



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 127/11-TASK

Date of Award: 3 November 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

Arbitrator chosen by the worker party: **Sin Kim Sean**

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

DISPUTANT PARTIES

Employer party:

Name: **TASK (the employer)**

Address: #40, St. 363, Daeum Meakkloea Village, Chbar Ampov I Commune, Meanchey
District, Phnom Penh

Telephone: 012 869 826

Fax: N/A

Representatives at the first hearing:

1. Mr Prom Pauv Executive Director
2. Mr Tuon Sophal Member of the Board of Directors
3. Ms Leng Sidara Member of the Board of Directors
4. Mr Pin Vannak Lawyer
5. Mr Som Chamrong Lawyer

Representatives at the second hearing:

1. Mr Prom Pauv Executive Director
2. Mr Pok Peuvthida Member of the Board of Directors
3. Mr Pin Vannak Lawyer

Worker party:

Name: **Former staff of TASK**

Address: #40, St. 363, Daeum Meakkloea Village, Chbar Ampov I Commune, Meanchey
District, Phnom Penh

Telephone: 017 727 268 Fax: N/A

Representatives at the first hearing:

1. Ms Net Chenda Former staff of the employer
2. Ms Cheang Sarim Former staff of the employer
3. Mr Sou Lalin Former staff of the employer

Representatives at the second hearing:

1. Ms Net Chenda Former staff of the employer
2. Ms Cheang Sarim Former staff of the employer
3. Mr Sou Lalin Former staff of the employer
4. Ms Sari Botcharya Lawyer
5. Mr Yun Sakhan Program Officer at Community Legal Education Center

ISSUES IN DISPUTE

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

1. The former staff demand that TASK pay compensation in lieu of prior notice.
2. The former staff demand that TASK pay indemnity for dismissal.
3. The former staff demand that TASK provide payment in lieu of annual leave.
4. The former staff demand that TASK pay outstanding wages.
5. The former staff demand that TASK provide retirement payments.
6. The former staff demand that TASK pay damages in accordance with the law.
7. The former staff demand that TASK pay them each US\$ 50,000 compensation for defamation and publish a letter of apology for distribution to all relevant institutions retracting its allegations. The staff claim that Prom Pauv slandered them after they were dismissed.
8. The former staff demand that TASK issue certificates of employment.

The executive director states that TASK cannot afford to accommodate the demands of its former staff.

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. 1427 MKBV dated 21 September 2011 was submitted to the Secretariat of the Arbitration Council on 22 September 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 Quarter, Tuol Kork District, Phnom Penh

Date of hearing: First hearing: 10 October 2011 at 8:30 a.m.
Second hearing: 14 October 2011 at 2:00 p.m.

Procedural issues:

On 23 August 2011, the municipal Department of Labour Disputes of Phnom Penh received a complaint from former staff of the employer claiming that the Executive Director Prom Pauv dismissed them without valid reasons. Upon receiving the claim, the municipal Department of Labour Disputes of Phnom Penh assigned an expert officer to conciliate the dispute and the last conciliation session was held on 31 August 2011. The dispute remained unresolved.

The non-conciliated issue was referred to the Secretariat of the Arbitration Council on 22 September 2011 via non-conciliation report No. 1427 MKBV dated 21 September 2011 [the Arbitration Council considers that there is one issue in dispute, comprised of eight demands]. Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the former staff to a hearing and conciliation of the non-conciliated issue. The first hearing was held on 10 October 2011 at 8:30 a.m. and a second hearing was held on 14 October 2011 at 2:00 p.m.

Both parties were present at the hearings. The Arbitration Council conducted a further conciliation of the issue, but it remained unresolved.

At the first hearing, the employer and the former staff agreed to extend the due date for issuance of the arbitral award until 3 November 2011.

The Arbitration Council will consider the issue in dispute based on 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. Letter authorising Som Chamrong and Pin Vannak to represent the employer, dated 3 October 2011.
2. Letter from Tuon Sophal authorising Pin Vannak and Som Chamrong to represent him, dated 3 October 2011.
3. Letter from Pok Peuvthida, Leng Sidara, and Prom Pauv authorising Tuon Sophal to represent them, No. 01/2011 dated 21 September 2011.
4. Brief statement on the labour dispute, dated 7 October 2011.
5. Letter from the Ministry of Interior to TASK Chairman Ouy Y regarding TASK's request for recognition of its new executive director, new members of the organisational structure, and amendments to its statute, No. 1406 dated 16 September 2010.
6. Statute of TASK, [registered by the Ministry of Interior on] 2 June 2011.
7. Employment contract of Net Chenda, dated 1 January 2011.
8. Employment contract of Sou Lalin, dated 1 January 2011.
9. Letter concerning the TASK's current situation, dated 20 July 2011.
10. Letter from TASK's donor Tear Netherlands reacting to TASK's current situation, dated 21 July 2011.
11. Minutes of a meeting of TASK's Board of Directors, dated 6 August 2011.
12. Dismissal notice of Cheang Sarim, No. 19/072011 dated 21 July 2011.
13. Dismissal notice of Sou Lalin, No. 20/2011 dated 21 July 2011.
14. Dismissal notice of Net Chenda, No. 21/2011 dated 21 July 2011.
15. Report on dismissal notices sent to the dismissed staff, dated 30 August 2011.
16. Email from Kristin and Susan praising TASK staff.
17. Email from Kristin and Susan to TASK staff.
18. Email from Efren to TASK staff.
19. Email from Net Chenda to Sovann and TASK staff.
20. Email from Pich Sovann to Kristin and Susan.
21. Email from Kristin and Susan to Pauv and TASK staff.
22. Email from Kristin and Susan to TASK management and staff.
23. Email from Kristin to TASK management and staff.

24. Email from Kristin to Pauv and Thida.

25. Email from Kristin to Pauv.

B. Provided by the worker party:

1. Letter regarding submission of documents, dated 14 October 2011.
2. Brief statement on the labour dispute in case 127/11, dated 14 October 2011.
3. Letter from Net Chenda, Cheang Sarim, and Sou Lalin authorising Sari Botcharya to represent them, dated 13 October 2011.
4. Minutes of a meeting of the Board of Directors, dated 4 July 2011.
5. Email from Prom Pauv to Thida, dated 17 July 2011.
6. Assignment letter of TASK's Board of Directors, dated 4 July 2011.
7. Testimony of Kristin Jack, Coordinator of Servants to Asia's Urban Poor, an international non-governmental organisation, dated 13 October 2011.
8. Email from Ester Ducai expressing concern about new developments.
9. Email from Chen Philip Las.
10. Letter from Chen Philip Las to the Arbitration Council.
11. Email from K. Brian McConaghy MSM, BA.
12. Email dated 17 July 2011.
13. Dismissal notice of Cheang Sarim, No. 19/072011 dated 21 July 2011.
14. Dismissal notice of Sou Lalin, No. 20/2011 dated 21 July 2011.
15. Dismissal notice of Net Chenda, No. 21/2011 dated 21 July 2011.
16. Letter from John Thida alleging that Prom Pauv planned to dismiss the three staff members, dated 10 October 2010.
17. Letter from the Ministry of Interior to TASK's Chairman Ouy Y regarding TASK's request for recognition of its new executive director, new members of the organisational structure, and amendments to its statute, No. 1406 dated 16 September 2010.
18. Statute of TASK, dated 30 August 2010.
19. Staff policy.
20. Letter regarding submission of additional documents, dated 17 October 2011.
21. Statement asserting that the events of 19 July 2011 did not constitute a strike, dated 22 August 2011.
22. Record of an inquiry by the Department of Political Affairs of the Ministry of Interior, dated 2 September 2011.
23. Letter objecting to the employer's evidence, dated 19 October 2011.
24. Brief statement on the labour dispute in case 127/11, dated 10 October 2011.
25. Statute of TASK, [registered by the Ministry of Interior on] 2 June 2011.
26. Statute of TASK, dated 16 September 2010.

27. Settlement of termination payments under the Labour Law for Cheang Sarim, Net Chenda, and Sou Lalin.
28. Payroll information for Cheang Sarim, Net Chenda, and Sou Lalin.
29. Letter from the employer to Cheang Sarim, Net Chenda, and Sou Lalin, No. 27/11 dated 25 August 2011.
30. Letter from the employer to Cheang Sarim, Net Chenda, and Sou Lalin, No. 23/11 dated 22 July 2011.
31. Announcement of the dismissal of Cheang Sarim, Net Chenda, and Sou Lalin, No. 22/11 dated 22 July 2011.
32. Employment contract of Cheang Sarim, dated 1 January 2011.
33. Employment contract of Net Chenda, dated 1 January 2011.
34. Employment contract of Sou Lalin, dated 1 January 2011.
35. Confirmation letter from the employer, dated 30 April 2011.
36. Letter from Kristin Jack, dated 22 September 2011.
37. Letter from the employer, dated 14 July 2011.
38. Letter from Craig Greenfield, a coordinator for Servants to Asian's Urban Poor, dated 22 September 2011.
39. TASK employee identity card of Sou Lalin, dated 1 July 2011.
40. Short-term employment contract of Sou Lalin for 2006, dated 1 February 2006.

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

1. Report on collective labour dispute resolution at TASK, No. 1427 MKBV dated 21 September 2011.
2. Record of collective labour dispute resolution at TASK, dated 16 September 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing addressed to the employer, No. 713 KB/AK/VK/LKA dated 4 October 2011.
2. Notice to attend the first hearing addressed to the workers, No. 714 KB/AK/VK/LKA dated 4 October 2011.
3. Notice to attend the second hearing addressed to the employer, No. 724 KB/AK/VK/LKA dated 11 October 2011.
4. Notice to attend the second hearing addressed to the workers, No. 725 KB/AK/VK/LKA dated 11 October 2011.

FACTS

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers; and

- Having reviewed the additional documents;

The Arbitration Council finds that:

- TASK is a non-governmental organisation established in 2004.
- TASK originates from another organisation, Servants to Asia's Urban Poor (SAUP), and has been working in the slum area of Meanchey district since 1993.
- On 1 October 2004, SAUP officially transferred management of its programs to Khmer staff under the official name of *Trotrung ning Akpiwat Sahakum Krey krór* (TASK), having evaluated TASK's management. TASK continues to be recognised by the Ministries of Interior and Health of the Kingdom of Cambodia.
- According to TASK's statute, the organisational structure is composed of five board members, Executive Director Prom Pauv, and a management team comprised of Cheang Sarim, Net Chenda, and Sou Lalin.
- The issue in this case concerns the dismissal of the three members of the management team.

Issue 1: The former staff demand that the employer provide compensation in lieu of prior notice, indemnity for dismissal, payment in lieu of annual leave, outstanding wages, retirement payments, damages, compensation for defamation, and certificates of employment.

General facts relating to the three dismissed staff members:

- Cheang Sarim held the position of head of the Health Program. She commenced work on 18 May 2001 and received a monthly main wage of US\$ 850. Including benefits, she earned a total wage of up to US\$ 981.50 per month. The last wages she received included US\$ 981.50 for the month and a retirement payment equivalent to one month's main wage per year of service. She was dismissed on 21 July 2011. She had 11 days of annual leave remaining for 2011.
- Net Chenda held the position of head of the Education and Rehabilitation Program. She commenced work on 3 September 2001 and received a monthly main wage of US\$ 850. Including benefits, she earned a total wage of up to US\$ 971.50 per month. The last wages she received included US\$ 971.50 for the month and a retirement payment equivalent to one month's main wage per year of service. She was dismissed on 21 July 2011. She had 15 days of annual leave remaining for 2011 and 10 days for 2010.
- Sou Lalin held the position of finance manager. He commenced work on 1 February 2006 and received a monthly main wage of US\$ 850. Including benefits, he earned a

total wage of up to US\$ 981.50 per month. The last wages he received included US\$ 981.50 for the month and a retirement payment equivalent to one month's main wage per year of service. He was dismissed on 21 July 2011. He had 13 days of annual leave remaining for 2011 and 15 days for 2010.

- The three staff members held undetermined duration contracts [see reasons for decision, below]. Their last contracts were effective from 1 January to 31 December 2011.

Facts relating to the dismissal:

- On 2 July 2011, the three staff members filed a complaint with TASK's Board of Directors against the Executive Director Prom Pauv and the Chairman of the Board of Directors Pok Peuvthida, alleging that Prom Pauv had failed to comply with provisions of TASK's statute and staff policy and Pok Peuvthida had failed to observe his duties.
- On the same date, TASK's Board of Directors held a meeting [with the three staff members] attended by Pich Sovann, Chen Philip Las, Leng Sidara, and two representatives from SAUP in order to discuss the nine alleged acts of misconduct by Prom Pauv and Pok Peuvthida.
- On 3 July 2011, the board held a meeting with Prom Pauv in order for him to defend himself against the allegations of misconduct.
- On 6 July 2011, upon being informed of the board's resolution in the meeting of 3 July 2011, the three staff members sent an email requesting that Prom Pauv and Pok Peuvthida have their contracts suspended.
- On 8 July 2011, two members of the board conducted a survey of staff members regarding Prom Pauv's work and character.
- On 9 July 2011, the board held a meeting to report the outcome of the survey to its members.
- On 11 July 2011, Prom Pauv sent an email to all staff regarding the nine alleged acts of misconduct. Based on the copy of the email submitted by the worker party on 17 October 2011, the Arbitration Council finds that the email is dated 10 July 2011 and not 11 July 2011.
- On 19 July 2011 at 7:37 a.m., Chen Philip Las sent an email to all staff calling for an urgent meeting at 2:00 p.m. At the scheduled time, Prom Pauv did not allow the staff, including the three staff members [Cheang Sarim, Net Chenda, and Sou Lalin] to attend the meeting and the meeting room was locked.
- Following this incident, the three staff members took leave from 20 to 29 July 2011.

- On 21 July 2011, Prom Pauv dismissed the three staff members.
- On 22 July 2011, the three staff members were given notices of dismissal.
- The three staff members filed a complaint against the dismissal and the dispute was conciliated by the board with another organisation acting as mediator.
- The employer states that on 6 August 2011 the board approved the dismissal of the three staff. The employer determined the dismissal date to be 6 August 2011.
- The Arbitration Council finds that the dismissal notices of the three staff members are each dated 21 July 2011. Article 19, Chapter 4 of the employer's new statute [signed on] 24 May 2010, sets out the roles and responsibilities of the executive director (i.e. staff recruitment, managing staff performance, dismissing staff, managing project cycles and finance, and reporting to the board on the operation and policy of the organisation. Further details of the roles and responsibilities are set out in the terms of reference for the executive director). Based on the above facts, the Arbitration Council assumes that the three staff members were dismissed on 21 July 2011 because, as Prom Pauv alleged, they organised a meeting with Chen Philip Las on 19 July 2011. Although Prom Pauv refers to Article 19 of Chapter 3 of the new statute, the Arbitration Council finds that there is no Article 19 in the Chapter 3 of the new statute.

Employer's arguments:

- The employer stated [at the hearing] that it dismissed the three staff members because they divulged the employer's confidential information to staff of SAUP at the board meeting on 2 July 2011 as well as conspiring with Chen Philip Las to call for an unauthorised meeting on 19 July 2011 which caused confusion among staff. The employer contends that their conduct was contrary to Article 83 of the Labour Law (part B. On the part of the worker, points 5 and 6) and Article 19, Chapter 3 of the employer's statute.
- The employer states that following the dismissal it paid the workers their outstanding wages and retirement payments according to their seniority.

Former staff members' arguments:

- The three former staff members refute Prom Pauv's claim, arguing that all staff received an email from Chen Philip Las calling for a meeting. They further state that on the day of the meeting they were tasked with interpreting for foreigners at a seminar, but cancelled the arrangement in order to attend the urgent meeting.
- The Arbitration Council finds that Chen Philip Las' email was sent to all staff on 19 July 2011 at 7:37 a.m. The employer acknowledges this finding.

- According to the evidence given by the former staff members, it was Chen Philip Las who initiated the meeting on behalf of the Board of Directors.
- The three former staff members state that they filed a complaint alleging nine acts of misconduct for the purposes of preserving transparency and stability at TASK. Two foreign staff members of SAUP attended the board meeting to help resolve the dispute because SAUP was “like a mother” to TASK. The three former staff members further state that the foreign staff did not interfere without authorisation in the internal affairs of the Board of Directors, as the board had already been informed of their attendance on 2 July 2011. They also deny allegations of a political demonstration.
- The Arbitration Council finds that Prom Pauv sent an email to all staff on 10 July 2011 and has been provided with an email written by K. Brian McConaghy confirming that he received an email from Prom Pauv on 17 July 2011 regarding TASK’s internal information.
- The Arbitration Council has also been provided with a letter from Kristin Jack confirming that it was his idea to write Prom Pauv an email regarding his knowledge of TASK’s internal information; none of the TASK staff suggested that he write the email.
- The employer has informed MEDiCAM and the Cooperation Committee for Cambodia of the dismissal of the three staff members via emails and correspondence sent to post-office boxes, etc.

Relevant policy of the employer:

- Point M of TASK’s policy, which relates to dismissal, states:
 - 1.0 Grounds for dismissal
 - 1.1 A worker will be dismissed in accordance with the procedure set forth in Point L.
 - ...
 - 2.3 Reasons for unconditional dismissal
- Section G of TASK’s policy, which relates to staff benefits, states:
 - 9.1 Upon being dismissed from full time work after a period of one year, the dismissed staff member will be provided with a retirement payment in an amount equal to the current main wage for one month per year of service.
 - 9.3 Staff will be paid retirement payments at the expiration or termination of their contracts.

- At the hearing, the employer and the former staff members agreed that staff could retain their untaken annual leave for two years.

REASONS FOR DECISION

Issue 1: The former staff demand that the employer provide compensation in lieu of prior notice, indemnity for dismissal, payment in lieu of annual leave, outstanding wages, retirement payments, damages, compensation for defamation, and certificates of employment.

The employer states that it dismissed the three staff members on the grounds of serious misconduct; it asserts that they conspired with Chen Philip Las to call for an unauthorised meeting on 19 July 2011, which caused confusion among staff and was contrary to Article 83 of the Labour Law (part B. On the part of the worker, points 5 and 6) and Article 19, Chapter 3 of TASK's statute. The Arbitration Council cannot find Article 19, Chapter 3 in TASK's new statute, to which Prom Pauv refers. Therefore, the Arbitration Council assumes that there is no Article 19, Chapter 3 in the statute.

Article 83 of the Labour Law states:

The following are considered to be serious offences:

...

B. On the part of the worker

...

5. Inciting other workers to commit serious offences.

6. Political propaganda, activities or demonstrations in the establishment.

According to the facts, Cheang Sarim, Net Chenda, and Sou Lalin filed a complaint with the Board of Directors after becoming aware of Prom Pauv's misconduct with respect to expenditure. The Board of Directors attempted to conciliate the issue but it remained unresolved. On 19 July 2011 at 7:37 a.m., Chen Philip Las sent an email to all staff calling for an urgent meeting at 2:00 p.m.

The Arbitration Council finds that Chen Philip Las sent an email to all staff on 19 July 2011 at 7:37 a.m. and that, according to evidence given by the former staff members, it was Chen Philip Las' idea to call for the meeting in his capacity as member of the Board of Directors. The Arbitration Council is satisfied in this case that it was Chen Philip Las' initiative to call for the meeting, without involvement from the three dismissed staff. The employer failed to prove that the three dismissed staff members were involved in Chen Philip Las' decision. The employer has acknowledged that all staff, including Prom Pauv, received the email from Chen Philip Las but it failed to instruct the staff not to attend the proposed meeting.

With respect to the allegation that the three staff members committed serious misconduct based on Article 83 of the Labour Law, the Arbitration Council considers that the three former staff members did not commit the alleged misconduct. There is no evidence proving that they incited other staff to commit serious misconduct or led political demonstrations at the establishment. Therefore, their conduct is not considered serious misconduct under Article 83 of the Labour Law.

According to the facts, the employer states that at the board meeting on 2 July 2011 the three former staff members discussed Prom Pauv's alleged misconduct with the two foreign staff of SAUP, who have no role at TASK. Prom Pauv considers this serious misconduct because they divulged the employer's confidential information. According to the dismissal notices dated 21 July 2011 issued to the three staff members, the ground for dismissal was that they arranged a meeting with Chen Philip Las on 19 July 2011, not that they divulged confidential information. Although the employer provided additional grounds for the dismissal at the hearing, the Arbitration Council considers that these were not the primary grounds.

Article 26 of Labour Law states:

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.

The three staff members were invited to the meeting on 2 July 2011 and on 3 July 2011 Prom Pauv met with the board for an inquiry into his alleged misconduct. The Arbitration Council finds that on 3 July 2011 the employer [i.e. Prom Pauv] learned of the discussion between the three staff of TASK and the two foreign staff of SAUP. The Arbitration Council considers that the date of the second hearing, 14 October 2011, was beyond the period in which the employer was entitled to dismiss the staff on the grounds of serious misconduct. Therefore, the employer is considered to have renounced its right to dismiss the staff members for serious misconduct [in relation to the allegation that they divulged confidential information].

In conclusion, the Arbitration Council considers that the three staff members did not commit serious misconduct as alleged by the employer in the dismissal notice.

In any event, Point L of TASK's policy, relating to warnings and discipline, does not provide for immediate dismissal following the type of serious misconduct alleged by the employer.

The Arbitration Council will consider the demand by the three dismissed staff members for termination payments below.

Article 67, paragraph 2 of Labour Law states that:

The labour contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years.

In Arbitral Award 36/06-Mondotex, reasons for decision, issue 2 and 57/06-Evergreen, reasons for decision, issue 3, the Arbitration Council interpreted Article 67, paragraph 2 as follows:

a fixed duration contract will become an undetermined duration contract if the renewal of the contract makes the total term of the initial contract and the renewal more than two years.

In previous arbitral awards, the Arbitration Council has ordered employers to convert fixed duration contracts to undetermined duration contracts where the total length of the contracts exceeds two years (*see Arbitral Awards 10/03-Jacqsintex, reasons for decision, issue 1 and 36/06-Mondotex, reasons for decision, issue 2*).

In this case, the three staff members held successively renewed contracts of more than two years' duration. Thus, their contracts with the employer were undetermined duration contracts.

Article 74 of Labour Law states:

The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.

However, no layoff can be taken without a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group.

Based the above article, the Arbitration Council considers that the employer is entitled to dismiss staff at will but it is required to give prior notice and a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment, or group (*see Arbitral Awards 60/08-PCCS, reasons for decision, issue 6 and 131/10-Leader's Industrial, reasons for decision, issue 1*).

As the employer dismissed the three staff members without following the procedure set forth in the Labour Law and TASK's statute, the three staff members are entitled to termination payments as follows:

1. Indemnity for dismissal:

Article 89 of Labour Law states:

If the labour contract is terminated by the employer alone, except in the case of a serious offence by the worker, the employer is required to give the dismissed worker, in addition to the prior notice stipulated in the present Section, the indemnity for dismissal as explained below:

1. Seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months.
2. If the worker has more than twelve months of service, an indemnity for dismissal will be equal to fifteen days of wage and fringe benefits for each year of service. The maximum of indemnity cannot exceed six months of wage and fringe benefits...

Based on this article, the employer is required to provide indemnity for dismissal upon termination of undetermined duration contracts. In this case, the employer dismissed Cheang Sarim, Net Chenda, and Sou Lalin. Hence, the Arbitration Council considers that they are each entitled to receive indemnity for dismissal in accordance with their seniority. As they each have more than twelve months of seniority, they are entitled to 15 days' wage and benefits for each year of service. However, the maximum indemnity for dismissal cannot exceed six months of wages and benefits.

The employer must calculate indemnity for dismissal using the following formula:

$$\text{Average daily wage} = \frac{\text{Total wages in the 12 month period prior to the dismissal}}{12 \text{ months} \times 26 \text{ working days}}$$

Note: Total wages include overtime payments and bonuses received by the staff in the 12 month period prior to the dismissal (see AAs 27/04-MSI, reasons for decision, issue 1; 51/04-Sam Han, reasons for decision, issue 1, and 51/08-ASD, reasons for decision, issue 3).

Name	Commencement date	Dismissal date	Amount to be paid
Cheang Sarim	18 May 2001	21 July 2011	US\$ 981.50 X 6 = US\$ 5889
Net Chenda	3 September 2001	21 July 2011	US\$ 971.50 X 6 = US\$ 5829
Sou Lalin	1 February 2006	21 July 2011	US\$ 981.50 X 6 = US\$5889

2. Damages:

Article 91 of the Labour Law states:

The termination of a labour contract without valid reasons, by either party to the contract, entitles the other party to damages.

These damages are not the same as the compensation in lieu of prior notice or the dismissal indemnity.

The worker, however, can request to be given a lump sum equal to the dismissal indemnity. In this case, he is relieved of the obligation to provide proof of damage incurred.

The Arbitration Council considers this article to mean that either party is entitled to damages if an employment contract is terminated by the other party without valid reasons. In this case, the employer dismissed the three staff members without valid reasons; therefore, they are each entitled to damages. As the former staff members did not provide evidence of the amount of damage resulting from the termination of their employment contracts, they will each be paid damages in an amount equal to the indemnity for dismissal.

3. Compensation in lieu of prior notice:

Article 75 of Labour Law states:

The minimum period of prior notice is set as follows:

...

- Two months, if the worker's length of continuous service is longer than five years and up to ten years.
- Three months, if the worker's length of continuous service is longer than ten years.

Article 77 of the Labour Law states:

The termination of a labour contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the employer to compensate the worker the amount equal to the wages and all kinds of benefits that the worker would have received during the official notice period.

The Arbitration Council considers that the termination of a labour contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, obligates the employer to provide to workers an amount equal to the wages and all kinds of benefits that the worker would have received during the period of prior notice.

According to the facts, Cheang Sarim and Net Chenda each have approximately ten years' seniority, therefore they are entitled to compensation in lieu of prior notice equal to three months' wages. Sou Lalin has five years' seniority, therefore he is entitled to receive compensation in lieu of prior notice equal to two months' wages.

In this case, the employer failed to give prior notice before dismissing the three staff members. Hence, the employer must provide them with compensation in lieu of prior notice according to their seniority, as per Article 75 of the Labour Law.

4. Payment in lieu of annual leave:

Article 166 of Labour Law states:

... all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service...

The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service.

Article 167 of Labour Law provides that “[i]f the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker.”

Based on the above articles, the Arbitration Council considers that workers with one year of service are entitled to 18 days of paid annual leave and are entitled to an additional day for each three years of service. Upon termination of their contracts, workers are entitled to payment in lieu of unused annual leave.

According to TASK’s statute, staff with between one and eight years of service are entitled to 12 days of annual leave and staff with nine years of service upwards are entitled to 15 days of annual leave.

Article 13 of Labour Law states:

The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.

Based on this article, the Arbitration Council has ruled in previous arbitral awards that provisions of an agreement that provide rights and benefits inferior to the Labour Law or any legal text [i.e. regulations] are null and void (*see Arbitral Awards 115/08-Top One, reasons for decision, issue 2 and 109/09-USA, reasons for decision, issue 4*).

TASK’s statute provides only 12 days of annual leave to staff with one to eight years of service and 15 days to staff with nine years and upwards of service. The Arbitration Council considers that TASK’s policy is rendered unenforceable by Article 13 of the Labour Law. The employer and the staff members agree that [under the employer’s policy] staff can retain their annual leave for a period of two years.

Cheang Sarim has approximately 10 years of service; therefore [in accordance with Article 166] she would have been entitled to 21 days of annual leave under her final employment contract [18 days plus one day for each three years of seniority]. According to the facts, she has taken four days of her annual leave for 2011. Therefore [under the

employer's policy] she had 11 days remaining for the year. The Arbitration Council considers that, based on Article 166, Cheang Sarim [accrued 12.25 days of annual leave] from January to July 2011 and has 8.25 days remaining.

Net Chenda has approximately 10 years of seniority; therefore [in accordance with Article 166] she would have been entitled to 21 days of annual leave under her last employment contract. According to the facts, she has not taken any of her annual leave for 2011. [Under the employer's policy] she had 15 days remaining for 2011 and 10 days for 2010. The Arbitration Council considers that, based on Article 166 and the employer's practice relating to the retention of annual leave, Net Chenda has 12.25 days of annual leave remaining for January to July 2011 and 10 days of annual leave remaining for 2010, totalling 22.25 days.

Sou Lalin has approximately 5 years of seniority, therefore [in accordance with Article 166] he would have been entitled to 19 days of annual leave under his last employment contract. According to the facts, he has taken two days of his annual leave for 2011, therefore [under the employer's policy] he had 13 days of annual leave remaining for 2011. He also had 15 days remaining for 2010. The Arbitration Council considers that, based on Article 166 and the employer's practice relating to the retention of annual leave, Sou Lalin has 9.08 days of annual leave remaining for January to July 2011 [11.08 – 2] and 15 days for 2010, totalling 24.08 days.

In conclusion, the Arbitration Council considers that the three staff members are entitled to payment in lieu of annual leave in accordance with their seniority [as calculated above].

5. Outstanding wages:

Article 116 of Labour Law states that “[i]n the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work”.

Based on this provision, the staff members are entitled to their outstanding wages.

According to the facts, the three staff members have not yet received their outstanding wages. Their contracts were due to expire on 31 December 2011 but were terminated on 21 July 2011, therefore the employer must pay their outstanding wages for July upon issuance of this award.

6. Retirement payments:

Section G of the TASK policy, relating to staff benefits, states:

9.1 Upon being dismissed from full time work after for a period of one year, the dismissed staff member will be provided with a retirement payment in an amount equal to the current main wage for one month per year of service.

9.3 Staff will be paid retirement payments at the expiration or termination of their contracts.

Based on this policy, TASK is required to provide retirement payments equal to one month of wages for each year of service upon issuance of this award.

The employer has loaned Sou Lalin US\$ 5,700 from his retirement budget. Therefore, he must repay this amount to the employer.

7. Certificates of employment:

Article 93, paragraphs 1 and 2 of the Labour Law states:

Any worker who was engaged to furnish his services may, upon expiration of the contract, demand from his employer a certificate of employment containing primarily the starting date of employment, the date of departure, and the kind of job held, or, if applicable, the jobs held successively as well as the periods during which the jobs were held.

The refusal to supply this certificate obliges the employer to pay damages to the worker.

Based on the above article, the Arbitration Council considers that the employer must [if the workers demand as such] issue certificates of employment to workers upon termination of their contracts. The certificate of employment must specify the starting and ending date of the employment, the type of occupation or successive occupations, as well as the period of the worker's tenure.

At the hearing, the Council found that the employer failed to issue certificates of employment to the three staff members. The employer's failure to issue certificates of employment upon request at the time of employment termination breaches Article 93 of the Labour Law.

In conclusion, the Arbitration Council orders the employer to issue certificates of employment to the three dismissed staff members upon request.

8. Compensation for defamation and letters for distribution to relevant institutions withdrawing the allegations and apologising to the staff members:

Point 34 of *Prakas* No. 099 states:

In matters referred to the arbitration panel, the panel shall have the power and authority to fully remedy any violation of provisions in the Labour Law, regulations implemented under the Labour Law, collective bargaining

agreements or other obligations arising from the professional relationship between employer and employee. Within the limitations of the Labour Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:

...

H. such other relief as is appropriate.

In relation to this demand, the three staff members failed to provide a proper calculation for the compensation demanded [US\$ 50,000 each] thus making the compensation amount equal to the amount of damages under Article 91. Moreover, the Arbitration Council considers that the damages due pursuant to Article 91 of the Labour Law are sufficient reparation for the three staff members. Therefore, the Arbitration Council rejects their demand that the employer pay them each US\$ 50,000 compensation for defamation.

The Arbitration Council finds that there is no provision in the Labour Law supporting the demand for a letter apologising and withdrawing the allegations. Therefore, the Arbitration Council rejects the demand for a letter of apology withdrawing the allegations.

In conclusion, the Arbitration Council rejects the staff members' demand that the employer pay them each US\$ 50,000 as compensation for defamation and write a letter of apology withdrawing the allegations for distribution to relevant institutions.

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

DECISION AND ORDER

Issue 1:

- Order the employer to issue certificates of employment and make the following payments to Cheang Sarim, Net Chenda, and Sou Lalin:
- Indemnity for dismissal [below];

Name	Commencement date	Dismissal date	Amount to be paid
Cheang Sarim	18 May 2001	21 July 2011	US\$ 981.50 x 6 = US\$ 5889
Net Chenda	3 September 2001	21 July 2011	US\$ 971.50 x 6 = US\$ 5829
Sou Lalin	1 February 2006	21 July 2011	US\$ 981.50 x 6 = US\$5889

- Damages equal to the indemnity for dismissal;
- Compensation in lieu of prior notice equal to three months' wages to Cheang Sarim and Net Chenda, two months' wages to Sou Lalin;

- Payment in lieu of annual leave;
 - Outstanding wages; and
 - Retirement payments.
- Reject the staff members' demand that the employer pay them each US\$ 50,000 compensation for defamation and write a letter of apology withdrawing the allegations for distribution to relevant institutions.

Type of award: Non-binding award

This 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 time period.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:



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THE ARBITRATION COUNCIL

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

**The Arbitration Council
would like to inform:**

- The executive director of TASK
- The former staff members of TASK

Subject: Rectifying the reasons for decision on page 14 concerning calculation of termination payments for the dismissed staff members of TASK, and the decision and order on page 21 of Arbitral Award 127/11-TASK due to miscalculation.

Reference: Arbitral Award 127/11-TASK dated 3 November 2011.

Based on the abovementioned subject and reference, the Arbitration Council would like to correct the Arbitral Award 127/11 as follows:

Reasons for Decision:

A new table relating to the calculation of the termination payments will replace the former table on page 14 as follows:

Former Table

Name	Commencement date	Dismissal date	Amount to be paid
Cheang Sarim	18 May 2001	21 July 2011	US\$ 981.50 x 6 = US\$ 5889
Net Chenda	3 September 2001	21 July 2011	US\$ 971.50 x 6 = US\$ 5829
Sou Lalin	1 February 2006	21 July 2011	US\$ 981.50 x 6 = US\$5889

New Table

Name	Commencement date	Dismissal date	Amount to be paid
Cheang Sarim	18 May 2001	21 July 2011	US\$ 981.50/26=US\$ 37.75 x150 days = US\$ 5662.5
Net Chenda	3 September 2001	21 July 2011	US\$ 971.50/26=US\$ 37.36 x 150 days = US\$ 5604.80
Sou Lalin	1 February 2006	21 July 2011	US\$ 981.50/26=US\$ 37.75 x 75 days = US\$ 2831.25

THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.

The new table below will replace the former table on page 19.

New Table

Name	Commencement date	Dismissal date	Amount to be paid
Cheang Sarim	18 May 2001	21 July 2011	US\$ 981.50/26=US\$ 37.75 x150 days = US\$ 5662.5
Net Chenda	3 September 2001	21 July 2011	US\$ 971.50/26=US\$ 37.36 x 150 days = US\$ 5604.80
Sou Lalin	1 February 2006	21 July 2011	US\$ 981.50/26=US\$ 37.75 x 75 days = US\$ 2831.25

Note: This modification does not affect the merits of the decision and other orders of the Arbitration Council, which were issued on 3 November 2011.

The Arbitration Council would like to offer an apology to the executive director and the former staff members of TASK for the aforementioned miscalculation.

This addendum will be attached to Arbitral Award 127/11-TASK issued by the Secretariat of the Arbitration Council.

Phnom Penh, 4 November 2011

Arbitrators' signatures

Pen Bunchhea

Ouk Ry

Sin Kim Sean