



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 40/10-Meng Yan

Date of award: 11 June 2010

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Sin Kimsean**

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

DISPUTANT PARTIES

Employer party:

Name: **Meng Yan Garment Manufactory & Wet Processing Ltd. (the employer)**

Address: Number 3 Village, Svay Rolum Commune, S'ang District, Kandal Province

Telephone: 011 551 486

Fax: N/A

Representatives:

- | | |
|--------------------|---|
| 1. Ms Carol Chan | Company Director |
| 2. Mr Ouk Ya | Head of Administration |
| 3. Mr Sin Heang | Assistant to the Company Director |
| 4. Mr Chet Khemara | Official of the Garment Manufacturers Association
in Cambodia (GMAC) |

Worker party:

Name: **Coalition of Cambodian Apparel Worker Democratic Unions (C.CAWDU)**

Local Union of C.CAWDU

Address: Number 3 Village, Svay Rolum Commune, S'ang District, Kandal Province

Telephone: 012 988 623

Fax: N/A

Representatives:

- | | |
|------------------|---------------------------------------|
| 1. Ms Meas Vanny | Dispute Resolution Officer of C.CAWDU |
| 2. Mr Nov Phanna | Dispute Resolution Officer of C.CAWDU |

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| 3. Mr Yom Van | President of the Local Union of C.CAWDU |
| 4. Mr Theam Kim | Vice-President of the Local Union of C.CAWDU |
| 5. Mr Nhim Chok | Secretary of the Local Union of C.CAWDU |
| 6. Mr Kor Sreang | Treasurer of the Local Union of C.CAWDU |

ISSUES IN DISPUTE

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

The workers demand that the employer reinstate Yom Van, president of the Local Union of C.CAWDU, Theam Kim, vice-president of the Local Union of C.CAWDU, Nhim Chok, secretary of the Local Union of C.CAWDU, Kor Sreang, treasurer of the Local Union of C.CAWDU, and union activists Doung Tola, Nov Buntheoun, and Noun Thlai, and back pay their wages from the date of their dismissal to the date of reinstatement. The employer requests one week to discuss the matter with the director and head of the factory.

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. 190 KB/BRK dated 2 September 2009 (Seventh 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. 227/10 KB/KN dated 4 March 2010 was submitted to the Secretariat of the Arbitration Council on 4 March 2010.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd.,
Tonle Bassac Commune, Chamkarmorn District, Phnom Penh

Date of hearing: 12 March 2010 at 2:00 p.m.

Procedural issues:

On 21 April 2010, the Department of Labour Disputes of Kandal Province received a complaint from C.CAWDU regarding the workers' demand for the improvement of working conditions by the employer. Upon receiving the complaint, the Department of Labour Disputes of Kandal Province assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 29 April 2010, at which three of the four issues were

resolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 4 March 2010 via non-conciliation report No. 227/10 KB/KN dated 4 March 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 non-conciliated issue, held on 12 March 2010 at 2:00 p.m.

Both parties were present as summoned by the Arbitration Council. The Arbitration Council conducted a further conciliation of the non-conciliated issue, but it was not resolved. The Arbitration Council will consider the issue in dispute in this case 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. Certificate, No. 1333 PN.CBP dated 23 March 2009, of commercial registration of Meng Yan Company.
2. Brief statement, dated 10 March 2010, of the labour dispute.
3. Internal Work Rules, dated 22 July 2008, of Meng Yan Company.
4. Minutes, dated 1 April 2010, of the individual labour dispute resolution among Meng Yan Company, Kor Sreang, Nhim Chok, and Theam Kim.
5. Certificate, dated 10 March 2010, of most representative status of the local union of Meng Yan factory.
6. Minute, dated 29 April 2010, of the collective labour dispute of Meng Yan Company.
7. Letter, dated 2 April 2010, from the Director of Meng Yan Company to the Head of the provincial Department of Labour and Vocational Training regarding a request to suspend Yom Van, the Head of the Washing Section and President of the local union of C.CAWDU, which has not registered yet in accordance with the Labour Law, since 1 April 2010.
8. Employment contract with Kor Sreang, which has validity from 2 January 2010 to 1 April 2010.
9. Employment contract with Kor Sreang, which has validity from 2 October 2009 to 1 January 2010. .
10. Employment contract with Kor Sreang, which has validity from 2 July 2009 to 1 October 2009.
11. Work schedule of Kor Sreang.
12. Notice letter regarding the expiration of Kor Sreang's contract.

13. Casual employment contract with Kor Sreang, which has validity from 2 June 2009 to 1 July 2009.
14. Casual employment contract with Kor Sreang, which has validity from 2 March 2009 to 1 June 2009.
15. Khmer identity card of Kor Sreang, dated 14 March 2002.
16. Warning letter for Kor Sreang.
17. Employment contract with Theam Kim, which has validity from 2 February 2010 to 27 March 2010.
18. Work schedule of Theam Kim.
19. Casual employment contract with Theam Kim, which does not exceed two months from 28 September 2009 onwards,.
20. Khmer identity card of Theam Kim, dated 19 March 2008.
21. Warning letter for Yom Van.
22. Employment contract with Yom Van, 23 December 2009.
23. Work schedule of Yom Van.
24. Employment contract with Yom Van, which has validity from 23 September 2009 to 22 December 2009.
25. Employment contract with Yom Van, which has validity from 23 June 2009 to 22 September 2009.
26. Employment contract with Yom Van, which has validity from 23 March 2009 to 22 June 2009.
27. Employment contract with Yom Van, which has validity from 23 December 2008 to 22 March 2009.
28. Employment contract with Yom Van, which has validity from 23 September 2008 to 22 December 2008.
29. Employment contract with Yom Van, which has validity from 23 June 2008 to 22 September 2008.
30. Employment contract with Yom Van, which has validity from 23 March 2008 to 22 June 2008 .
31. Employment contract with Yom Van, which has validity from 23 December 2007 to 22 March 2007.
32. Khmer identity card of Yom Van, dated 30 September 2002.
33. Casual employment contract with Doung Tola.
34. Khmer identity card of Doung Tola, dated 31 August 2006.
35. Casual employment contract with Nov Bunthern.
36. Khmer identity card of Nov Bunthouen, dated 30 November 2006.

37. Employment contract with Tuon Thlai, which has validity from 21 March 2010 to 20 April 2010.
38. Khmer identity card of Tuon Thlai, dated 20 October 2001.
39. Photo of strike, dated 30 April 2010, led by C.CAWDU to demand reinstatement.
40. Letter, No. 340 KB/RK/VK dated 30 April 2010, from the Head of the Department of Labour Disputes to Yom Van regarding a request for registration of the local union of C.CAWDU of Meng Yan Factory.

B. Provided by the worker party:

1. Brief statement, dated 12 March 2010, of Meng Yan case.
2. Letter, No. 47/9 SBKK dated 28 March 2010, from the President of the C.CAWDU to the Director of Meng Yan Company regarding notification of the outcome of the local union of C.CAWDU's establishment election.
3. Minute, dated 2 April 2010, regarding discrimination against local union of C.CAWDU.
4. Case receipt, dated 8 April 2010, issued by the Department of Labour Disputes of the Ministry of Labour and Vocational Training.
5. Letter, No. 340 KB/RK/VK dated 30 April 2010, from the Head of the Department of Labour Disputes to Yom Van regarding the request for registration of the local union of C.CAWDU.
6. Strike notification letter, dated 20 April 2010, [from C.CAWDU] to Meng Yan Company.
7. Letter, No. 36/10 SKB dated 8 April 2010, from C.CAWDU to the Head of the Department of Labour Disputes regarding the request to Meng Yan Company to reinstate the union leaders.
8. Letter, No. 33/10 SKB dated 2 April 2010, from C.CAWDU to the Head of the provincial Department of Labour and Vocational Training regarding the complaint of union discrimination and dismissal of union leaders and activists by the Director of the company.
9. Letter, No. 38/10 SKB dated 8 April 2010, from C.CAWDU to the Head of project of the employment program of Community Legal Education Center regarding the request to Meng Yan Company to reinstate the union leaders.
10. Complaint, No. 19/10 dated 2 April 2010, from the local union of C.CAWDU to the President of C.CAWDU regarding assistance for the resolution of the disputes of the local union.
11. Letter, No. 34/10 SKB dated 2 April 2010, from C.CAWDU to the Director of the company regarding the request for stop discrimination against the local union.

12. Letter, No. 37/10 SKB dated 8 April 2010, from C.CAWDU to the Head of project of the Better Factories program of the ILO/BFC regarding the request to Meng Yan Company to reinstate the union leaders.
13. Letter, No. 43/10 SKB dated 20 March 2010, from C.CAWDU to the Secretariat of the Arbitration Council regarding its objection to the documents of Meng Yan Company.

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

1. Report, No. 227/10 KB/KN, dated 4 March 2010, of collective labour dispute resolution at Meng Yan Garment Manufactory & Wet Processing Ltd.
2. Minute, dated 29 April 2010, of collective labour dispute resolution at Meng Yan Garment Manufactory & Wet Processing Ltd..

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 227 KB/AK/VK/LKA dated 6 March 2010 to the company party to attend the hearing.
2. Invitation letter No. 228 KB/AK/VK/LKA dated 6 March 2010 to the worker party to attend the hearing.

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:

- Meng Yan Garment Manufactory & Wet Processing Ltd. (Meng Yan) commenced operation in November 2007. Currently, it employs a total of 540 workers.
- The Local Union of C.CAWDU is the claimant in this case; however, this union has not yet officially registered because it was only established through the election on 28 March 2010 and have not yet received approval of union registration from the Ministry of Labour and Vocational Training.
- The employer stated that only the Local Union of Cambodian Union Federation (CUF) had a certificate of union registration No. 1471 dated 16 July 2008, representing approximately 300 workers as well as having the certificate of most representative status No. 13/10 KB/VB dated 10 March 2010.

Issue: The workers demand that the employer reinstate Yom Van, president of the Local Union of C.CAWDU, Theam Kim, vice-president of the Local Union of C.CAWDU, Nhim Chok, secretary of the Local Union of C.CAWDU, Kor Sreang, treasurer of the Local Union of C.CAWDU, and union activists Doung Tola, Nov Buntheoun, and Noun Thlai, and back pay their wages from the date of their dismissal to the date of reinstatement.

- The workers stated that after the establishment election of local union on 28 March 2010, the union had notified the employer on 29 March 2010 of the outcome of the election in which Yom Van was elected as the President, Theam Kim as the Vice-President, and Nhim Chok as the Secretary. The employer party did not object to the workers' statement.
- The evidence given provided by the workers showed that it had received a receipt of application for union registration from the Department of Labour Disputes on 8 April 2010; however, on 26 April 2010, the Department of Labour Disputes received an objection from the employer to Nhim Chok's candidacy, elected as Secretary, due to the fact that he had not reached the age of eligibility [25 years of age] for union leadership (his birthday is 8 October 1985 as provided on his Khmer identity card, No. 5041097, which makes him 24). After that, the Department of Labour Disputes issued a letter, No. 340 KB/RK/VK dated 30 April 2010, and provided a copy of it to Yom Van and the employer stating that in accordance with the Article 269 of the Labour Law, the Department of Labour Disputes could not forward the union application to be registered. The letter also stated when Yom Van had evidence to prove his authenticity; then the Department would prepare the application for the Ministry's consideration.
- The workers argued after the union notified the employer of the outcome of the election on 29 March 2010, the employer suspended Yom Van, President of the local union, and immediately dismissed other union leaders as well as activists, Theam Kim, Vice-President, Nhim Chok, Secretary, Nov Bunthreon, activist, Doung Tola, activist, Noun Thlai, activist, and Kor Sreang, Treasurer. The workers asserted that the dismissal was the result of union discrimination because they were local union leaders and activists.
- Yom Van stated he was told by Ouk Ya, the Head of Administration, on 30 March 2010 at 4:00 p.m. not to establish the union because he had worked with him for long time. Then, at 8:00 p.m. Ou Khon, President of the Cambodian Trade Union, phoned Theam Kim and told him to meet Ouk Ya at his house. Theam Kim and Kor Sreang went together to meet Ouk Ya. After that, Ouk Ya and Ou Khon asked Theam Kim to

go to Nhim Chok's house; so that they could have a meeting in the factory; however, he had disagreed because it was at night and not during work hours. Then the employer dismissed them without stating any reason. The employer did not object to this argument.

- The employer stated it suspended Yom Van and terminated the employment contracts of Theam Kim and Nhim Chok because they refused direction from the Head of Production and the Head of Section. Moreover, the employer claimed the termination of Kor Sreang, Doung Tola, Noun Thlai, and Nov Bunthern was due to the fact that their three-month contracts had expired. The employer stated that the termination was not based on union discrimination as accused.

Case of Yom Van, Theam Kim, and Nhim Chok

A. Yom Van

- Yom Van commenced his work on 23 November 2007 and signed a three-month contract. Then, the employer renewed his contract for over two years.
- Yom Van worked as the Head of the Washing Section and received monthly wages of US\$ 70, attendance bonus of US\$ 5, seniority bonus of US\$ 3, living allowance of US\$ 6 and position bonus of US\$ 20.
- On 2 April 2010, the employer sent a letter to the provincial Department of Labour and Vocational Training requesting to suspend employment contract of Mr. Yom Van from 1 April 2010 onward.
- Yom Van had not received his last wages.

B. Theam Kim

- Theam Kim worked in the Polishing Section and was Vice-President of the local union of C.CAWDU. He commenced his work on 28 September 2009 under a three-month contract. His last employment contract was to be expired on 27 March 2010 but the employer terminated his contract on 31 March 2010.

C. Nhim Chok

- Nhim Chok worked in the Polishing Section and was Secretary of the local union of C.CAWDU. He commenced his work on 29 September 2009 under a three-month contract. His last employment contract was to be expired on 31 March 2010 but the employer terminated it on 1 April 2010.

Case of Kor Sreang, Doung Tola, Nov Bunthern, and Noun Thlai

A. Kor Sreang

- Kor Sreang worked in the Washing Section and was Treasurer of the local union of C.CAWDU. He commenced his work on 5 February 2009 under a fixed duration

contract. His employment contract was to be expired on 1 April 2010 but the employer terminated it on 31 March 2010. The reason for termination was contract expiration; however, he had not received prior notice and he was called by Sak Sovan, Assistant to the Administrator, on 31 March 2010, to discuss his union participation and after that, Sak Sovan confiscated his employee card at 1:30 p.m.

B. Doung Tola, Nov Bunthern, and Noun Thlai

- Doung Tola worked in the Polishing Section and was an activist of the local union of C.CAWDU. He commenced his work on 10 February 2010 under a fixed duration contract. His contract was to be expired on 9 April 2010 but the employer terminated it on 31 March 2010.
- Nov Bunthern worked in the Cutting Section and was an activist of the local union of C.CAWDU. He commenced his work on 8 February 2010 under a two-month contract and his employment contract was to be expired on 7 April 2010. The employer terminated his contract on 7 April 2010.
- Noun Thlai worked in the Washing Section and was an activist of the local union of C.CAWDU. He commenced his work on 21 March 2008 under a three-month contract. His contract was to be expired on 21 April 2010. The employer terminated his contract on 20 April 2010.

REASONS FOR DECISION

Issue: The workers demand that the employer reinstate Yom Van, president of the Local Union of C.CAWDU, Theam Kim, vice-president of the Local Union of C.CAWDU, Nhim Chok, secretary of the Local Union of C.CAWDU, Kor Sreang, treasurer of the Local Union of C.CAWDU, and union activists Doung Tola, Nov Buntheoun, and Noun Thlai, and back pay their wages from the date of their dismissal to the date of reinstatement.

The workers demand the employer reinstate seven workers, some who are union leaders and some who are union activists. The Arbitration Council finds that three of them are union leaders: Yom Van, President of the local union, Theam Kim, Vice-President, Nhim Chok, Secretary, Kor Sreang, Treasurer, and all of them are present in the hearing. The other workers, namely Doung Tola, Nov Bunthern, and Noun Thlai (all of them are union activists) are absent and have not authorised any person to represent them. Therefore, the Arbitration Council will consider whether the local union has legal standing to represent its members (those who are absent) in the dispute brought to the Arbitration Council.

Article 268 of the Labour Law states *"[i]n order for their professional organisation to enjoy the rights and benefits recognised by this law, the founders of those professional*

organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labour for registration...

Within two months after receipt of the registration form, the professional organisation is considered to be already registered."

The Arbitration Council considers Article 268 to mean that professional organisations enjoy the rights and benefits recognised by the Labour Law when the organisation has been registered by the Minister in charge of Labour.

The claimant in this case is the local union of C.CAWDU. The evidence and facts provided by the two parties show that after the election of the union leadership was held on 28 March 2010, the local union of C.CAWDU sent a request to the Ministry of Labour and Vocational Training for union registration. On 9 April 2010, the Department of Labour Disputes had received an application of union registration; however, at the same time, the employer had lodged an objection to Nhim Chok's candidacy, the local union Secretary, due to the fact that he had not reached the age of eligibility; and the Department issued a letter stating it could not forward the application of union registration to the Ministry.

Based on the facts, the Arbitration Council considers the union has not yet received a certificate of registration from the Ministry of Labour and Vocational Training. Therefore, in accordance with Article 268 of the Labour Law, the union has not yet received rights and benefits recognised by the law.

In previous awards, the Arbitration Council considered the rights and benefits above also included the legal right to represent its members in the dispute brought to the Arbitration Council. (See Arbitral Award 62/06-Quicksew, reasons for decision, issue 2; 30/08-E Garment, reasons for decision, issue 1; 31/08-South Bay, reasons for decision, issue 1; 120/09-Reliable and 161/09-Prek Treng).

Therefore, the local union of C.CAWDU does not have legal standing to represent its members in the dispute brought to the Arbitration Council.

Moreover, clause 19 of *Prakas* 99 SKBY dated 21 April 2004 states "[a] party may appear before the arbitration panel in person, be represented... or be represented by any other person expressly authorised in writing by that party."

Based on the facts, Doung Tola, Nov Bunthern, and Noun Thlai who are absent have not authorised any person to represent them in the resolution of the dispute before the Arbitration Council. Therefore, the Arbitration Council will only consider the issue of the workers who are present in the hearing: Yom Van, Theam Kim, and Kor Sreang.

The Arbitration Council will consider whether the termination of the four workers above who stood for union leadership complies with the legal procedure and whether or not this termination is the result of union discrimination.

Clause 7 of *Prakas* 313 SKBY dated 27 November 2000 states “[u]nion leaders in an enterprise establishment, normally including president, first vice president, and first secretary...”

Based on the facts and evidence provided by the workers regarding the outcome of election, the Arbitration Council finds Yom Van ran for the position of President of the local union, Theam Kim for the position of Vice-President, and Nhim Chok for Secretary, and Kor Sreang, for the position of Treasurer. Therefore, in accordance with clause 7 of the *Prakas* above, only Yom Van, Theam Kim, and Nhim Chok will be considered as union leaders and Kor Sreang who ran for the Treasurer position is not considered as a union leader on the grounds that union leaders are only the President, Vice-President, and Secretary.

Case of Yom Van, Theam Kim, and Nhim Chok who are elected as union leaders

Clause 3, paragraph 3, of *Prakas* 305 SKBY dated 22 November 2001 states “[a]ny worker belonging to a union who runs for a leadership position in that union shall enjoy the same protection from dismissal as a shop steward. This protection begins 45 days prior to the election and ends, if s/he is not elected, 45 days after the election. To this end, the employer must be duly informed of the candidacy by any reliable means. However, the employer shall only be required to comply with this provision once for each election of union leaders.”

Based on the facts, the employer had lodged an objection to Nhim Chok’s candidacy, who is elected as Secretary, on the grounds that he has not reached the age of eligibility to become a leader of a professional organisation (union) and the employer based its objection on his Khmer identity card, No. 5041097 on which his birthday is 8 October 1985. In accordance with the *Prakas* 305 above, the Arbitration Council considers paragraph 3 refers to all workers who are candidates for union leadership. In this case, the Arbitration Council considers Nhim Chok has run for union leadership and he is also elected; but he is not legally a union leader unless his union has been registered. Therefore, his position is that of a candidate who runs for union leadership.

Based on clause 3, paragraph 3, of *Prakas* 305 above, the Arbitration Council considers protection [from termination] is provided to all candidates who run for union leadership and it is also provided 45 days prior to the election. At the same time, one sentence contains “protection ends, if s/he is not elected, 45 days after the election.” The Arbitration Council considers the meaning of the sentence above to be that the duration of protection is limited to candidates who are not elected, thus protection ends 45 days after

the election; however, the duration of protection for candidates who are elected, in accordance with clause 3, paragraph 3, of *Prakas* 305 above, is not specifically determined. In this case, the Arbitration Council notes the duration of protection for non-elected candidates should be at least 45 days after the election or can be extended to until the date they submit their application for union registration.

In addition, clause 3, paragraph 3 above, states “[t]o this end, the employer must be duly informed of the candidacy by any reliable means.”

Based on the facts, the Arbitration Council considers after the election of the union leadership of the local C.CAWDU was held on 28 March 2010, the union notified the employer on 29 March 2010 of the outcome of the election in which Yom Van was elected as President, Theam Kim, as Vice-President, and Nhim Chok, as Secretary. After that, the employer suspended Yom Van on 2 April 2010 and terminated Theam Kim on 31 March 2010 and Nhim Chok on 1 April 2010 during the period of protection from termination. Hence, the Arbitration Council determines the three above who are elected as union leaders are entitled to protection from termination as worker delegates.

Article 293 of the Labour Law states “[t]he dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector...The Labour Inspector, who has been referred a request to authorise the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question...within one month at the latest upon receipt of the case...If there is no notification of the Labour Inspector's decision within the allotted time... the case... is considered to be rejected.”

Based on the contents of Article 293 of the Labour Law, the Arbitration Council considers the dismissal of all protected workers must take place only after authorisation from the Labour Inspector and Minister in charge of Labour. This means that the Labour Inspector has a duty to consider, authorise or reject the request of the employer within one month after receiving the complaint. (See Arbitral Award 149/08-Cambo Hansae, reasons for decision, issue 1 and 175/08-Apsara Authority, reasons for decision, issue 2).

In this case, the Arbitration Council finds the employer has sent a request of employment contract suspension of Yom Van to the provincial Department of Labour and Vocational Training on 2 April 2010 due to the fact that he refused the direction of the employer; however, the request is not authorised by the Labour Inspector. At the same time, the employer has terminated fixed duration contracts of Theam Kim and Nhim Chok, who are protected, before their contracts are expired and the termination is not authorised by the Labour Inspector. Therefore, based on Article 293 of the Labour Law, the Arbitration Council

decides this termination does not comply with the legal procedure stipulated in the Labour Law.

Is the termination of Yom Van, Theam Kim, and Nhim Chok who are elected as union leaders and Kor Sreang as Treasurer based on union discrimination?

In the hearing, the workers argued the termination of the workers who are elected as union leaders and of union activists are the result of union discrimination; however, the employer argued the termination is not the result of union discrimination but is the result of refusal of the direction from the employer and employment's contracts of some workers are already expired.

The Arbitration Council considers whether the termination of Yom Van, Theam Kim, Nhim Chok, and Kor Sreang is the result of union discrimination.

Article 12 of the Labour Law states "...no employer shall consider... membership of workers' union or the exercise of union activities to be the invocation in order to make a decision on hiring... or termination of employment contract..."

Article 279 of the Labour Law, states "[e]mployers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment...and dismissal."

In Arbitral Award 10/03-Jaqsintex, reasons for decision, issue 2, states "...[b]oth decisions related to the non-renewal of undetermined duration contracts and decisions related to the dismissal of undetermined duration contract workers are considered as decisions that the employer cannot make based on the reason of union membership or the involvement in union activities". (See Arbitral Award 10/10-Nagaworld, reasons for decision, issue 2).

Based on Articles 12 and 279 of the Labour Law and previous awards, the Arbitration Council agrees with the interpretation above that the termination of union activists based on union involvement is against the Labour Law and the jurisprudence of the Arbitration Council.

Based on the facts, the Arbitration Council considers the local union of C.CAWDU held an election on 28 March 2010 and sent a notification to the employer on 29 March 2010 which the security guard of the employer accepted. After that, the employer terminated the workers as follows:

Name	Union Position	Commencement Date	Contract Expiry Date	Termination Date
Yom Van	President	Not known	Undetermined duration contract	2 April 2010
Theam Kim	Vice-President	28 September 2009	27 March 2010	31 March 2010

Nhim Chok	Secretary	29 September 2009	31 March 2010	1 April 2010
Kor Sreang	Treasurer	2 July 2009	1 April 2010	31 March 2010

Yom Van, Theam Kim, and Nhim Chok were terminated after they were elected as union leaders. The termination does not comply with the legal procedure stipulated in the Labour Law; for example, Yom Van has an undetermined duration contract but it was terminated immediately, without prior notice on the grounds that he refused a direction from the employer. Moreover, Theam Kim and Nhim Chok worked under three-month contracts but the employer terminated their contracts before they expired on the grounds that they refused the direction from the employer. The employer also stated that it paid them wages and other benefits and that the termination of Kor Sreang was based on the expiration of his contract.

However, in this case, the Arbitration Council considers the terminations are not based on the reasons provided by the employer because after the union election, the employer learned that they are elected as union leaders; and so the employer tried to question them about this issue and induce them to withdraw from union membership on the grounds that there is no benefit to establish the union.

The Arbitration Council has heard that the employer terminated the four workers based on the refusal of direction; but in this case, the Arbitration Council finds that the employer has used its directional right unreasonably and not in accordance with the law; for example, the employer often unreasonably transferred them from one section to another and when they refused to do so, the employer issued warning letters to them or decided not to renew their contracts on the grounds that they refused the assignment from the employer. In fact, Theam Kim worked in the Polishing Section and then he was transferred to Hole Polishing and later to the Adjustment Section. He did not object to the decisions of the employer; however, finally, he refused to work as a fabric organiser because it is not part of his job description; and as a result, the employer issued a warning letter to him and terminated him on the grounds that he refused a direction from the employer.

Based on the interpretation above, the Arbitration Council considers the termination of the four workers is actually based on their union participation and the termination of four protected workers does not comply with the legal procedure stipulated in the Labour Law. Hence, the Arbitration Council orders the employer to reinstate Yom Van, Theam Kim, Nhim Chok, and Kor Sreang and pay them wages from the date of termination to the date of reinstatement.

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

DECISION AND ORDER

Issue: Order the employer to reinstate Yom Van, Theam Kim, Nhim Chok, and Kor Sreang and pay them wages from the date of termination to the date of reinstatement.

Type of award: non-binding award

This award of the Arbitration Council 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: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: