operation in 1995. Presently, it employs 142 workers.
- CTSWF is the claimant, representing 67 workers in this case.

Issues 1 and 2: The workers demand that the employer reinstate 67 workers on the grounds of union discrimination

- The employer was recognised as a legal entity in the form of sole proprietorship through certificate of commercial registration No. 1111 dated 14 May 1996.
- Presently, the employer has two branches with two separate tourism licenses as follows:
 - o Tourism license of Angkor Village Hotel, No. 128/11 dated 31 May 2011; and
 - o Tourism license of Angkor Village Resort and Spa, No. 126/11 dated 31 May 2011.
- All workers alternate between Angkor Village Hotel and Angkor Village Resort and Spa.
- On 4 July 2011 at 8:00 a.m. the workers notified the employer of the election and the employer acknowledged receipt of the notification.
- On 4 July 2011 at 9:00 a.m. the workers commenced a full-day election for both hotels, covering each worker's shift.

- On 5 July 2011, the workers notified the employer of the results of the election and the employer acknowledged receipt of the notification. The results were as follows:
 1. The union leaders of Angkor Village Hotel:
 - o Kang Kimlean was elected President with 16 votes.
 - o Has Seam was elected Vice-President with 11 votes.
 - o Phoeun Saroun was elected Secretary with 8 votes.
 2. The union leaders of Angkor Village Resort and Spa:
 - o Chey Phy was elected President with 46 votes.
 - o Chea Vanny was elected Vice-President with 40 votes.
 - o Cheab Sovannisa was elected Secretary with 28 votes.
- According to the brief statement submitted by CTSWF, the employer offered written employment contracts to workers with verbal contracts who were participating in the election. The employer refuted this claim in its brief statement.
- At a meeting of gardening workers on 25 July 2011 at 4:00 p.m., Yao Yung, the Head of the Gardening Section, conveyed Tep Vuthou's concerns regarding the workers' membership in the union, and her request that the workers focus on their work at the hotels rather than on the union. Yao Yung was instructed by Tep Vuthou to talk to the workers.
- On 29 July 2011, the workers received a receipt of acknowledgement of registration, issued by the Department of Labour Disputes.
- On 30 July 2011, the employer dismissed Chan Charya, accusing her of putting poison in the food.
- The Arbitration Council summoned Chan Charya to provide testimony regarding the accusation. In her testimony, she acknowledged her remark regarding poison but could not recall the date. She further stated that the remark was solely intended as a joke with Yao Yung. She and Yao Yung did not have a previous dispute.
- The Arbitration Council also summoned Yao Yung to provide testimony. He testified that at lunchtime on 27 July 2011, Chan Charya told him to beware of poison. On 28 July 2011, she said that today she had put a little bit more poison in the food. On 29 July 2011, she asked him: "Did you have lunch? If so, I will put in two more packs of poison". He further stated that he decided to report the matter to the employer because of her repeated remarks about poison. He did not have a previous dispute with her.

- The employer stated that it dismissed her upon being notified of the matter, because she cooked for all the workers as well as the owners' families. The employer had grave concerns over this issue and their families had not eaten the food at Angkor Village Hotel since then.
- On 30 July 2011, Olivier Piot gave Chan Charya a dismissal notification, including severance pay, at the canteen. At that time, another eight workers immediately complained about the dismissal, causing a commotion. He then decided to dismiss the other eight workers.
- On 1 August 2011, another nine workers were dismissed by the employer due to a lack of work.
- At 8:00 a.m. on the same date, 60 workers staged a strike, demanding that the employer reinstate the 18 dismissed workers. The provincial Department of Labour and Vocational Training of Siem Reap intervened in the case. At that time, Tep Vouthou promised not to dismiss any more workers.
- On 1 August 2011 at 2:00 p.m., the workers returned to work. The workers stated that the employer issued them with written warning letters, but they declined to acknowledge the letters and left the hotels. In its brief statement, the employer stated that it did not issue any written warning letters as it was busy discussing the issue with the Heads of Section.
- The employer stated that the workers left the hotels without giving notice. Accordingly, Tep Vouthou instructed them via text message to take a vacation, but requested that they return first to obtain severance pay.
- On 3 August 2011 at 8:00 a.m., the workers staged another strike to demand that the employer reinstate the dismissed workers. At 2:00 p.m., the provincial Department of Labour and Vocational Training held a conciliation session, but the employer did not attend. The Deputy Head of the provincial Department phoned the employer, asking why it had dismissed another 12 workers; the employer responded that it had not dismissed them but had allowed them to take a vacation.
- On 4 August 2011, the 12 dismissed workers returned to work but the employer locked the doors, preventing them from entering the workplace. The workers decided to stage another strike.
- On 5 August 2011, the provincial Department held another conciliation session but the employer's lawyer requested a postponement until 6 August 2011.

- On 6 August 2011, during the conciliation period, the employer refused to reinstate the 67 dismissed workers due to a lack of work and requested that it provide them with severance pay in accordance with the Labour Law.

The workers' arguments

- The workers demand that the employer reinstate the 67 dismissed workers, on the grounds of union discrimination.
- The demand is based on Article 36 of the Constitution of Cambodia regarding freedom of association; Articles 266, 268, and 279 of the Labour Law; and international conventions No. 87 and 98.
- The workers assert that Angkor Village Hotel has not yet shut down. Normally, the Hotel is renovated in May of every year; and during this period the workers are transferred to Angkor Village Resort and Spa.

The employer's arguments

- The employer refuses to reinstate the workers on the grounds of a shutdown of Angkor Village Hotel, due to a lack of patrons and a lack of security at the hotel.
- According to the evidence, the employer submitted a request to temporarily shutdown Angkor Village Hotel from 8 August 2011 onwards.
- On 8 August 2011, the provincial Department of Tourism of Siem Reap notified the Minister for Tourism of the request.
- The Arbitration Council ordered the two parties to submit evidence to substantiate their claims by 22 August 2011, and gave them until 24 August 2011 to object to the evidence. However, the employer failed to submit to the Arbitration Council a record of the decrease in the number of patrons, or shutdown permission.
- The employer also failed to obtain approval from the Labour Inspector to dismiss the 67 workers.

REASONS FOR DECISION

Issues 1 and 2: The workers demand that the employer reinstate 67 workers on the grounds of union discrimination

Before determining this issue, the Arbitration Council considers whether this issue gives rise to rights dispute.

In previous arbitral awards, the Arbitration Council has ruled that a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement (see

AAs 05/11-M&V I, reasons for decision, issues 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issues 1 and 2; and 14/11-GHG, reasons for decision, issue 4).

The Arbitration Council agrees with the interpretation above. The Council considers that this issue concerns the dismissal of the workers, thus making it a rights dispute.

The Council considers this issue as follows:

According to the facts, the dismissal of the 67 workers was triggered by the demand for the reinstatement of Chan Charya. The dismissal occurred after the union had applied for registration and received receipt of acknowledgement of the registration.

Article 293 of the Labour Law states that “[t]he dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector”.

According to this provision, any dismissal of a candidate for worker delegate [shop steward] must be authorised by the Labour Inspector.

Clause 4 of *Prakas* No. 305 dated 22 November 2001 on The Representativeness of Professional Organisations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreements at that Level, states:

From the time that the application for registration is submitted, all workers who are founding members of a union, as well as those workers who voluntarily join the union during the application period, shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 days following the date of registration of the union...For the purposes of this protection, the union shall notify the employer by any reliable means of the names of the individuals to be protected. A copy of this notice must be sent to the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation.

Based on this clause, the Arbitration Council considers that workers who found or volunteer to be members of the union must receive protection for 30 days following the date of the registration of the union. In this case, the date of application for registration (29 July 2011) and the date by which the 67 workers had been dismissed (6 August 2011) fall within the period of protection.

In previous arbitral awards, the Arbitration Council has interpreted the above clause to mean that:

workers can receive special protection as long as: 1) the worker is the type of worker entitled to receive special protection; 2) the dismissal occurs within the special protection period; and 3) the union has notified the employer of the

candidates entitled to special protection through all reliable means (see AAs 50/05-*Fortune*, reasons for decision, issue 1; 64/05-*Chian Hwey*, reasons for decision, issue 1; 07/06-*Dai Young*, reasons for decision, issue 1; 09/06 – *Grand Diamond City*, reasons for decision, issue 1; and 148/07-*Pay Her*, reasons for decision, issue 1).

The Arbitration Council considers this issue as follows:

First condition: the 67 dismissed workers are union leaders and union founders. Thus, this condition is met.

Second condition: the 67 workers were consecutively dismissed from 30 July 2011 to 6 August 2011. The dismissal occurred after the application for union registration on 29 July 2011, which is within the period of protection. Thus, this condition is met.

Third condition: the workers notified the employer of the result of the election on 5 July 2011 and the employer acknowledged receipt of the notification. Thus, this condition is also met.

Based on the foregoing, the 67 workers were entitled to special protection in accordance with the Labour Law. Hence, the employer was required to seek approval from the Labour Inspector before dismissing them. However, the employer failed to do so in this case.

In previous arbitral awards, the Arbitration Council has held that the employer must reinstate the dismissed workers if it did not obtain approval for the dismissal from the Labour Inspector (see AAs 50/05-*Fortune*, reasons for decision, issue 1; 64/05-*Chian Hwey*, reasons for decision, issue 1; 07/06-*Dai Young*, reasons for decision, issue 1; 09/06-*Grand Diamond City*, reasons for decision, issue 1; and 148/07-*Pay Her*, reasons for decision, issue 1).

The Arbitration Council agrees with the above interpretation in this case. However, the employer refuses to reinstate the workers due to its request for temporary shutdown based on a decrease in the number of patrons and a lack of security at the hotels.

According to previous arbitral awards, the claimant bears the burden of proof (see AAs 79/05-*Evergreen*; 101/08-*GDM*, reasons for decision, issues 1 and 2; 108/08-*Hugo*, reasons for decision, issue 4; 163/09-*Tack Fat*, reasons for decision, issue 2; 168/09-*Teok Tla Plaza II*, reasons for decision, issue 2; and 115/10-*G Foremost*, reasons for decision, issue 18).

In the hearing, the Arbitration Council ordered the employer to submit evidence regarding the alleged decrease in the number of patrons before and after the strike, but the employer failed to comply with the order. However, the Arbitration Council obtained the request for temporary shutdown and the letter No. 1822 dated 9 August 2011 from the

provincial Department of Tourism to the Minister for Tourism; although there has been no response from the Ministry of Tourism as yet. The Arbitration Council considers that the employer intends to partially close its business; however, due to the lack of response from the Ministry of Tourism and lack of evidence of a decrease in the number of patrons, the Arbitration Council assumes that the employer's business is not officially closed and the employer still has work for the workers.

In conclusion, the employer must reinstate the 67 workers and provide back pay from the date they were illegally dismissed. If the employer later obtains approval for a temporary shutdown, it is entitled to reduce the number of workers in accordance with Article 95 (mass layoff) of the Labour Law. In accordance with this article, the employer must establish the order of the layoffs in light of the workers' professional qualifications, seniority within the establishment, and family burdens.

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

DECISION AND ORDER

Issues 1 and 2: Order the employer to either reinstate the 67 dismissed workers and provide them with back pay from the date they were illegally dismissed or, if it obtains permission for business shutdown, to reduce the number of workers in accordance with the procedure set forth in Article 95 of the Labour Law.

Type of award: non-binding award

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

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: