KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 08/11-PCCS Garments

Date of award: 25 February 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Ann Vireak**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTANT PARTIES

Employer party:

Name: **PCCS Garments Limited (the employer)**

Address: No. 1, Russian Confederation Boulevard, Teouk Thla Commune, Russei Keo District, Phnom Penh

Telephone: 012 273 616 Fax: N/A

Representatives at the first hearing:

1. Mr Mah Kai Keong General Manager
2. Mr Long Phally Head of Human Resources
3. Mr You Mengtry Head of Administration

Representatives at the second hearing:

1. Mr Mah Kai Keong General Manager
2. Mr Long Phally Head of Human Resources

Worker party:

Name: **Worker Freedom Union Federation (WFUF)**

Address: No. 58, Sola Street, Trorpang Lvea Village, Kakap Commune, Dangkor District, Phnom Penh

Telephone: 016 783 823 Fax: N/A

Representatives at the first hearing:

1.	Mr. Va Chankosal	President of WFUF
2.	Mr Un Dara	Advisor to WFUF
3.	Mr Keoung Sokha	Worker
4.	Mr Korng Syvai	Worker
5.	Mr Say Kimseng	Worker
6.	Ms Ros Kimsan	Worker
7.	Ms Pich Channaroth	Worker
8.	Ms Ouk Sophy	Worker
9.	Ms Erng Somart	Worker
10.	Ms Chan Sreypov	Worker
11.	Mr Vong Mao	Worker
12.	Ms Vang Chouy	Worker
13.	Mr Muong Rithy	Worker
14.	Mr Vong Chomnit	Worker
15.	Ms Srun Nat	Worker
16.	Mr Long Sam	Worker
17.	Mr You Vutha	Worker
18.	Ms Mork Daly	Worker
19.	Ms Lors Kea	Worker
20.	Ms Loeung Saron	Worker
21.	Ms Chhuy Sokhon	Worker
22.	Ms Meas Lyna	Worker
23.	Ms Lay Sreymom	Worker
24.	Mr Nghing Dorn	Worker

Representatives at the second hearing:

1.	Mr Va Chankosal	President of WFUF
2.	Mr Un Dara	Advisor to WFUF
3.	Mr Keoung Sokha	Worker
4.	Mr Say Kimseng	Worker
5.	Ms Ros Kimsan	Worker
6.	Ms Pich Channaroth	Worker
7.	Ms Ouk Sophy	Worker
8.	Ms Erng Somart	Worker
9.	Ms Chan Sreypov	Worker
10.	Ms Vang Chouy	Worker
11.	Mr Muong Rithy	Worker

12. Mr Vong Chomnit	Worker
13. Ms Srun Nat	Worker
14. Mr Long Sam	Worker
15. Ms Mork Daly	Worker
16. Ms Lors Kea	Worker
17. Ms Loeung Saron	Worker
18. Ms Meas Lyna	Worker
19. Ms Lay Sreymom	Worker
20. Ms Chea Srey	Worker
21. Mr Ngil Sophanarein	Worker

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide work for them in the near future. The employer states that it is trying to find work for the workers.
2. The workers demand that the employer refrain from transporting material out of the factory for outsourcing. The employer argues that it has a right to transport the material for outsourcing.

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. 043 KB/RK/VK dated 13 January 2011 was submitted to the Secretariat of the Arbitration Council on 13 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: First hearing: 28 January 2011 at 2:00 p.m.
Second hearing: 11 February 2011 at 8:00 a.m.

Procedural issues:

On 28 December 2010, the Department of Labour Disputes received a complaint from WFUF outlining its 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 6 January 2011. As a result, two of the four issues were resolved. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 13 January 2011 via non-conciliation report No. 043 KB/RK/VK dated 13 January 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 two non-conciliated issues, held on 28 January 2011 at 2:00 p.m. A second hearing was held on 11 February 2011 at 8:00 a.m. Both parties were present at each hearing as summoned by the Arbitration Council. The Arbitration Council conducted a further conciliation of the two non-conciliated issues, but neither was resolved.

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 the parties' obligation to implement an award on rights disputes in accordance with the MoU.

The Arbitration Council will consider the issues in dispute 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. Minutes of collective labour dispute resolution at PCCS Garments Limited, dated 6 January 2011.

B. Provided by the worker party:

1. Authorisation letter from the workers for the president of WFUF, dated 18 January 2011.

2. Authorisation letter from the workers for the president of WFUF, dated 29 January 2011.

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

1. Report on collective labour dispute resolution at PCCS Garments Limited, No. 043 KB/RK/VK, dated 13 January 2011.
2. Minutes of collective labour dispute resolution at PCCS Garments Limited, dated 6 January 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 063 KB/AK/VK/LKA dated 21 January 2011.
2. Notice to attend the first hearing addressed to the workers, No. 064 KB/AK/VK/LKA dated 21 January 2011.
3. Notice to attend the second hearing addressed to the employer, No. 113 KB/AK/VK/LKA dated 7 January 2011.
4. Notice to attend the second hearing addressed to the workers, No. 114 KB/AK/VK/LKA dated 7 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:

- PCCS Garments Limited (PCCS) is a conglomerate of the SA, GIT, Global, and PGL factories.
- This dispute involves workers at the PGL factory.
- There are approximately 550 workers at the PGL factory.
- 550 workers have authorised WFUF to represent them in these proceedings.

Issue 1: The workers demand that the employer give them work in the near future.

- Workers in the following sections at the PGL factory have not had work to do since 5 December 2010 [these sections ran out of work on the following dates]:
    - Cutting section on 17 November 2010.
    - Sewing section on 28 November 2010.
    - Finishing section on 5 December 2010.

- Between December 2010 and 11 February 2011, the date of the second hearing, the workers have been left without any work to do. The sewing and cutting sections have been closed and there is no electricity in some sections.
- During the no-work period, the employer has transported machines and materials out of the factory. When operating normally, there were more than 3,000 machines at the factory, but this was reduced to approximately 1,300 machines.
- Of the four factories operated by PCCS, only the PGL factory does not have work for the workers.
- The workers argue that PCCS received purchase orders and goods for December 2010 and January 2011, but rather than providing work at the PGL factory it gave the work to other factories. Those factories have a lot of work for their workers and give them overtime work every day. However, the PGL factory has nothing for the workers to do. The workers showed documents at the hearing regarding these purchase orders.
- The workers argue that they have stopped trusting the employer to distribute purchase orders and work to them because it rearranged the sewing machines into one place and transported a large number of machines, office furniture such as chairs and tables, computers, and other goods out of the factory.
- The workers further contend that they [usually] receive piece rate wages and earn, on average, US$ 120 per month. During the no-work period, the employer has provided them with wages of only US$ 61 plus a seniority bonus and an attendance bonus of US$ 5. The workers complain that they cannot not support themselves on US$ 61 because it must be spent on rental fees, food, and other expenses. Moreover, some workers have been underpaid.
- The employer states that the PGL factory used to be the head office and it would distribute purchase orders to the other three factories on an annual basis. However, in March 2011 the employer selected the GIT factory as its head office instead. The employer further stated that the purchase orders for the PGL factory stopped in December 2010 and it is seeking new purchase orders. The reason for this lack of purchase orders is that the buyers do not trust the factory due to frequent strikes by the workers. In response to the workers' complaint about not receiving purchase orders for December and January, the employer argued that that those purchase orders were for the GIT factory and not for the PGL factory.
- The employer states that the reason it transported the machines and some material out of the factory was that there were no purchase orders for the factory and the other

factories had a shortage of machines. In the past, the employer would transport equipment to the other factories and return it if there was a purchase order for the PGL factory. The reason for the transportation of chairs, tables, and computers was that the employer's head office changed from PGL to GIT in March 2011.

- At the hearing, the workers showed purchase order documents and stated that the employer had received purchase orders but decided not to give them any work in order to cause disorder and force them into resigning. The workers did not submit the documents.
- The employer responds that if it did have purchase orders for the factory, it would lose profits by paying wages to the workers every month. The employer did not submit to the Arbitration Council evidence or written documents detailing its purchase orders and the distribution of them to the other factories.
- The workers maintain that they were underpaid even though they attended work every day. The employer promised to handle their complaints about underpaid wages, but failed to fulfil this promise.
- The employer responds that the reason for the wage deductions was that it did not see the names of the workers on the electronic attendance sheet ([produced by] an eye-scanning machine). However, it would back pay the underpaid wages to the workers. The employer counted their presence as long as they scanned their eyes once, but some workers did not scan their eyes.
- The workers argue that the employer requires them to attend work every day and their presence is registered through the eye-scanning machine. The machine erred in registering their names, leading to incomplete monthly attendance. Consequently, they were underpaid. They further contend that they can [usually] make a complaint before the wage payment date because the employer arranges for the group leaders to oversee the workers' presence and to report to the employer at the end of each month. However, during the no-work period, the employer has not had the group leaders overseeing the workers' presence and there has been no monthly report. Therefore, they were not able to make a complaint.
- The workers' final position is a demand that the employer provide them with work within two months at the very latest. Otherwise, it must terminate their contracts because it has committed a serious offence in accordance with Article 83 of the Labour Law.

- The employer maintains that it is seeking new purchase orders and designing a sample shirt for buyers. It cannot make a promise as to when it will find work for the workers and it will continue to pay them as usual.
- The employer further states that it has made an annual plan distributing work to its factories. Since the workers have frequently gone on strike at the PGL factory, products were not finished on time. As a result, the employer lost profits because it increased expenditure on aeroplane transportation. Moreover, the buyers have withdrawn their orders from the factories. The GIT and Global factories have had work for their workers because the employer has had it planned since 2010.

Issue 2: The workers demand that the employer cease transporting materials out of the factory for outsourcing.

- In the past, the employer has transported machines and other goods between the factories, depending on each factory's needs.
- The workers argue that the employer has taken equipment from the factory, such as chairs, tables, closets, sewing machines, baskets, irons, and fire extinguishers. This shows that the employer intends to cease operating the factory. Furthermore, the employer has issued a policy allowing the workers to voluntarily terminate their own contracts.
- In this case, the workers demand that the employer cease its transportation [of items] in order to build the workers' trust. There are only 1,229 sewing machines remaining at the factory, whilst previously there were approximately 3,000.
- The employer states that it commenced the transportation on 18 January 2011 because there were no purchase orders and no work for the workers. The transportation was intended to meet the needs of the other factories. The employer also transported a large number of special sewing machines because they were needed at other factories. The employer needed more than 300 sewing machines. Moreover, the employer understood that the transportation was within its managerial rights.
- The employer and the workers agree that the 545 workers hold undetermined duration contracts.

REASONS FOR DECISION

In this case, the 545 workers have authorised WFUF to represent them before the Arbitration Council. The Arbitration Council will consider the issues below.

Clause 19 of *Prakas* No. 099 SKBY dated 21 April 2004 provides that "[a] party may appear before the arbitration panel in person, be represented by a lawyer…or be represented by any other person expressly authorised in writing by that party."

The Arbitration Council considers that a party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorised in writing by that party *(see Arbitral Award 01/11-Pou Yuen)*.

Based on the facts and evidence presented by the workers, the Arbitration Council finds that the 545 workers have authorised WFUF to represent them. Therefore, WFUF has legal standing to bring the issues in dispute before the Arbitration Council for resolution.

Issue 1: The workers demand that the employer give them work in the near future.

Before turning to this issue, the Arbitration Council will consider whether it gives rise to an interests dispute or a rights dispute.

Article 312, paragraph 2 of the Labour Law states that "[t]he 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 decide on rights disputes based on the law and interest disputes based on equity.

Clause 43 of *Prakas* No. 099 SKBY dated 21 April 2004 on Arbitration Council 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 disputes to be interests disputes when the workers' demand does not relate to an entitlement in the Law, an agreement [i.e. employment contract], or a collective agreement (s*ee Arbitral Awards 119/09-SL, issue 1; 86/10-New Mingda, issue 2; and 02/11-Pou Yuen, issue 2*).

Based on the foregoing, the Arbitration Council considers that an interests dispute does not relate to existing rights in the Law, an agreement, or a collective agreement. Conversely, a rights dispute relates to existing rights in the Law, an agreement, or a collective agreement.

The workers stated at the hearing that the employer must find them work within a period of two months; otherwise it must terminate their contracts. The Arbitration Council considers this issue as follows.

The Arbitration Council finds that, according to the facts, the employer has not had work for the workers since the middle of November 2010. Many sections of the factory are closed and the electricity has been cut off in the cutting and sewing sections. A large number of sewing machines, office furniture such as chairs and tables, computers, and other goods have been transported from the factory.

At the hearing, the employer asserted that it did not intend to terminate the workers' contracts and that it was seeking new buyers. It may take two or three months to secure new buyers. The employer can not ensure exactly when, because the number of purchase orders at the beginning of the year was low. Moreover, the employer stated that based on its 2010 plan, the PGL factory ran out of purchase orders in December 2010.

The Arbitration Council finds, based on the facts, that the employer had a well-prepared plan and anticipated the number of purchase orders it would have at certain times of the year. The employer had purchase orders [remaining] for the other two factories, but not for the PGL factory because the buyers withdrew their orders due to frequent strikes. Furthermore, the buyers submit their purchase orders to PCCS, not to PGL, GIT, or the other factories. PCCS headquarters is responsible for distributing orders to the factories. The employer did not provide any evidence or explanation besides this argument at the hearing to convince the Arbitration Council that there were in fact no purchase orders for the PGL factory.

Based on the facts, the Arbitration Council considers that the employer has had enough purchase orders for all of the factories, but did not plan on giving the orders to the PGL factory following the completion of its orders in December 2010. Furthermore, the situation at the factory created by the number of strikes since 2009 has prevented the workers from completing the orders on time and the employer has lost profits due to having to transport goods by aeroplane. Based on the employer's work distribution plan for 2010, the other two factories have had enough work for their workers.

The Arbitration Council considers that, based on the workers' employment contracts, the employer is required to provide work to the workers and the workers must complete the work exercising diligence. In this case, the Arbitration Council finds that the employer does not have work for the workers because it does not have new buyers, and it may take the employer two or three months to find a new buyer. For this reason, the workers cannot force the employer to give them work.

At the hearing, the workers asserted that the employer's failure to provide work is considered a serious offence. Therefore, the employer must pay them indemnity for dismissal and damages when they resign. The Arbitration Council considers this issue below.

Article 83, part A, point 5 of the Labour Law provides that "[f]ailure to provide sufficient work to a piece-worker" is considered a serious offence.

Based on this article, the Arbitration Council considers that the employer commits a serious offence if it has work for the workers but refuses to provide it to them.

However, in this case the employer does not in fact have work for the workers. It is not the case that the employer has work but refuses to provide it. The Arbitration Council is of the view that Article 83 is not applicable in this case.

At the hearing, the workers demanded that the employer terminate their contracts if it does not have work for them. The Arbitration Council will consider whether the employer is obliged to terminate the undetermined duration contracts of the workers when it does not have work for them.

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.

In Arbitral Award 09/05-Kin Tai, reasons for decision, issue 1, the Arbitration Council interprets the above article to mean that:

> Each party to an undetermined duration contract can cancel the contract individually. If the employee does not want to continue working for the employer, the employee can cancel the employment contract with the employer. However the employee cannot force the employer to cancel the employment contract because the employer can hire, rehire, or terminate the employment contract of any worker in accordance with the law. In this case the employer argues that it still wishes to employ all the workers and is not willing to dismiss any worker. Therefore, the Arbitration Council finds that the demand in this case forcing the employer to cancel the employment contract is not in accordance with legal rules and the Labour Law.

The Arbitration Council agrees with the above interpretation; the employer has the right to hire, rehire, or terminate the employment contract of each worker. If the workers do

not want to continue the employment relationship, they can cancel their contracts and the employer cannot force them to continue to work.

In this case, the Arbitration Council finds that the employer is not willing to dismiss the workers.

Based on the article and interpretation above, the workers cannot demand that the employer terminate their contracts. However, if the workers do not want to continue working for the employer, they can cancel their own contracts and give the employer prior notice as required by the law.

In Arbitral Award 09/05-Kin Tai, reasons for decision, issue 2, the Arbitration Council held that

> [i]f the employer terminates a contract by its own intention and the termination does not follow the Labour Law procedures, the employees have sufficient rights under the law to demand that the employer pay termination compensation under Articles 75, 89, and 91 of Labour Law…The workers' demand that the employer pay termination compensation under Articles 75, 89 and 91 of the Labour Law to those who resign individually is more than is provided in the law because the employees have the right to resign but they do not receive benefits under Articles 75, 89, and 91 of the Labour Law.

Based on the interpretation above, workers are not entitled to receive benefits in accordance with Articles 75, 89, and 91 of the Labour Law when they voluntarily resign from their positions. The workers can receive the benefits stipulated in Articles 75, 89, and 91 only in cases where the employer terminates their contracts.

However, Article 90 of the Labour Law states:

> Indemnity for dismissal must be granted to the worker and, if applicable, he can also claim damages even though the contract was not terminated by the employer, but the latter, through his incitements, pushed the worker into ending the contract himself.

Article 90 entitles workers to claim damages if the employer pushes them into ending their contracts.

According to the law, the employer has the choice to either suspend or terminate the workers' contracts when it does not have work for them. Although the employer pays the workers their full wages, attendance bonuses, and seniority bonuses, amounting to US$ 71 per month, they feel dissatisfied with the situation being prolonged for two months because the employer has not found a new buyer and cannot say exactly when it will have a buyer. Moreover, the workers used to earn average wages of US$ 120 per month. Since they work on piece rates, they are [when provided with work] able to receive more than their US$ 61

monthly main wages. During to the no-work period their wages have been reduced, leading to difficulties in their daily living circumstances. Additionally, some workers have been underpaid because their attendance has not been accurately recorded by the eye-scanning machine.

Based on the foregoing, the Arbitration Council is of the view that the main reason for terminating the workers' contracts is that the employer does not have work for them, which is a factor pushing the workers to end their contracts. Therefore, the workers can receive damages equivalent to indemnity for dismissal as provided for in Article 89 of the Labour Law.

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:
>
> 1. Seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months.
> 2. 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.

Based on this article, a worker will be paid an indemnity for dismissal equal to 15 days of wage and fringe benefits for each year of service. This will be calculated by multiplying their average daily wage by 15 days. In previous arbitral awards, the Arbitration Council has determined that wage includes actual wages for work or service, and excludes specifically-stated allowances, overtime payments, and bonuses *(see Arbitral Award 27/04-MSI, reasons for decision, issue 1)*.

Clause 34 of *Prakas* No. 099 SKBY dated 21 April 2004, states

> In matters referred to the arbitration panel, the panel shall have the power and authority to fully remedy any violation of provisions provided in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee. Within the limitations of the Labour Law and this *Prakas*, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:

A. orders to reinstate dismissed employees to their former or any other appropriate position;

B. orders to the immediate payment of back pay;

…

H. such other relief as is appropriate.

Based on this clause, the Arbitration Council considers that the workers cannot force the employer to terminate their contracts. However, the workers are able to end their contracts themselves. If the workers end their contracts after two months of this award being issued [i.e. following the two-month period in which the employer promises to seek new buyers] the workers are entitled to receive outstanding wages, indemnity for dismissal, and payment in lieu of unused annual leave.

Issue 2: The workers demand that the employer cease transporting materials out of the factory for outsourcing.

Before deciding on this issue, the Arbitration Council will consider whether it gives rise to an interests dispute or a rights dispute.

Since the demand concerns the right stipulated in the Labour Law to direct the company, the demand gives rise to a rights dispute (s*ee the first issue above*).

The Arbitration Council considers this issue as follows:

Article 2, paragraph 2 of the Labour Law states:

> Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in a factory, workshop, work site, etc., under the supervision and direction of the employer.

In previous arbitral awards, the Arbitration Council has interpreted this article to mean that the employer has the right to direct and supervise the enterprise as long as it is done reasonably and lawfully *(see Arbitral Awards 141/08-Bloomtime, reasons for decision, issue 1 and 38/09-AIA, reasons for decision, issue 4)*.

In Arbitral Award 38/09-AIA, the Arbitration Council held that

> [s]ewing machines, generators, and button-attaching machines, etc. are considered assets of the company. Therefore, the employer has a legal right to manage [the assets], including the right to relocate the assets out of the factory. Furthermore, transportation of the machines into/out of the factory is part of the employer's right to manage and supervise the factory in order to make the production line run smoothly.

According to the facts, the employer transported materials from the PGL factory to the other factories. These materials include chairs, tables, closets, sewing machines, baskets, irons, fire extinguishers, etc. Because of this, the workers lost trust in the employer, fearing that the factory was about to close. Therefore, they requested that the employer temporarily stop transporting the materials out of the factory. However, the employer responded that it has moved materials between factories in the past and it would return the materials if it had work to offer the workers.

In conclusion, the Arbitration Council is of the view that the materials are the employer's assets and the act of transporting those materials from the factory falls within the employer's right to direct and supervise its assets.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue 1:

- Within the two-month period following the issuance of this award, the employer must arrange to provide work to the workers at the PGL factory, [operated by] PCCS Garments Limited.
- After this period, if the employer is unable to find work, it must provide damages equivalent to the indemnity for dismissal stipulated in Article 89 of the Labour Law, outstanding wages, and payment in lieu of unused annual leave to the workers when they resign.

Issue 2: Reject the workers' demand that the employer cease transporting machines and other materials out of the PGL factory, [operated by] PCCS Garments Limited.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is 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 of the Arbitration Council 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: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....