



ARBITRATION COUNCIL

**THE ARBITRATION COUNCIL DIGEST
#1 OF 2005 (JANUARY – JUNE 2005)**

INTRODUCTION

In the period from 1 January to 30 June 2005, 39 cases were filed with the Arbitration Council. 26 of these cases resulted in an award being issued. Of the 26 awards, 2 were binding on the parties, however over 80 percent were followed, in whole, substantially or partially, by the parties. Jurisprudence resulting in this six-month period, included jurisprudence relating to the Arbitration Council's jurisdiction, the calculation of wages for piece rate workers and the nature of management prerogative.

In addition to the Arbitration Council's caseload, Arbitrators and other industrial relations stakeholders participated in the initial stages of the Ministry of Labour and Vocational Training and International Labour Organization review of the current Labour Law. This process will continue throughout 2005 and early 2006, with the Labour Law likely to be amended by the Royal Government of Cambodia in late 2006.

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/>.

It should be noted that the authoritative version of an Arbitration Council award is that issued by the Council in Khmer.

Number of cases filed	39
Number of cases settled without an award	11
Number of cases in which an award was issued	26
Number of cases where objection was filed against award	14
Number of cases where strikes were involved	11
Average number of workers involved in a dispute where an award was issued	865
Average number of workers involved in a dispute where an award was not issued	377

Figure 1 represents statistics from cases registered with the Secretariat of the Arbitration Council during the period from 1 January – 30 June 2005 only.

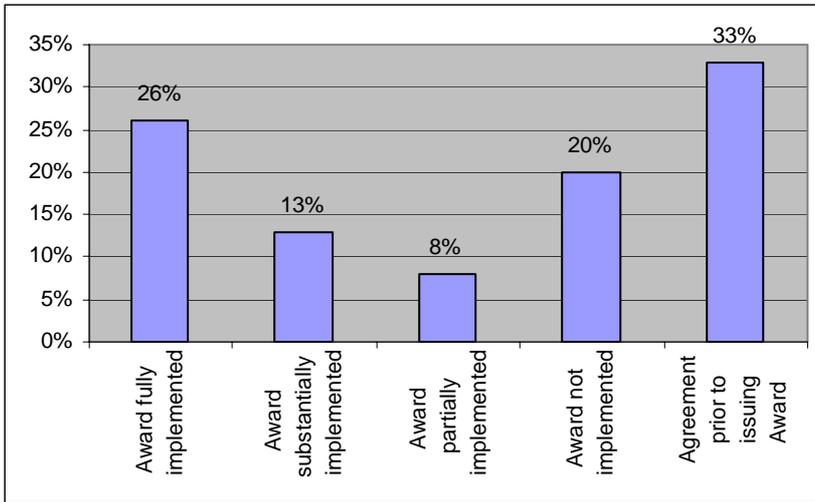


Figure 2 represents the outcomes of cases registered with the Secretariat of the Arbitration Council in the period from 1 January - 30 June 2005.

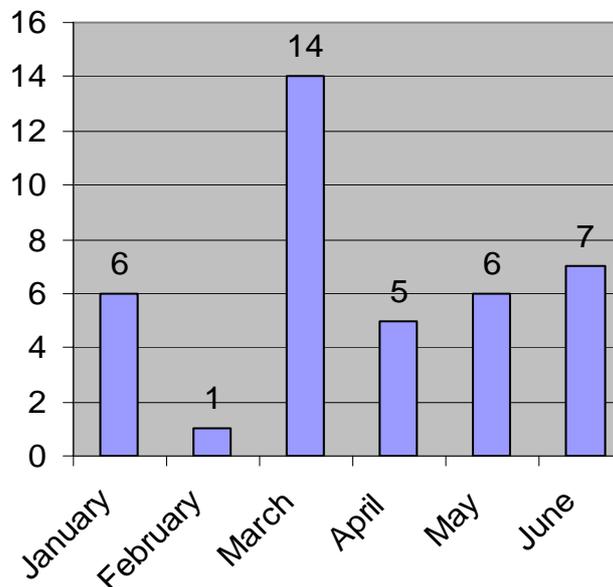


Figure 3 represents the number of cases registered with the Secretariat of the Arbitration Council each month during the period from 1 January - 30 June 2005.

Case summary:

The following summary concerns awards issued by the Arbitration Council in respect of cases registered with the Secretariat of the Arbitration Council from 1 January to 30 June 2005. 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.

Arbitration Council jurisdiction

AA = Arbitral Award (No.)

* A rights dispute must involve an actual alleged violation of the law. There is no extant dispute if the case concerns a hypothetical violation of the law.

AA 27/05; 29/05

Annual leave

* While the employer does not have an absolute right to determine the time for workers to take their annual leave, the employer does have the right (1) under Article 170 of the Labour Law to limit a worker's leave to 15 days at a time, granting the remaining days at another time and (2) under Article 167 of the Labour Law to disallow annual leave to be taken during the worker's first year of service.

AA 21/05

* Workers do not have an absolute right to take annual leave any time they desire.

AA 21/05

* Both parties have a right to negotiate about the time annual leave is taken. The employer has the right to ensure that production is not obstructed and the needs of the business are met, while workers have the right to request annual leave when they wish to take it. However, Article 170 sets out a presumption that annual leave will be taken at Khmer New Year. If either the workers or employer wish annual leave to be taken at another time there must be an agreement between the employer and worker.

AA 21/05; 27/05; 39/05

* The Labour Law grants workers the right to take annual leave, and does not restrict that right based on the purpose that they wish to use the leave for. For this reason, the employer does not have the right to deny workers permission to take annual leave based on the purpose for which they wish to use the leave.

AA 21/05

* When a worker is on annual leave, s/he is therefore not working, the employer has the right to prohibit that worker from entering the premises of the workplace.

AA 21/05

* A policy to make workers use up all of their annual leave at one time, without an opportunity to defer some of their leave, is not reasonable and is contrary to the purpose of the Labour Law.

AA 21/05

* The employer is not entitled to force workers to use annual leave instead of suspending labour contracts during a period of no work.

AA 27/05

Change in legal status of employer

* Under Article 87 of the Labour Law, if there is a change in the legal status of the employer, all contracts and agreements between workers and the former employer, as well as internal work rules of an enterprise, shall continue unless there are new contracts, agreements or internal work rules.

AA 21/05

Classification of employment

* Regardless of the classification of the workers or their labour contracts, under Articles 10 and 104 of the Labour Law, all workers, including casual workers, must be ensured minimum working conditions and wages.

AA 23/05

Closing the case

* Where both parties have been properly notified about the hearing schedule, but the claimant party does not appear at the hearing and does not show proper reasons for its absence, the Arbitration Council may consider that such party has given up its claim and the Arbitration Council may close the case.

AA 30/05

Discrimination

* The employer cannot use union participation or union involvement as a basis to decide whether to hire, discipline or terminate the contract of a worker.

AA 34/05

* A worker party who alleges union discrimination must provide evidence of such discrimination.

AA 34/05

Dismissal

* Workers do not have the right to order or demand that the employer dismiss any worker (including a manager, a supervisor or even another worker).

AA 02/05

* Only parties to the labour contract may terminate the labour contract. The hiring or dismissal of any worker in the enterprise is the sole right of the employer, as one of the parties to the contract.

AA 02/05

* Workers have no right under the law to force the employer to terminate their labour contracts. Such continuation of employment does not violate the Labour Law unless the company forces a worker who wants to resign from work to continue working for the company.

AA 09/05

* The benefits of termination compensation under Article 75, 89, and 91, to which a worker may be entitled apply only in cases where the employer alone terminates the labour contract, not when the worker resigns from employment.

AA 09/05

* Dismissal means, an employer's dismissal of a worker's employment at a time when the contract is in operation and has not yet expired.

AA 34/05

* The protections from dismissal under Article 293 of the Labour Law, which require the employer to obtain prior approval from the Labour Inspector to dismiss certain types of workers, do not apply in cases where the termination is due to the expiry of the contract rather than termination by the employer.

AA 34/05

* Valid reasons for the employer to terminate an employment contract include the operational requirements of the establishment such as a reduction in work or the closure of some part of the operation, and in such circumstances the employer is not required to pay damages pursuant to Article 91.

AA 32/05

Employer's right to manage

* The date on which the employer pays wages to workers is a management decision of the employer. The employer has the right to determine the date of each month's pay, as long as this decision is in accordance with the law, that is, at least once per month.

AA 03/05; 24/05

* In accordance with Article 138 of the Labour Law, the employer sets working hours.

AA 11/05

* The right and authority of the employer to manage and lead the enterprise includes refusing the workers' demand to open a gate for workers to enter the factory during the (non-working) lunch hour.

AA 11/05

* The employer can unilaterally decide to have a policy that provides other bonuses which are not set out in the Labour Law to encourage workers to try to increase their productivity and effectively manage urgent deadlines.

AA 24/05

* The employer's right to manage, arrange and lead the work and operations of the factory includes the right to open or close any gate in the factory, subject to the requirements of the law and the safety and security of workers.

AA 29/05

Employment relationship

* To determine whether an employment relationship exists, the Arbitration Council must consider whether a person is working "under the direction and management of another person". In doing so, the Arbitration Council will have regard to factors including whether the worker works for any other employer, who recruited them, who determines their wages and working hours, who approves leave and who is responsible for disciplinary action and dismissal.

AA 04/05

* Once an employment contract has expired, the employer has the right to determine whether or not to re-hire a worker, subject to prohibitions against discrimination.

AA 34/05

Evidence

* Where a party submits evidence after a deadline set by the Arbitration Council and the party does not have a valid reason for missing such deadline, the Arbitration Council may decline to consider the late-submitted evidence.

AA 23/05

Labour rights of women

* Until such time that a Prakas is issued regarding day-care centres and nursing rooms pursuant to Article 187 of the Labour Law, the employer shall be responsible for arranging for babysitters in the day-care centre and nursing room.

AA 11/05

Mass Layoff

* Article 95 of the Labour Law allows the employer to terminate worker(s) due to the reduction in the establishment's activity at the employer's discretion.

AA 32/05; 37/05

* When a company intends to reduce the activities in the establishment or to reorganise its internal affairs, it must follow the procedures under Article 95 of the Labour Law such as procedures regarding establishment of the order of layoffs with reference to professional qualifications, seniority within the establishment and family burdens of the workers, the employer's obligation to notify the Labour Inspector, and priority for re-hiring to laid-off workers for a period of two years.

AA 37/05

* The legal obligation that requires the employer to ask for approval from the Labour Inspector before dismissing union leaders includes instances of mass layoff under Article 95.

AA 37/05

* The entitlement of increased seniority that is referenced in Article 95 of the Labour Law which provides for one year's additional seniority if a laid off worker is married and an additional year for each dependant child, is simply a method to be used in order to minimise the effect of a mass layoff on the workers; it is not an entitlement to a monetary payment.

AA 32/05

Medical checks and employment cards

* The employer is required to pay for workers' pre-employment medical checks. If the employer did not pay for the medical check, the employer must reimburse the workers.

AA 05/05

* Employees are responsible for paying for their employment card, however where the employer arranges for the registering of employment cards and improperly deducts more than the amount it would have cost the worker to arrange the employment card him- or herself, the employer must reimburse the worker the difference.

AA 05/05

* An agreement which requires the employer to reimburse all workers (regardless of the category of worker or when the worker began his/her employment) for a portion of the cost (but not the entire cost) of medical checks and employment cards; but, does not require workers to prove the employer had previously deducted any amount of money for such medical checks or employment cards, or, that their claim falls within the three-year statute of limitations and the agreement is made to resolve a past dispute but does not set a policy that is binding upon the parties in the future, does not violate Article 13 of the Labour Law.

AA 16/05

Overtime Meal Allowance

* Parties cannot agree to conditions less than what the law provides. Workers who volunteer to work overtime, on the employer's request, shall receive an additional 1,000 riel per day or receive a free meal and cannot agree to less benefit than that specified in the law.

AA 03/05

Piece rate work

* Article 108 provides a guideline to determine the piece rate (piecework cost) under the Labour Law and means that the piece rate shall allow workers who have average skills working during the normal 8 hours per day (48 hours per week) to receive at least the minimum wage (US\$45.00 per month for garment workers)

AA 03/05

* The employer has the right to set and change the piece rate, however, the rate must follow the principles of Article 108. The employer must set the piece rate in a manner that allows a worker of average ability working normally (without overtime, public holidays or Sundays) to earn at least equal to the guaranteed minimum wage.

AA 03/05

Serious misconduct

* The Labour Law does not require the employer to dismiss a worker for serious misconduct but gives the employer the right to determine whether or not to dismiss said worker

AA 02/05

* Calling or inciting workers to go on strike, even if the strike did not follow the proper legal procedures, is not an act of serious misconduct; unless, the employer has evidence to prove that a worker has incited workers to use violence during the strike.

AA 08/05; 20/05

Suspension

* The requirement under Article 71(11) of the Labour Law that a suspension be under the control of the Labour Inspector generally means that the Labour Inspector must be notified of and approve the suspension of the labour contract.

AA 22/05