



**The Arbitration Council Digest
Volume 9 (1 July to 31 December 2007)**

Introduction

Number of cases filed	89
Number of cases settled without an arbitral award	36
Number of cases in which an arbitral award was issued	53
Number of cases in which the parties chose a binding arbitral award	6
Number of cases where strikes were involved	13
Number of cases where a return to work order was issued	12

Figure 1 represents statistics from cases registered with the Secretariat of the Arbitration Council during the period from 1 July to 31 December 2007;

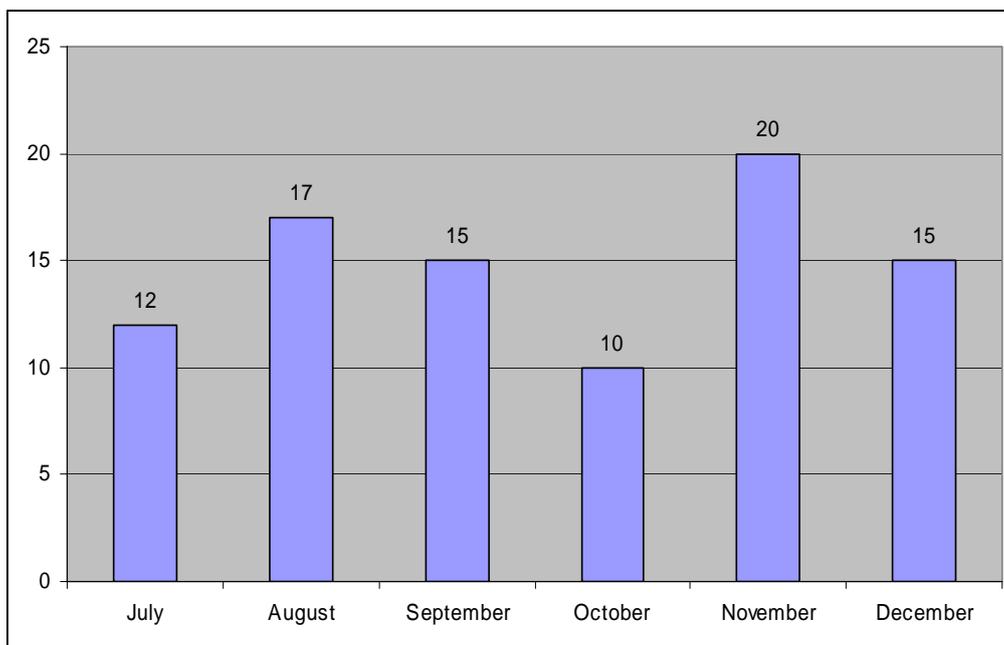


Figure 2 represents the number of cases registered with the Secretariat of the Arbitration Council each month during the period from 1 July to 31 December 2007;

Copies of arbitral awards in Khmer and English as well as detailed information regarding the law and procedures governing the Arbitration Council are available from the Secretariat of the Arbitration Council or on the internet at <http://www.arbitrationcouncil.org/>.

Case Summary:

The following summary concerns arbitral awards issued by the Arbitration Council in respect of cases registered with the Secretariat of the Arbitration Council from 1 July to 31 December 2007. This summary is provided for informational purposes only and should not be considered legal advice. This is a summary only and may not represent a complete summary of all legal points considered by the Arbitration Council.

AA = Arbitral Award number

Arbitration Council jurisdiction and procedure

Generally, the Arbitration Council can decline to consider any interests dispute brought by a union that does not have the most representative status in the enterprise.

AA 60/07; 62/07; 70/07; 79/07; 81/07; 84/07; 85/07; 89/07; 92/07; 94/07; 102/07; 108/07; 109/07; 114/07; 122/07; 124/07&128/07; 131/07; 133/07; 135/07

Generally, the party who makes the accusation carries the burden of proof.

AA 60/07; 109/07; 124/07&128/07

The Arbitration Council can reject the workers' demand if they do not provide evidence to support their claim.

AA 62/07; 70/07; 91/07

When a party does not attend or participate in a hearing to present the demand to the Arbitration Council or to support their demand in the hearing, and the party does not have any valid reason for his/her absence, then the Arbitration Council can decide that that party has chosen to give up the claim and close the case or the Arbitration Council can proceed with the hearing in the absence of that party in order to rule on the case based on the evidence and testimony of the other party who is present.

AA 73/07; 82/07; 134/07; 148/07

The Arbitration Council can choose not to continue the arbitration process, if either party still continues industrial action.

AA 97/07; 126/07

Based on the principle of *Res Judicata*, the Arbitration Council can decide not to reconsider the same issue between the same parties which the Arbitration Council has already decided.

AA 100/07

In order for a dispute to be a collective dispute, it must fulfill three conditions: (a) the dispute arises between one or more employers and a certain number of their staff; (b) dispute is related to working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers; and (c) the dispute could jeopardise the effective operations of the enterprise or social peace.

AA 109/07

Claims in the non-conciliation report of the Ministry of Labour that are forwarded to the Arbitration Council are presumed to be collective disputes; a party who challenges this presumption has the burden of proof to support his/her challenge.

AA 109/07

Generally, the Arbitration Council will decline to consider a future dispute which has not yet happened.

AA 122/07

A party cannot change from a binding to non-binding award when there is an agreement between the employer party and the worker party for a binding award; an amendment can only be made with the consent of both parties.

AA 123/07

Discipline and termination

Disciplinary action applied to workers must be proportional to the misconduct and consistent with the company's internal work rules.

AA 90/07

The workers do not have the right to order or demand the employer party dismiss any worker; an exception can be if the workers provide evidence to prove that that worker is a dangerous person that

should not be employed in the company or factory and employing that person would cause danger to the workplace.

AA 94/07; 109/07; 116/07

The employer is not obligated to pay the 5% severance pay in respect of termination of fixed duration contracts or payments for unused annual leave to workers at the end of their probationary period if such workers continue employment on undetermined duration contracts.

AA 98/07

Either one of the parties to an undetermined duration contract can terminate the contract at his or her will, but the termination must be according to the law.

AA 101/07

The employer has the right to discipline or take measures to terminate a worker; but the disciplinary sanction is subject to certain conditions, for example it must be proportional to the misconduct.

AA 109/07; 118/07

Generally, only parties to a contract have the right to terminate the contract; thus demands by third parties to dismiss or transfer another worker are not valid; an exception can be if that worker poses a danger to the health and safety of workers in the workplace.

AA 116/07

The employer may not take disciplinary action against a worker for any misconduct for which the employer or one of his representatives has been aware of for more than fifteen days.

AA 118/07

Right to warn or impose other disciplinary measures on workers is part of the employer's right of management as long as the management is exercised lawfully and reasonably.

AA 124/07&128/07

Severance pay will be paid only after the fixed duration contract has expired and the labour relation is ended.

AA 131/07

The employer shall be considered to renounce his right to dismiss a worker for serious misconduct if this action is not taken within a period of seven days from the date on which he has learned about the serious misconduct in question.

AA 137/07

Workers can be entitled to receive special protection regarding dismissal if the following conditions exist: 1) the dismissed worker is the type of worker who is entitled to receive special protection, 2) the dismissal occurred within the special protection period and 3) the union notified the employer of the identity of the worker who receives special protection through all reliable means.

AA 148/07

Employment status

The employer's right to manage and direct the company includes the transfer of workers from one place to another but the employer shall comply with certain conditions including: 1) no deduction of wage, 2) workers shall not be transferred to far-away places, 3) work shift shall not be moved from day to night or from night to day and 4) the new position shall not require substantially different skills of the worker.

AA 90/07; 137/07

In cases where an undetermined duration contract replaces a fixed duration contract, the seniority status of the worker shall include the length of both contracts.

AA 131/07

General working conditions

The employer has the right to manage and direct the Company and manage human resources as long as the management is in accordance with the law and is reasonable.

AA 84/07; 94/07; 106/07; 116/07; 118/07

The employer has the right to determine work hours to avoid interruption of the production line and reject unnecessary leave.

AA 94/07; 118/07

When a particular employment practice is not against the law, does not unlawfully discriminate against groups of workers (or is applied equally among workers), both the employer and workers have agreed to such practice and such practice was practiced for many years, then although there is no written agreement or contract regarding such practice, such practice can become a binding oral agreement between the parties; past practice can become a verbal agreement between the employer and workers when the practice is performed explicitly, continuously for many years.

AA 136/07

Labour and other contracts

If an agreement is not clear, it shall be interpreted according to common practices or customs of the garment industry in Cambodia.

AA 60/07

Generally, the parties to a contract have an obligation to implement the agreement they signed.

AA 60/07; 79/07

A fixed duration contract can be renewed one or more times, as long as the renewals do not surpass a maximum duration of two years; if the total duration of the employment relationship surpasses two years, the labour contract shall become an undetermined duration contract.

AA 64/07; 123/07

Generally, the denial by a party to follow the contract they already signed is not valid because parties to a contract have an obligation to abide by the contract they signed.

AA 79/07

Generally, none of the contracting parties may force the other party to sign the contract or accept the conditions that the other party finds unacceptable; any contract made by force will be considered null and void under the law or can be nullified by the other party.

AA 79/07; 92/07; 94/07; 106/07; 114/07

Generally, contracting parties are obliged to cooperate to carry out the contract in a trusting and honest manner and in accordance with the principle of social morality; thus, even though an employer is not obliged to provide a photocopy of the labour contract to workers, in principle and based on the common practice regarding implementation of contracts, each contracting party shall should keep a copy of the contract in order to ensure that the other party executes the contract honestly and morally.

92/07

The labour contract is an agreement between a worker and an employer and must conform to the provisions of common contract law.

AA 92/07; 94/07; 106/07; 114/07

A fixed duration contract automatically terminates at the specified ending date and the obligation of the employer and the worker also ends; therefore, generally, none of the contracting parties may force the other party to renew the contract without consent.

AA 140/07

Labour rights of women

The employer is obliged to pay 50% of wages and perquisites for 90 days to the workers who take maternity leave, prior to the commencement of the maternity leave.

AA 60/07; 70/07; 79/07; 91/07; 109/07; 130/07

An agreement to provide for payment in lieu of breastfeeding breaks and building of a daycare center is not in accordance with the purpose of the Law or the government's public policies.

AA 79/07

Women who take the 90-day maternity leave shall receive 50% of wages which includes overtime payments and other perquisites as the basis for calculation.

AA 133/07

Leave

Where a worker takes leave for personal obligations with permission from the employer, the attendance bonus shall be deducted in proportion to the number of days of leave with permission.

AA 94/07; 106/07; 115/07

Workers who have not worked for two continuous months can still be entitled to paid leave calculated in proportion to the amount of time he/she worked in the enterprise.

AA 98/07

Although the right to use annual leave arises only after a worker has worked for 1 year, an employer is not prohibited from allowing workers with less than 1 year of service to use annual leave.

AA 98/07

When a worker is absent with approval from the employer, it leads to the suspension of his or her labour contract and the worker is not required to work for the employer and the employer does not have to pay the worker, unless there is a contrary provision that requires the employer to pay the worker.

AA 106/07

A practice of providing payment in lieu of workers taking paid leave is unlawful.

AA 118/07

When workers are sick, the employer should permit leave because the decision not to let workers take leave when they are sick is not appropriate management and direction and can violate the employer's legal obligation to maintain and protect the health and safety of workers.

AA 118/07

Occupational safety and health

Because the law generally does not require the employer to provide tables and chairs for workers to eat their meals, then, without any relevant agreement or related health and hygiene issues that might be a reason for such requirement, a claim for tables and chairs during meal time is generally an interests dispute.

AA 60/07

The Labour Law provides sufficient grounds to conclude that the employer has an obligation to pay for the medical check fees of their workers.

AA 61/07; 62/07; 86/07; 91/07; 93/07; 98/07; 124/07 & 128/07

If an accident occurs to a worker when they are striking, this is not a work related accident.

AA 85/07

Where the Arbitration Council orders an employer to reimburse the medical check fee to workers, this should be done within one month after the award comes into effect.

AA 86/07

The statute of limitations for a lawsuit for medical check fees lasts three years starting from (i) in cases where workers underwent the medical check before they started working, the date of signing the contract or the date that workers started working; or (ii) in cases where workers underwent the medical check after they started working, the date that workers paid for the medical check fee.

AA 91/07; 124/07 & 128/07

Qualified doctor refers to a doctor trained by a medical schools recognized by the Ministry of Health and has proper certificate of recognition to permit them to practice the profession.

AA 102/07

Strike

Even though an employer may have a longstanding practice of paying workers when they go on strike, an employer is not obligated to continue such practice and such practice does not become a binding oral agreement if the practice is not clear and there is no evidence that when workers are hired they have an expectation or understanding that they will be paid during strike.

AA 63/07

When workers are conducting an unlawful strike, they do not come to work regularly for the employer and therefore are not entitled to a regular attendance bonus.

AA 63/07

Unions and worker delegates

The two hours provided by the law for worker delegates to carry out their duties shall take place during regular working hours, unless worker delegates agree otherwise.

AA 60/07

Unless the statute of the union provides otherwise, the term of a union leader will not end upon the termination of employment. Dismissed workers who are union leaders still have the right and responsibility to represent their members in the resolution of a collective dispute.

AA 62/07

An employer has an obligation to deduct wages for union contribution fees from workers who make a request in writing 15 days in advance.

AA 64/07; 116/07; 133/07

A trade union who has not yet received a registration certificate from the Ministry of Labour is not entitled to demand that the company deduct union contribution fees from workers.

AA 64/07; 133/07

The worker party has the burden of proof to support the allegation that the employer discriminated against the union.

AA 75/07; 123/07; 137/07; 140/07; 148/07

If there is no union with most representative status in the factory, a combination of unions with a majority of members of the total workers in the factory can jointly bring an interests dispute before the Arbitration Council

AA 81/07

Disciplinary action applied to workers must be proportional to the misconduct and consistent with the company's internal work rules.

AA 90/07

A request in writing by a worker to have union contribution fees deducted from their wages need only be made once (not every month); if a worker no longer wants the company to deduct union contribution fees from their wages they can prepare a letter asking the employer to stop deductions.

AA 91/07

Unless a non-union member expressly authorizes (in writing) a union to represent him or her, a union only has legal standing to represent its members.

AA 93/07

The Labour Law prohibits an employer from using workers' membership in a union as a reason to make decisions about discipline or termination of the employment contract.

AA 100/07; 123/07

The Labour Law does not provide union leaders a right to meet for two hours per week; this right is granted only to worker delegates.

AA 116/07

All union founding members or workers who voluntarily join a union as members during the registration may be entitled to receive the special protections regarding dismissal.

AA 148/07

Wages and bonuses

The statute of limitations to submit a complaint resulting from a labour contract is three years from the day workers are entitled to the benefits.

AA 61/07

The attendance bonus is an incentive bonus and can ensure praise to workers who come to work regularly and are not absent without a valid reason.

AA 62/07; 106/07; 115/07

Workers who take sick leave with permission have a right to receive an attendance bonus in proportion to the number of days they attend at work.

AA 62/07

The employer has the right to determine whether workers who earn less than the daily piece rate on one particular day receive a top up that day or at the time of each wage payment so long as calculation does not mean workers earn less than the minimum wage

AA 69/07; 106/07

The employer does not have an obligation to set the piece rate based on the average worker in a specific section, it can be based on an average worker performing substantially similar work in the overall factory

AA 69/07

The timing of when the employer should provide notice of the piece rate to workers depends on the actual facts of a case, including whether there is an agreement between the employer and workers about when such notice will be given.

AA 79/07

Regarding wage increases, the employer has the right to evaluate workers based on their capacity, discipline, punctuality, respect for the company's guidelines, performance, skill, and work ethic in order to determine whether they are entitled to a wage increase; however in cases where the workers can provide evidence to show that they performed well, they are skillful and they receive less wages than those workers who have the same capacity, performance, and skills they can be entitled to a wage increase.

AA 84/07

The employer has the right to determine which day to pay workers provided the determination is reasonable and complies with the law, which stipulates that workers shall be paid at least once per month.

AA 89/07; 124/07 & 128/07

A demand for a wage increase will be an interests dispute where there is no article in the Labour Law, regulation or agreement which specifies that workers are entitled to a wage increase.

AA 102/07; 108/07

An employer has the right to determine or amend the piece rate but such determination should allow a worker of average skills to earn the minimum wage.

AA 106/07

According to Article 103 of the Labour Law, a bonus is a part of wage.

AA 106/07

Overtime payments should be counted as part of a worker's wage.

AA 119/07

A demand for an employer to provide an additional US\$1 seniority bonus every working year from year 5 onward is a demand which is beyond the law and is an interests dispute.

AA 131/07; 133/07

A demand for the company to provide an attendance bonus in an amount more than US\$5, as determined by the law, is an interests dispute where there is no agreement that specifies otherwise.

AA 135/07

Work suspension

In order for a suspension to be lawful, the employer must provide notice to the Labour Inspector so that the Inspector can decide whether or not the suspension of the labour contracts should be allowed.

AA 74/07

An agreement by workers to accept less than full wages during a period of unlawful suspension is an agreement that gives less than what is provided for under the law, and therefore null and void.

AA 74/07

Where an employment contract is suspended in accordance with the Labour Law, the employer is not obliged to provide wages to workers' for the period of the suspension; however if such suspension is unlawful, the employer must provide full wages to workers.

AA 100/07; 116/07