KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 74/11-Forever Million Footwear

Date of award: 18 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: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Nhean So Munin**

DISPUTANT PARTIES

Employer party:

Name: **Forever Million Footwear Industry Co., Ltd. (the employer)**

Address: Trapang Chouk Village, Tekthla Commune, Sensok District, Phnom Penh

Telephone: 012 766 423 Fax: N/A

Representatives in the first hearing:

1. Mr David Tseng — Head of administration
2. Mr Ly Cheng — Advisor to the employer
3. Mr Lu Kimhong — Interpreter
4. Mr Ly Kiman — Administrative assistant

Representatives in the second hearing:

1. Mr. David Tseng — Head of administration
2. Mr Ly Cheng — Advisor to the employer
3. Mr Lu Kimhong — Interpreter
4. Ms Heng Sreymom — Interpreter

Representatives in the third hearing:

1. Mr David Tseng — Head of administration
2. Mr Ly Cheng — Advisor to the employer
3. Mr Lu Kimhong — Interpreter

Worker party:

Name: **Voice Khmer Youth Union Federation (VKYUF)**

Local Union of Voice Khmer Youth Union Federation (the union)

Address: Trapang Chouk Village, Tekthla Commune, Sensok District, Phnom Penh

Telephone: 012 713 065 Fax: N/A

Representatives in the first hearing:

1. Mr An Sakhan — General secretary of VKYUF
2. Mr Tith Vannak — Officer of VKYUF
3. Ms Sek Sreymom — Secretary of the Local Union of VKYUF
4. Ms Chea Sarom — Member of the union committee
5. Ms Chan Sopharath — Member of the union committee
6. Mr Chun Setha — Member of the union committee

Representatives in the second hearing:

1. Mr An Sakhan — General secretary of VKYUF
2. Mr Uo Pheurn — Officer of VKYUF
3. Ms Sek Sreymom — Secretary of the Local Union of VKYUF
4. Ms Chea Sarom — Member of the union committee
5. Ms Chan Sopharath — Member of the union committee
6. Ms Chun Setha — Member of the union committee

Representatives in the third hearing:

1. Mr An Sakhan — General secretary of VKYUF
2. Mr Uo Pheurn — Officer of VKYUF
3. Ms Sek Sreymom — Secretary of the Local Union of VKYUF
4. Ms Chea Sarom — Member of the union committee
5. Ms Chan Sopharath — Member of the union committee
6. Mr Chun Setha — Member of the union committee
7. Ms Nork Thyda — Member of the union committee
8. Mr Lim Long — Worker

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate Chun Setha and Chan Sopharath.
2. The workers demand that the employer not threaten them by using security force and that the competent authority launch an investigation into this matter.
3. The workers demand that the employer provide a 1,000 riel meal allowance for overtime work from 7:00 p.m. to 9:00 p.m.

4. The workers demand that the employer set up a day-care centre and a nursing room in the factory.
5. The workers demand that the employer allow all workers to leave work at 4:00 p.m. every Saturday.
6. The workers demand that the employer provide a proper seniority bonus and back pay underpayment of seniority bonus.
7. The workers demand that the employer pay monthly wages before 4:00 p.m. on payday.
8. The workers demand that the employer refrain from discriminating against the union, its committee and members.
9. The workers demand that the employer dismiss David Qu immediately. The workers allege that David Qu behaves inappropriately and verbally abuses them.
10. The workers demand that the employer deduct wages from the union's members for their union contribution fee.

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. 136 dated 7 June 2011 (Ninth 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. 659 KB/RK/VK dated 22 June 2011 was submitted to the Secretariat of the Arbitration Council on 22 June 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: 29 June 2011 at 8:30 a.m.
Second hearing: 19 July 2011 at 8:30 a.m.
Third hearing: 25 July 2011 at 8:30 a.m.

Procedural issues:

On 6 June 2011, the Department of Labour Disputes received a complaint from the union outlining the workers' demands that the employer improve their working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to

resolve the labour dispute. None of 10 issues were conciliated. The 10 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 22 June 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 10 non-conciliated issues. The first hearing was held on 29 June 2011 at 8:30 a.m.

Both parties were present at the three hearings. During the hearings, the workers withdrew issues 2, 5, and 7. Issues 1, 3, 4, 6, 8, 9, and 10 remained unresolved.

The Arbitration Council will consider the remaining seven issues in dispute based on the evidence and facts presented in the hearings, and additional evidence submitted after the third hearing below.

EVIDENCE

This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.

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:

General facts:

A. Forever Million Footwear Industry Co., Ltd. possesses a certificate of commercial registration dated 15 May 1997 and has commenced operations since 1997.

B. The employer established Jocam Footwear Co., Ltd. located on the premises of Forever Million Footwear Industry Co., Ltd. Jocam Footwear Co., Ltd. was registered by a certificate dated 31 August 2010 and was fully recognised as a legal entity on 6 September 2010 by letter No. 2190.

C. Jocam Footwear Co., Ltd. operated a separate factory from Forever Million Footwear Industry Co., Ltd. and received permission to run its factory on 7 February 2011. The two entities share an administration system and the employees. Some of the submitted administrative documents have the letterhead of Jocam Footwear Co., Ltd. and others have the letterhead of Forever Million Footwear Industry Co., Ltd., e.g warning letter. According to the list of employees

of the two entities, 200 and 1,700 workers are currently employed by Jocam Footwear Co., Ltd. and Forever Million Footwear Industry Co., Ltd. respectively.

D. Previously, the Democratic Union was established in the factory. In 2007, this union and the employer reached an agreement in relation to payment in lieu of setting up a day-care centre, payment in lieu of annual leave, maternity payment (paid in lump sum prior to maternity leave), and provision of two cans of milk per month among others. Presently, this union has been dissolved. Along with other workers, the members of the dissolve union have established a new union, the Cambodian Workers Labor Union. This union was registered with the Ministry of Labour and Vocational Training on 11 April 2011.

E. The Local Union of VKYUF is the only union in Forever Million Footwear Industry Co., Ltd. This union was registered with the Ministry of Labour and Vocational Training on 25 April 2011. It formed an alliance with VKYUF and authorised VKYUF to collect the union contribution fees on its behalf. The workers claim that the union has a total of 700 members, but could not recall the number of its members who are working for Forever Million Footwear Industry Co., Ltd. The employer cannot confirm the number as it has not deducted the union contribution fee from the wages of any workers.

Specific facts relating to each issue:

- **Case of Chun Setha**

Chun Setha commenced his work for Forever Million Footwear Industry Co., Ltd. on 1 November 2008. His role was a 'knife organiser'. The employer dismissed him on 28 May 2011 and paid him wages for May 2011. Prior to his dismissal, Chun Setha held an undetermined duration contract.

His dismissal was due to the fact that he, as the chief knife organiser, handed out the incorrect knives at least three times in the one month of June. This resulted in a large number of shoes (at least 1,600 pairs of shoes) being defective. The employer has warned him repeatedly over this misconduct.

As a consequence of the misconduct, the employer has issued a warning letter to the head of the cutting section and two cutters. However, no dismissal of these workers has been taken place because the employer believes that they are the least responsible in this matter. The employer believes that Chun Setha is the most responsible for the loss as he was the one who handed out the incorrect knives.

Apart from this misconduct, the employer claims that Chun Setha has been given a warning over the unauthorised use of a handheld transceiver during working hours.

The workers claim that the dismissal of Chun Setha was motivated by union discrimination. The workers claim that the employer was aware that Chun Setha, an advisor

to the union, was the one who gathered the workers to stage a strike demanding an improvement of working conditions. The workers present a complaint submitted by the employer to Sok Reoun, a deputy prosecutor of the Phnom Penh Court of First Instance, which reads:

> …while our factory received a lot of orders from buyers, the Local Union of KVYUF incited workers to cause frequent trouble in the factory. This union threatened the employer to stage a strike when the employer wanted to dismiss any workers. This union would not cause any trouble if the employer gave them money under the table. Due to illegitimate pressure from the union and two members of its committee which resulted in frequent disruption to the production line…Due to intolerable pressure, the employer decided to dismiss the two members of the union committee…

The workers claim that there was unfair treatment among workers over the same misconduct. The workers pose a question to the employer, "if Chun Setha's dismissal was grounded on serious misconduct instead of being motivated by union discrimination, why did the employer promise that it would pay a large amount of termination payment to him if he agreed to withdraw his complaint?"

The employer denies the allegations of union discrimination and insists that Chun Setha's dismissal conformed to the legal procedure in relation to serious misconduct.

- **Case of Chan Sopharath (Chan Sopharoth)**

Chan Sopharath worked as a fabric organiser and the employer dismissed her on 28 May 2011. The Arbitration Council determines that Chan Sopharath was a worker of Forever Million Footwear Industry Co., Ltd. and not of Jocam Footwear Co., Ltd. The Council finds that Jocam Footwear Co., Ltd. received permission to operate its factory on 7 February 2011. According to the data of payroll submitted by the employer, she started her employment on 11 September 2010, five months before the opening of the factory. No evidence or argument has been presented as to whether Chan Sopharath has been dismissed or has resigned from Forever Million Footwear Industry Co., Ltd.

The employer submitted the job application of Chan Sopharath dated 1 January 2011 for Jocam Footwear Co., Ltd. Her thumbprint was affixed and photograph was attached to the application. The employer presented an employment contract with Jocam Footwear Co., Ltd. Her name and thumbprint were on the contract, but there was no signature of the employer (ie. the director and the head of section).

The Arbitration Council assumes that Chan Sopharath held an undetermined duration contract at her dismissal, in the absence of evidence to the contrary. She has not received wages for May 2011.

Chan Sopharath joined the Local Union of VKYUF on 27 January 2011 and was appointed to the committee on 2 March 2011. At the hearing, she submitted that, in 2011, she took extended leave of two days due to illness and three days due to the third anniversary of her grandmother's death.

The employer submitted five warning letters. Three of them were issued in February 2011 and show unauthorised absence of five hours and three hours, and unauthorised leave of one day. Another one in March 2011 shows unauthorised absence of five hours. Chan Sopharath acknowledged receipt of these letters.

At the hearing, the employer claimed that it gave her a warning over partial completion of her task on 27 May 2011. The employer considered this as another instance of her misconduct.

The workers claim that the dismissal of Chan Sopharath aims to discriminate against the Local Union of VKYUF.

Issue 3: The workers demand that the employer provide an additional 1,000 riel meal allowance for overtime work from 7:00 p.m. to 9:00 p.m.

The parties agree that work hours finish at 4:00 p.m. The workers opt / elect to work overtime until 9:00 p.m. They take a dinner break of one hour from 6:00 p.m. to 7:00 p.m. They undertake overtime work of four hours almost every day, including Sundays. Recently, there has been no overtime work on Saturdays.

Apart from providing proper wages under the Labour Law, the employer provides a 2,000 riel meal allowance from 4:00 p.m. to 6:00 p.m. An additional 1,000 riel meal allowance (500 riel per hour of overtime work) is provided from 7:00 p.m. to 9:00 p.m.

The workers demand that the employer provide an overtime time meal allowance at the rate of 1,000 riel per hour from 7:00 p.m. to 9:00 p.m. The employer refuses to accommodate this demand on the basis of low profit and additional snack allowance. The employer claims that it provides 150 riel snack allowance for overtime work of four hours.

Issue 4: The workers demand that the employer set up a day-care centre and a nursing room in the factory.

At the hearing, the workers estimated that female workers accounted for 80-90% of the workforce in the factory. The employer claimed that Forever Million Footwear Industry Co., Ltd. employs 200 workers, 11 of whom are male workers. The employer further claimed that only one female worker has children younger than 18 months old. At the hearings, the workers did not provide the specific number of workers employed by Forever Million Footwear Industry Co., Ltd. Also, the workers did not make an objection nor supply evidence to refute the employer's claim. Therefore, in the absence of further evidence, the Arbitration Council accepts the employer's claim on the number of female employees.

The Arbitration Council finds that on 22 January 2007 the employer agreed with the Democratic Union to provide female workers a monthly US$ 7 allowance for milk formula upon their return from maternity leave. This provision was valid until their children were one year old. Those eligible must have continuous service of one year. On 27 November 2007, the employer agreed with the same union to provide a monthly US$ 7 payment in lieu of setting up a day-care centre. Those having children aged 12 to 18 months old were eligible to the provision.

No evidence has been presented in relation to the arrangement of a day-care centre and nursing room at any other place outside the factory.

Issue 6: The workers demand that the employer provide a proper seniority bonus and back pay the underpayment of seniority bonus.

The workers claim that most of the workers have been working for Forever Million Footwear Industry Co., Ltd. since 1997. In this case, the workers did not provide the Arbitration Council with a list of the claimants. The workers claim that they are unable to submit a list since some of the union leaders have resigned from work; and the union secretary and some members of the committee have not been allowed to enter the factory for two months.

At the hearings, the workers told the Arbitration Council that Seng Sreymom (Seng Sreymorm), Nok Thyda (Nork Thida), and Lim Long were involved in this dispute. They were present at the hearing.

Seng Sreymom claims that she has worked for Forever Million Footwear Industry Co., Ltd. since 1997 and received a US$ 11 seniority bonus once during Khmer New Year of 2011. According to the payroll data submitted by the employer, the Arbitration Council finds that Seng Sreymom commenced work on 10 November 1997. However, her job application for Jocam Footwear specified 10 October 1997 as her date of employment commencement. According to the payroll data for 2008-2010, Seng Sreymom received a US$ 5 seniority bonus every month during this period.

Nok Thyda claims that she commenced her work in 2007, received an employment identity card after one year of service, and received a monthly US$ 2 seniority bonus. According to the employment identity cards and the payroll data for 2009 submitted by the employer, the Arbitration Council finds that Nok Thyda started working for Forever Million Footwear Industry Co., Ltd. on 30 December 2008. However, the payroll data for 2010 states 1 May 2009 which is consistent with her job application for Jocam Footwear Co., Ltd. According to the payroll data for 2009 and 2010, Nok Thyda received a monthly US$ 2 seniority bonus from May to December 2010.

Lim Long claims that he has worked for Forever Million Footwear Industry Co., Ltd. since 2009 and has not received a seniority bonus since then. According to the payroll data

for 2009 and 2010 submitted by the employer, the Arbitration Council finds that Lim Long held contracts for Forever Million Footwear Industry Co., Ltd. from 15 October 2009, 1 March 2010, and 16 September 2010 as specified in his job application for Jocam Footwear Co., Ltd. According to the payroll data for 2009 and 2010, Lim Long has not received a seniority bonus during this period.

The workers argue that Seng Sreymom, Nok Thyda, and Lim Long have not accepted the transfer to Jocam Footwear Co., Ltd. The employer did not supply them with or is it the AC? their contracts with Jocam Footwear Co., Ltd., resignation letters, nor dismissal letters by Forever Million Footwear Industry Co., Ltd.

Issue 8: The workers demand that the employer refrain from discriminating against the union, its committee and members.

At the hearings, the workers submitted a list of eight claimants who have made a demand for reinstatement and back pay of their wages. They are Chea Sarom, Seng Sreymom, Nok Thyda, Nit Synet, Lim Long, Chres Chandy, Men Phyrum, and Leng Sokha. The Arbitration Council finds that some female workers have different names in different documents; e.g. Chres Chandy has a different name in one document as Chres Channdy.

The employer submitted job applications of Seng Sreymom, Nok Thyda, Chea Sarom, Leng Sokha, Chres Chandy, Nit Synet, Lim Long, and Men Phyrum with Jocam Footwear Co., Ltd., and some excerpts from the payroll data for 2010 which included Seng Sreymom (Seng Sreymorm), Nok Thyda, and Lim Long.

Considering the fact that in Cambodia individual's names are frequently misspelled in different documents due to the low level of literacy and a lack of care considering the parties' failure to attach significance to different names, the Arbitration Council assumes that Seng Sreymom (and Seng Sreymorm), Nok Thyda (and Nork Thida), Nit Synet (and Nit Sinet), Chres Chandy (and Chres Channdy) refer to the same person. Therefore, the eight claimant names are: (1) Seng Sreymom (Seng Sreymorm), (2) Nok Thyda (Nork Thida), (3) Nit Synet (Nit Sinet), (4) Chres Chandy (Chres Channdy), (5) Chea Sarom, (6) Leng Sokha, (7) Lim Long, (8) Men Phyrum.

The workers claim that the eight workers have not accepted the transfer to Jocam Footwear Co., Ltd. Some documents submitted by the employer are inconsistent and the eight workers' probationary contracts with the employer bear no signature of the employer. No clear date has been written down on their job applications. Thus, their probationary contracts are deemed invalid. No resignation letters or dismissal letters for them has been submitted.

The workers claim that the employer discriminated against them because the eight workers' dismissal took place following the strike from 2 to 11 June 2011, attended by almost all the workers of Forever Million Footwear Industry Co., Ltd. and Jocam Footwear Co., Ltd.

The workers claim that the employer paid the eight workers termination payments at the security stand outside the factory, but the employer allowed non-activist workers to return to work; for instance, Horm Sreymom and Horm Sreymey who were not active in the strike were allowed to resume their work. The workers state that after the strike, some of the union leaders resigned from work and withdrew their membership from the union.

The employer's statement dated 28 June 2011 reads:

> The employer denies the allegations of union discrimination. The employer previously cooperated with the Democratic Union by reaching an agreement in compliance with the Labour Law; and recently a new union that is an affiliate of Cambodian Workers Labor Federation Union (CWLFU) [*sic*].

At the hearings, the employer denied the allegations of union discrimination by stating that some of the members of the union committee remained in employment with them. The employer claimed that the eight workers are not involved in this dispute. Rather they were in dispute with the employer in another case which was closed by the Arbitration Council. The employer stated that there was an interim order by the Arbitration Council and a provisional ruling by the court ordering the striking workers to return to work within 48 hours. However, the eight workers did not return to work. The employer argued that the eight workers had abandoned their work when they failed to comply with the orders. The employer stated that Horm Sreymom and Horm Sreymey agreed to return to work and were working at the factory.

The workers maintain their demand that the employer reinstate the eight workers and provide them with back pay because they are workers of Forever Million Footwear Industry Co., Ltd. and have not been involved in a previous dispute with Jocam Footwear Co., Ltd. The workers claim that the eight workers have not accepted the termination of their contracts and have not received termination payments; they have received only the outstanding wages for May 2011.

Issue 9: The workers demand that the employer dismiss David Qu immediately.

At the hearing, the workers demanded that the employer dismiss David Qu. The workers alleged that he threatened and verbally abused those who took a short break even when work was not available, and cited his behaviour of waving his hand towards the striking workers to return to work as a threatening and abusive act.

The employer refused to dismiss him as he is the general / country manager of Forever Million Footwear Industry Co., Ltd. The workers maintained their demand of his dismissal.

Issue 10: The workers demand that the employer deduct wages from the union's members for the union contribution fee.

The workers claim that Bot Mara, the representative of VKYUF, has submitted a request for deducting wages for the union contribution fee to the employer. The request was attached with 700 workers' authorisations to deduct their wages. However, the workers have not submitted a copy of this request to the Arbitration Council.

At the hearing, the advisor to Forever Million Footwear Industry Co., Ltd. asked the representative of the employer the reasons for not deducting wages for the union contribution fee. The employer's statement dated 28 June 2011 reads:

> The employer will deduct wages for the union contribution fee if the workers have submitted the following documents:
>
> - Wage deduction authorisation from each worker after the union has been registered;
> - Request for deduction submitted by union federations must be attached with the approval from the local unions, since members of the local unions are paid by the employers.

The workers did not respond to this statement.

REASONS FOR DECISION

Issue 1: The workers demand that the employer reinstate Chun Setha and Chan Sopharath.

- **Case of Chun Setha**

In this case, the workers claim that the dismissal of Chun Setha was motivated by union discrimination. The employer denies the allegation of union discrimination and claims that his dismissal was based on serious misconduct. The Arbitration Council considers this issue as follows:

In relation to evidence of union discrimination, the Arbitration Council considers arguments in the hearing and relevant evidence to determine as to whether or not there is discrimination (*see Arbitral Awards 141/08-Bloomtime, reasons for decision, issue 4; 64/09-Sinomax 2*).

Based on evidence and the parties' arguments, the Arbitration Council considers that the activities and language of the employer seem to discriminate against the Local Union of VKYUF. However, there is also compelling evidence that the union activists have exerted their influence to obtain personal gains from the employer, which is mentioned at the hearings and in the employer's complaints to the deputy prosecutor. The workers and Chun Setha have not disputed this claim. Having taken into account Chun Setha's serious

misconduct and warning letters for other three workers and Chun Setha, the Arbitration Council is not convinced to conclude that the dismissal of Chun Setha was motivated by discrimination against the Local Union of VKYUF and its activists.

In this case, the Arbitration Council finds that serious misconduct was the basis of the dismissal of Chun Setha. Thus, the Arbitration Council considers whether or not the dismissal of Chun Setha is based on misconduct as stipulated in the law.

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 behavior, based on the requirements of the operation of the enterprise, establishment or group.

Based on this article, the Arbitration Council determines that the employer has the right to dismiss the workers at will by notifying them of a valid reason relating to aptitude or behaviour based on the requirements of the operation of the enterprise or company (*see Arbitral Awards 131/10-Leader Industrial, reasons for decision, issue 1; 16/11-Cambo Handsome, reasons for decision, issue 1*).

Article 83 Part B Point 3 of the Labour Law refers to, "[s]erious infractions of disciplinary, safety, and health regulations." According to the facts, the Arbitration Council finds that Chun Setha's contract qualifies as an undetermined duration contract. In relation to the dismissal of Chun Setha, the employer cites two instances of misconduct: the alleged use of a handheld transceiver at the workplace and a lack of care and attention in the performance of the job which caused damage to the employer's property.

Concerning the alleged use of a handheld transceiver, the employer has failed to prove whether this act violates the Internal Work Rules or affects the operation of work and work quality. Furthermore, the employer has not issued a warning letter to other workers who used a handheld transceiver. Therefore, the Arbitration Council rules that the use of a handheld transceiver does not qualify as misconduct.

Regarding Chun Setha's mismanagement of knives, the Arbitration Council finds that the Internal Work Rules and Article 83 of the Labour law do not specify his act as misconduct. However, according the spirit of Article 83, the Arbitration Council determines

that Chan Setha's act amounts to serious misconduct in terms of a serious infraction of the disciplinary regulations because he has made repeated mistakes in one month which resulted in a large loss to the employer despite his two-year work experience. Based on the law and facts above, the Arbitration Council rejects the workers' demand that the employer reinstate Chun Setha.

- **Case of Chan Sopharath**

In this case, the workers claim that Chan Sopharath is a worker of Forever Million Footwear Industry Co., Ltd. and her dismissal was the result of union discrimination. The employer denies the allegations of union discrimination, and claims that she works for Jocam Footwear Co., Ltd. and her dismissal was based on serious misconduct. The Arbitration Council considers whether Chan Sopharath is a worker of Forever Million Footwear Industry Co., Ltd. or Jocam Footwear Co., Ltd.

According to the facts, the employer cites Chan Sopharath's job application and her employment contract as the basis of its claim. Chan Sopharath denies any signature on those documents. In subsequent hearings, the employer did not provide any evidence to verify her signature. Furthermore, supposing that Chan Sopharath has accepted her signature on the employment contract submitted by the employer, the Arbitration Council still considers that employment contract to be invalid

The Arbitration Council finds that there is no sufficient evidence to conclude that Chan Sopharath has entered into a contract with Jocam Footwear Co., Ltd. and quit from Forever Million Footwear Industry Co., Ltd. on 1 January 2011. However, based on the evidence, the Council concludes that Chan Sopharath is a worker of Forever Million Footwear Industry Co., Ltd since the commencement of her employment.

The Arbitration Council goes on to consider whether the dismissal of Chan Sopharath was based on serious misconduct or was motivated by union discrimination.

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 behavior, based on the requirements of the operation of the enterprise, establishment or group.

Based on this article, the Arbitration Council determines that the employer has the right to dismiss the workers at will by notifying them of a valid reason relating to aptitude or behaviour based on the requirements of the operation of the enterprise or company (*see Arbitral Awards 131/10-Leader Industrial, reasons for decision, issue 1; 16/11-Cambo Handsome, reasons for decision, issue 1*).

Article 83 Part B Point 3 of the Labour Law refers to, "[s]erious infractions of disciplinary, safety, and health regulations."

According to the facts, the Arbitration Council concludes that Chan Sopharath has taken extended leave at least twice in the first five months of 2011, which the employer deemed to be misconduct. No specific clause of the Internal Work Rules has been presented in the substantiation of her dismissal. Having taken the parties' arguments and Article 83 into account, the Arbitration Council rules that Chan Sopharath has not violated the disciplinary regulations.

According to the facts, the employer has warned her over the non-completion of her work. Although she has acknowledged the content of the warning letter by signature, it cannot be considered that the warning was legitimate since the employer has not offered an explanation of how her work was evaluated. Therefore, the Arbitration Council cannot conclude that she had committed serious misconduct by not completing her work.

In conclusion, the Arbitration Council rules that Chan Sopharath's misconduct was not serious misconduct.

In relation to the allegation of union discrimination, the Arbitration Council considers this issue as follows:

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

In respect of the allegations of union discrimination in previous arbitral awards, the Arbitration Council has ruled that the claimants have the burden of proof (*see Arbitral Awards 158/08-M&V 4; 40/09-Goldfame, reasons for decision, issue 1*).

The Arbitration Council will consider evidence relevant to the issue in order to determine whether or not there is union discrimination in connection with the dismissal of the workers (*see Arbitral Award 122/09-YVP, reasons for decision, issue 3*).

Having carefully examined the activities and language of the employer, the Arbitration Council determines that the employer was inclined to discriminate against the Local Union of VKYUF and its activists who kept asking the employer for personal favours. Since the employer did not implicate Chan Sopharath in this matter and her misconduct was not deemed to be serious misconduct, the Arbitration Council concludes that her dismissal was motivated by union discrimination and not based on serious misconduct.

At the hearings, the workers demanded that the employer provide back pay dating from the date of her dismissal, as well as her outstanding wages for May 2011.

Based on the law and facts, the Arbitration Council determines that the workers' claim is legally founded, and therefore orders the employer to reinstate her. The workers' claim concerning back pay of her wages and outstanding wages for May 2011 is also legally substantiated, and therefore the Council orders the employer to accommodate this demand.

Issue 3: The workers demand that the employer provide a 1,000 riel meal allowance for overtime work from 7:00 p.m. to 9:00 p.m.

The workers admit that their demand is not legally grounded. However, the workers maintain their demand that the employer provide a meal allowance for overtime work of two hours from 7:00 p.m. to 9:00 p.m. at the rate of 1,000 riel per hour, as the employer provides for the previous two hours of overtime work. The employer claims that it cannot afford to accommodate this demand. The Arbitration Council considers this issue as follows:

The workers and the employer does not have an agreement or an employment contract that requires the employer to provide an additional 2,000 riel meal allowance when the workers opt to work during that period. The Arbitration Council also finds that there is no law or provision of the Labour Law or a provision of labour-related regulations that requires the employer to accommodate the workers' demand. Therefore, the issue qualifies as an interests dispute.

In relation to an interests dispute in previous arbitral awards, the Arbitration Council has ruled that having most representative status (MRS) gives a union legal capacity to negotiate with the employer to establish a collective agreement in an enterprise (see Article 96 paragraph 2 of the Labour Law and Clause 9 paragraph 1 of *Prakas* 305) and legal standing to bring an interests dispute to the Arbitration Council for resolution.

In order to acquire most representative status, Article 277 of the Labour Law 1997 and Clause 6 of *Prakas* 305 dated 22 November 2001 require a union to represent half of the total number of workers in the factory, to be registered with the Ministry of Labour and Vocational Training, and to fulfill other requirements stipulated in Article 277.

In previous arbitral awards, the Arbitration Council has declined to consider interests disputes if the claimant unions do not possess MRS (*see Arbitral Award 108/08-Hugo, reasons for decision, issue 2*).

According to the facts, the Arbitration Council finds that the Local Union of VKYUF has been formally registered with the Ministry of Labour and Vocational Training. However, the union fails to show that it has acquired MRS. Therefore, the Local Union of VKYUF does not have the legal capacity to negotiate a collective agreement with the employer on behalf of all workers in the factory.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide an additional 1,000 riel meal allowance when they choose to work overtime from 7:00 p.m. to 9:00 p.m.

Issue 4: The workers demand that the employer set up a day-care centre and a nursing room in the factory.

According to the facts, the Arbitration Council finds that at least 100 female workers have been employed, one of whom has a baby younger than 18 months old. There is no day-care centre and no nursing room.

At the hearing, the workers cite Article 186 of the Labour Law to support their claim.

Article 186 of the Labour Law states:

> Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care centre).
>
> If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer.

The employer believes that the agreements in 2007 remains enforceable and chooses not to rely on Article 186. According to the agreement dated 22 January 2007, the Arbitration Council finds that the agreement provides for a monthly allowance of two cans of milk powder, but it is indicated that they are provided in lieu of setting up a day-care centre

and nursing room. According to the agreement dated 27 November 2007, the Arbitration Council finds that a monthly US$ 7 allowance is provided to those having a child aged between 12 months old and 18 months old in lieu of setting up a day-care centre.

The workers argue that those agreements are unenforceable and not applicable to them because they are collective agreements negotiated by the Democratic Union and since the Democratic Union did not hold MRS. the Democratic Union's two-year terms have been now expired, and the Democratic Union has been dissolved.

The Arbitration Council considers that the workers' claim is reasonable and legally founded. Therefore, the Arbitration Council orders the employer to set up a day-care centre and nursing room in accordance with Article 186 of the Labour Law.

Issue 6: The workers demand that the employer provide a proper seniority bonus and back pay the underpayment of seniority bonus.

According to the facts, Seng Sreymom (Seng Sreymorm), Nok Thyda (Nok Thida), and Lim Long have shown that they have worked for Forever Million Footwear Industry Co., Ltd. until the date they were dismissed. The Arbitration Council considers this issue as follows:

Notification No. 017 dated 18 July 2000, states:

> 5. Any workers work in any factories or enterprises for years shall get rewards for the job as follows:
>
> 5.1. Working for more than 1 year, the worker shall get 2 US dollars per month in reward for the work seniority.
>
> 5.2. Working for more than 2 years, the worker shall get 3 US dollars per month in reward for the work seniority, i.e., 2 dollars for the first year plus 1 dollar for the second year.
>
> 5.3. Working for more than 3 years, the worker shall get 4 US dollars per month in reward for the work seniority, i.e. 2 dollars in first year plus 1 dollar in 2nd year plus 1 dollar in 3rd year.
>
> 5.4. Working for more than 4 years, the worker shall get 5 US dollars per month in reward for the work seniority, i.e. 2 dollars in 1st year plus 1 dollar in 2nd year plus 1 dollar in 3rd year plus 1 dollar in fourth year.

The seniority for the above reward calculation shall be in effect from 1 August 2000.

Notification No. 041/11 dated 7 March 2011, states:

- Seniority bonus:

1. The workers who have worked at any factory, enterprise, and establishment, for more than one year shall receive a seniority bonus as follows:

Seniority (in years)	1	2	3	4	5	6	7	8	9	10	11
Amount of money received (in dollars)	0	2	3	4	5	6	7	8	9	10	11

2. The workers who have seniority in accordance with the years mentioned above shall receive a seniority bonus based on the year of seniority (as mentioned in the table above) except for workers who have worked for more than 11 years who shall receive a seniority bonus of US$ 11 per month.

   Provision of various benefits stipulated in Points 1, 2, and 3 of this notification will take effect from 1 March 2011.

Article 120 paragraph 1 of the Labour Law states, "[a] lapse of a lawsuit for the payment of wages is three years from the date the wage was due."

Based on Article 120 of the Labour Law, Notification No. 017, and Notification 041/11, the Arbitration Council rules that the workers who are entitled to a seniority bonus can make a claim for wages as well as underpaid seniority bonus or unpaid seniority bonus within three years after pay day.

According the abovementioned facts, the Arbitration Council concludes that:

- Seng Sreymom (Seng Sreymorm) has been working for Forever Million Footwear Industry Co., Ltd. since 10 October 1997 (13 years of service) and has received US$ 5 seniority bonus every month from 2008 to 2010. Without evidence for 2011, the Arbitration Council cannot consider whether or not she has received a seniority bonus from January 2011 onwards.

- Nok Thyda (Nok Thida) has been working for Forever Million Footwear Industry Co., Ltd. since 30 December 2008 (more than two years of service) and has received US$ 2 seniority bonus every month from May to December 2010. Without evidence for 2011, the Arbitration Council cannot consider whether or not she has received a seniority bonus from January 2011 onwards.

- Lim Long has been working for Forever Million Footwear Industry Co., Ltd. since 15 October 2009 (more than one year of service) and has not received a seniority bonus from 2009 to 2010. Without evidence for 2011, the Arbitration Council cannot consider whether or not she has received a seniority bonus from January 2011 onwards.

Based on the aforementioned facts and law, the Arbitration Council rules that Seng Sreymom, Nok Thyda, and Lim Long can make a claim for underpaid seniority bonus or unpaid seniority bonus. Therefore, the Arbitration Council orders the employer to provide Seng Sreymom (Seng Sreymorm) US$ 5 seniority bonus from January to February 2011 and US$ 11 seniority bonus from March 2011 in accordance with Notification No. 041/11. The Arbitration Council also orders the employer to rectify payment of the seniority bonus of Nok Thyda (Nok Thida) and Lim Long in accordance with Notification No. 017 (valid until February 2011) and Notification No. 041/11 (valid from March 2011).

Issue 8: The workers demand that the employer refrain from discriminating against the union, its committee and members.

According to the facts, the Arbitration Council finds that the eight claimants are: (1) Seng Sreymom (Seng Sreymorm), (2) Nok Thyda (Nok Thida), (3) Nit Synet, (4) Chres Chandy (Chres Channdy), (5) Chea Sarom, (6) Leng Sokha, (7) Lim Long, (8) Men Phearom. At the hearings, the employer claimed that the eight workers were not involved in this dispute because they were workers of Jocam Footwear Co., Ltd. Having carefully considered the parties' arguments and examined the evidence, the Arbitration Council determines that the eight workers have worked for Forever Million Footwear Industry Co., Ltd. until they were dismissed. Therefore, they are involved in this dispute. Furthermore, the Arbitration Council finds that the contracts between Forever Million Footwear Industry Co., Ltd. and the eight workers have not been legally terminated but they have received wages for May 2011. Thus, the Arbitration Council considers this issue as follows:

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

In respect of the allegations of union discrimination in previous arbitral awards, the Arbitration Council has ruled that the claimants have the burden of proof (*see Arbitral Awards 158/08-M&V 4; 40/09-Goldfame, reasons for decision, issue 1*).

The Arbitration Council will consider evidence relevant to the issue in order to determine whether or not there is union discrimination in connection with the dismissal of the workers (*see Arbitral Award 122/09-YVP, reasons for decision, issue 3*).

According to the facts, the Arbitration Council finds that the workers' strike is unlawful and the Council's interim order and the court's provisional ruling cited by the employer are irrelevant to this issue [due to a different employer, Jocam Footwear Co., Ltd.].

Based on this finding and although the workers' strike is unlawful, the Arbitration Council rules that the employer has discriminated against the Local Union of VKYUF because the employer paid wages to and allowed workers, who were not members of the union, to return to work.

At the hearings, Lim Long claimed that he expressed his intention to return to work on 8 June 2011, but the employer did not allow him to do so because he was the one who was speaking through a loudspeaker during the strike. The other seven claimants did not express their intention to return to work as they saw the employer refused Lim Long's request to return to work. Thus, they believed that the employer would not allow them either.

Based on the abovementioned facts and law, the Arbitration Council orders the employer to reinstate the eight workers.

The Arbitration Council goes on to consider the demand in relation to back pay.

The Arbitration Council rules that Seng Sreymom (Seng Sreymorm), Nok Thyda (Nok Thida), Nit Synet, Chres Chandy (Chres Channdy), Chea Sarom, Leng Sokha, Men Sarom are not entitled to wages for the period of the strike or the time from their dismissal until the issuance of this award. However, since Lim Long has expressed his intention to return to work after the strike, the Arbitration Council rules that Lim Long is entitled to wages from the date of his dismissal to the date of issuance of this award.

Issue 9: The workers demand that the employer dismiss David Qu immediately.

In this case, the employer refused to dismiss David Qu as he is the general or country manager of Forever Million Footwear Industry Co., Ltd. The workers maintained their demand for his dismissal. The Arbitration Council considers this issue as follows:

Article 65 paragraph 1 of the Labour states:

> A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.

Article 1 of Decree 38 on referring to Contract and other Liabilities dated 28 October 1988, states, "[a] contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them."

Based on these articles, the Arbitration Council rules that only the contracting parties, i.e. the employer and the workers, have the right to terminate their contracts. The third party does not have the right terminate the contracts between the employer and the workers (*see Arbitral Award 116/10-Whitex, reasons for decision, issue 1*).

In previous arbitral awards, the Arbitration Council has ruled:

> the employees do not have rights to demand the employer to dismiss any employees unless the employees can prove that the employee is a dangerous person who cannot be allowed in the company or factory, and that keeping the person can cause harm to the workplace (*see Arbitral Awards 129/09-Whitex Garment, reasons for decision, issue 1; 123/10-June Textile*).

The Arbitration Council applies these rulings in this case. The Arbitration Council considers that it is necessary in some cases that the Council intervene by ordering the employer to transfer or dismiss the workers who have caused harm to other workers. Generally speaking, the Arbitration Council understands that it has no authority to order the employer to dismiss or transfer the employee whom the employer has hired as a general manager, country manager, member of board of directors, or member of the management team.

According to the facts, the Arbitration Council determines that waving at the striking workers to return to work does not constitute a threatening act. Instructing the workers to work when the workers take a break during working hours does not qualify as a threat. This is because the employer or the supervisor has a duty to oversee the workers' activity and to

ensure that they are doing their job during working hours. Furthermore, the Arbitration Council considers that participation in a strike is the right of the workers; however, the employer or the supervisor has a duty to maintain order in the factory and ensure safety at the workplace, i.e. waving at the workers to return to work. The Arbitration Council considers that such behaviour is not illegal and is not intended to threaten the workers.

The Arbitration Council rules that David Qu's action is not too aggressive or illegal and is not likely to cause harm to any workers at the workplace.

In conclusion, the Arbitration Council rejects the workers' demand that the employer dismiss David Qu.

Issue 10: The workers demand that the employer deduct wages from the union's members for the union contribution fee.

In this case, the workers demand that the employer deduct wages from the union's members for the union contribution fee. At the hearings and in its statement, the employer agreed to accommodate this demand when the workers submitted documents mentioned in its statement dated 28 June 2011.

Article 129 paragraph 2 of the Labour Law states:

> However, the worker can authorise deductions of his wage for dues to the trade union to which he belongs. This authorisation must be in writing and can be revoked at any time.

Based on this article, the Arbitration Council considers that this article requires the employer to deduct the workers' wages for union contribution fee when the employer is authorised to do so; however, the union must submit a request for the deduction of its members' wages after it has been registered with the Ministry of Labour and Vocational Training.

In Arbitral Award 60/05-Ever Green, the Arbitration Council ruled:

> the purpose of the requirement of written permission was to protect workers from any deduction against their will and to prevent any mistake. This was to guarantee that the application was legal and reflected workers' wishes.

The Arbitration Council applies this ruling in this case. In order to ensure the deductions of the workers' wages reflect their wishes, all documents regarding the deductions must be clear and proper. Based on Article 129, the workers hold the exclusive

right to deduction of their wages because they can authorise the deduction by written permission.

In this case, the Arbitration Council considers that the employer's request was made in accordance with the Labour Law because it ensures that all documents regarding the deduction be submitted in a clear and proper manner.

According to the facts, the Arbitration Council considers that a request for deduction of the workers' wages should have been submitted after the union has been registered with the Ministry of Labour and Vocational Training. Since the workers have not submitted a copy of their request for deduction, the Arbitration Council is unable to determine whether or not the workers' request is clear and proper. Regardless of having leadership and membership problems which have made it difficult to prepare the documents, the union or VKYUF is not relieved from an obligation to prove authenticity of its request.

In conclusion, the Arbitration Council orders the workers (the union and VKYUF) to prepare documents requested by the employer. Upon receiving these documents, the employer must deduct wages for the union contribution fee. The deduction must be made on the pay day following the request submission to the employer.

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

DECISION AND ORDER

Issues 1:

- Reject the workers' demand that the employer reinstate Chun Setha.
- Order the employer to reinstate Chan Sopharath, pay her wages for May 2011, and provide her with back pay from the date of her dismissal to the date of reinstatement.

Issue 3: Decline to consider the workers' demand that the employer provide an additional 1,000 riel meal allowance when they choose to work overtime from 7:00 p.m. to 9:00 p.m.

Issue 4: Order the employer to set up a day-care centre and nursing room in accordance with Article 186 of the Labour Law.

Issue 6:

- Order the employer to provide Seng Sreymom (Seng Sreymorm) a US$ 5 seniority bonus from January to February 2011 and a US$ 11 seniority bonus from March 2011 in accordance with Notification No. 041/11.

- Order the employer to rectify payment of the seniority bonus of Nok Thyda (Nok Thida) and Lim Long in accordance with Notification No. 017 (valid until February 2011) and Notification No. 041/11 (valid from March 2011).

Issue 8:

- Order the employer to reinstate (1) Seng Sreymom (Seng Sreymorm), (2) Nok Thyda (Nok Thida), (3) Nit Synet, (4) Chres Chandy (Chres Channdy), (5) Chea Sarom, (6) Leng Sokha, (7) Lim Long, (8) Men Phearom.
- Reject the workers' demand that the employer provide back pay of wages for the period of the strike and the time from their dismissal until the issuance of this award to Seng Sreymom (Seng Sreymorm), Nok Thyda (Nok Thida), Nit Synet, Chres Chandy (Chres Channdy), Chea Sarom, Leng Sokha, Men Sarom.
- Order the employer to provide back pay of wage from the date of his dismissal to the date of issuance of this award to Lim Long.

Issue 9: Reject the workers' demand that the employer dismiss David Qu.

Issue 10: Order the workers (the union and VKYUF) to prepare documents requested by the employer. Upon receiving these documents, the employer must deduct wages for the union contribution fee.

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 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: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Nhean So Munin**

Signature: .....