



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 61/11-Cambrew

Date of Award: 7 July 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **You Suonty**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTING PARTIES

Employer party:

Name: **Cambrew Ltd**

Address: Building 215, Preah Norodom Boulevard, Tonle Basac Commune, Chamkar Morn
District, Phnom Penh

Telephone: 012 813 388 Fax: N/A

Representative:

1. Mr. Sarin Denora Lawyer

Worker party:

Name: **Cambodian Food and Service Workers Federation (CFSWF)**

**The Local Union of Coalition of Cambodian Apparel Workers Democratic
Unions (C.CAWDU)**

Address: Prek Samrong Village, Takhmao Commune, Takhmao Town, Kandal Province

Telephone: 017 473 482 Fax: N/A

Representative:

1. Mr. Tu Sytheang Dispute Resolution Officer of CFSWF
2. Ms. Tep Phalin Dispute Resolution Officer of CFSWF
3. Ms. Sim Chanthoeun President of the Local Union of C.CAWDU

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company reimburse an additional 100% of wages to them for the period they worked on weekly days off from 2007 to 2010 in compliance with Articles 118 and 139 of the Labour Law. The workers argue that during that period the company provided only US\$ 2 to each of them.
- 2- The workers demand that the company sign undetermined duration contracts with those workers who worked with the company for more than two years.

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. 133 dated 9 June 2010 (*Eighth 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 the non-conciliation report No. 547 KB/RK/VK dated 27 May 2011 was submitted to the Secretariat of the Arbitration Council on 30 May 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: 15 June 2011 at 8:30 a.m.

Procedural issues:

On 17 February 2011, the Department of Labour Disputes received a complaint, No. 017/11 SKCSK from the CFSWF, regarding the demand for the company to improve working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the labour dispute and the conciliation session was held on 19 May 2011; as a result, neither of the two issues were conciliated. The two non-conciliation issues were referred to the Secretariat of the Arbitration Council on 30 May 2011 via non-conciliation report No. 647 K.B/RK/VK dated 27 May 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the company and the workers to the hearing and conciliation on the two non-conciliation issues in the hearing of 15 June 2011 (8:30 a.m.). Neither of the issues were conciliated.

Therefore, in this case, the Arbitration Council will consider the issues in dispute based on evidence and reasoning as follows:

EVIDENCE

Witnesses and Experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Letter, No. 61/11 KSR dated 6 June 2011, from the company to the Head of the Secretariat of the Arbitration Council, regarding a request to adjourn the hearing.
2. Thumbprints by 16 workers who claimed that they did not affix their thumbprints on the letter, No. 1412/10 SKCSK dated 13 December 2010, regarding the five-point demand.
3. Authorisation letter, No. 66/11 KSR dated 14 June 2011, from the company to Sarin Denora to represent the company before the Arbitration Council.
4. Agreement (promotional girl) made between the company and Sim Phalla, ID C 0484, dated 3 February 2009.
5. Certificate, No. 2993 PN.CBP dated 19 June 2008, of commercial registration for the company.
6. Statute, No. 981/02 dated 15 November 2002, of the company.
7. Name list of the 347 workers who agreed with the company to deduct their wages of 1,000 riels as union contribution fees for Trade Union of Workers' Progress.
8. Agreement (promotional girl) made between the company and Sar Sreyoun, ID FC 0099, and Thun Sophea, ID FC 0003, dated 3 April 2009.
9. Agreement (promotional girl) made between the company and Nghim Narin, ID FC 0238, dated 27 April 2010.
10. Agreement (promotional girl) made between the company and Yim Samroeun, ID FC 0254, dated 21 April 2010.
11. Agreement (promotional girl) made between the company and Hem Sokhunthea, ID FC 0311, dated 7 April 2010.
12. Agreement (promotional girl) made between the company and Long Ratanak, ID C 0061, dated 23 January 2008.
13. Agreement (promotional girl) made between the company and Samnang Dalin, ID FC 0010.
14. Agreement (promotional girl) made between the company and Chhun Laylin, ID C 0210, dated 28 January 2008.
15. Agreement (promotional girl) made between the company and Neang Than, ID FC 0060, dated 30 January 2008.

16. Agreement (promotional girl) made between the company and Dam Chamrong, dated 21 October 2008.

B. Provided by the worker party:

1. Agreement (promotional girl) made between the company and Dam Chamrong, ID C 0534, dated 24 May 2010.
2. Letter containing the thumbprints by the 38 workers who claimed that they did not affix their thumbprints on the company's letter and still held their position in relation to the three points (200% of wages for overtime work on weekly days-off, reimbursement of 100% of underpaid overtime payment on weekly days-off, conversion of fixed duration contracts to undetermined duration contracts), and authorise the CFSWF to represent them in this case, dated 17 June 2011.
3. Brief statement of the labour disputes at the company.
4. Certificate, No. 1234 KB/VK dated 17 September 2007, of registration for the Local Union of C.CAWDU.
5. Statute, No. 1234 KB/VK dated 17 September 2007, of the Local Union of C.CAWDU.
6. Thumbprints by 39 workers requesting the President of CFSWF to represent them to resolve the five-point demand with the company.
7. Letter, No. 011/11 SKCSK dated 11 January 2011, from the CFSWF to the Director of the company, requesting to hold a discussion about working conditions, union freedom, and workers' benefits.
8. Letter, No. 1412/10 SKCSK dated 13 December 2010, from the CFSWF to the Director of the company, regarding a request to hold a discussion about working conditions, union freedom, and workers' benefits.
9. Minutes of collective labour dispute resolution at the company, dated 19 May 2011.

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

1. Report of collective labour dispute resolution at Cambrew Company, No. 547 K.B/RK/VK, dated 27 May 2011.
2. Minutes of collective labour dispute resolution at Cambrew Company, dated 19 May 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 361 KB/AK/VK/LKA dated 3 June 2011 to the company to attend the first hearing.
2. Invitation letter No. 362 KB/AK/VK/LKA dated 3 June 2011 to the workers to attend the first hearing.
3. Invitation letter No. 365 KB/AK/VK/LKA dated 7 June 2011 to the company to attend the second hearing.

4. Invitation letter No. 366 KB/AK/VK/LKA dated 7 June 2011 to the workers to attend the second hearing.

FACTS

- Having examined the report of collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the worker, and;
- Having reviewed additional documents;

The Arbitration Council finds that:

- Cambrew is a manufacturing and distribution company of Angkor Beer. The company commenced its operations in 2009. According to the non-conciliation report, the company employs a total of 1,500 workers.
- The Local Union of C.CAWDU is the claimant in this case.
- The company submitted the Internal Work Rules, No. 026 SKBY.RK dated 15 March 2001 which was in the English language, to the Arbitration Council. Clause 23, of *Prakas* 099 SKBY dated 21 April 2004 on Arbitration Council, states “The language to be used during the arbitral proceedings shall be Khmer...”. The Arbitration Council, therefore, declines to consider evidence that is not in Khmer.

Issue 1: The workers demand that the company reimburse wages of an additional 100% to them for the period they worked on weekly days off from 2007 to 2010.

- Since January 2011, the company prohibited the workers from taking weekly days off.
- Prior to January 2011, the company required workers to work on weekly days off (i.e. seven days per week and eight hours per day). Under such practice, the company paid workers US\$ 60 per month. The company paid an additional US\$ 2 of wages to workers for work on the weekly days-off.
- On 30 April 2010, 39 workers authorised the CFSWF to represent them over this matter, demanding the company reimburse an additional US\$ 2, dating back from 2007 to 2010, to the workers working on the weekly days off.
- On 13 December 2010, the union submitted a request for negotiation to the company, but the company rejected their request.
- On 14 June 2011, the workers submitted a name list of the 39 claimants.
- On the hearing date of 15 June 2011, the company objected to some names in the list. The company stated that some of the listed workers resigned and others belonged to different unions.

- The Arbitration Council ordered the workers to check the names of the claimants and to resubmit the name lists by 21 June 2011.
- According to the evidence provided by the workers on 21 June 2011, only 38 workers authorised the CFSWF to represent them over this matter.
- The company submitted the evidence showing that 16 workers, who previously made the demand, withdrew their demands.
- The Arbitration Council reviewed the name list of the workers against that of the company's and found that four workers' names matched the list of the company. Consequently, the Arbitration Council considers only the demand of the 34 workers as follows:

No.	Name	ID Number	No.	Name	ID Number
1	Long Rothne	0278	18	Long Phean	0138
2	Song Arunrek	0191	19	Heng Phanny	0375
3	Chheurn Sareth	0543	20	Yeoun Sreymom	0609
4	Sim Phan	0531	21	Lok Va	0097
5	Touch Sokleang	0051	22	Nuth Sros	0239
6	Ou Chanthoeun	0613	23	Kok Channa	0196
7	Ou Chanthou	0448	24	Erng Tha	0524
8	Pich Hoeun	0267	25	Om Sopheak	0564
9	Pich Sreymom	0401	26	Dam Chamrong	0534
10	Hy Thy	0623	27	Vert Sreyneang	0566
11	Nal Pov	0351	28	Chantha Sreyleak	0570
12	San Sophan	0560	29	Leak Pheap	0232
13	Ly An	0211	30	Svay Sophat	0558
14	Say Mengsros	0626	31	HengSreyoun	0346
15	Sok Leang	0559	32	Out Sreyoun	0496
16	Som Phary	0624	33	Seng Dany	0435
17	Sim Chanthoeun	0517	34	Kong Sreynut	0580

Issue 2: The workers demand that the company sign undetermined duration contracts with those who have been working for over two years.

- The claimant in this case commenced their work in 2000 under verbal employment contracts. From 2000 to 2007, the company did not sign written employment contracts with them. The company, however, began to use successive fixed duration contracts of one year for the workers since 2007. As of the hearing date, the total length of their contracts exceeded two years.

- The workers argued that their employment contracts would become undetermined duration contracts in accordance with Article 67 of the Labour Law. They further stated that they did not want to lose their seniority.

REASONS FOR DECISION

Article 137 of the Labour Law states:

In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.

In Arbitral Award 114/08-Whitex, issue 5, the Arbitration Council ruled that:

Article 137 of the Labour Law above means that workers' normal work hours should not exceed eight hours per day or 48 hours per week. The work performed by the workers on Sundays, which exceed normal working hours, is considered as overtime work.

Article 139 of the Labour Law states:

If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of fifty percent higher than normal hours. If the overtime hours are worked at night or during weekly time off, the rate of increase shall be one hundred percent.

In Arbitral Award 96/10-K.C. Gelson, issue 3, the Arbitration Council held that the company must pay wages to the workers at an increase in the rate of 100% [ie. 200% of normal wages] when they work on Sundays (the workers' weekly day off).

The Arbitration Council finds that the workers receive US\$ 60 of wages per month excluding the pay of the weekly days-off. Under the above monthly wages, they earned daily US\$ 2.30 on normal working days. The Arbitration Council holds that the workers shall receive 200% of normal wages when they work on weekly days off in accordance with Article 139 (new) of the Labour Law. Article 139 requires the company to pay the workers US\$ 4.60 when the workers work on weekly days off [a rate of increase by 100% or 200% of normal wages]. The company, however, paid only US\$ 2 to the workers. Considering the article above, the Arbitration Council holds that the company must provide an additional US\$ 2.60 to the workers. In this case, the workers demanded that the company pay them only US\$ 2 for the work on the weekly days off.

In the hearing, the workers demanded that the company reimburse the wages from 2007 to 2010. The Arbitration Council considers the statute of limitations of the demand as follows:

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 this article, the Arbitration Council considers that the workers have the right to claim the underpaid wages within a three year period after the date of the wage payment.

Based on the facts, on 13 December 2010, the worker submitted a request to the company to negotiate the issue. Accordingly, the Arbitration Council finds that the statute of limitations of their claim had not yet passed when the workers enforced their right within the three year period, effective from 13 November 2007 to 13 December 2010.

In conclusion, the Arbitration Council orders the company to reimburse an additional US\$ 2 from 13 November 2007 to 13 December 2010 to the 34 workers.

Issue 2: The workers demand that the company sign undetermined duration contracts with those who have been working for over two years.

Article 67, paragraph 2 of the Labour Law states:

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.

Any violation of this rule leads the contract to become a labour contract of undetermined duration.

Article 73, paragraph 5 of the Labour Law states:

If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.

In Arbitral Award 10/03-Jacqsintex, issue 1, the Arbitration Council determined that:

Article 67(2) should be interpreted such that fixed duration contracts are converted into undetermined duration contracts where a renewal causes the total length of the

employment contract to exceed two years. (See AA 36/06-Mondotex, issue 2 and 57/06-Ever Green, issue 3)

In previous Arbitral Awards, the Arbitration Council ordered the company to convert fixed duration contracts to undetermined duration contracts because the company's practice violates Article 67 of the Labour Law. (See AA 36/06-Jacqsintex, issue 2; 36/06-Mondotex, issue 2; 57/06-Ever Green, issue 3)

Based on the facts, the 34 workers commenced their work in 2000. As a result, their contracts exceed two years. Based on the above interpretation, the Arbitration Council considers that the 34 workers' contracts are undetermined duration contracts. Regardless, the Arbitration Council holds that even though the company began to use fixed duration contracts of one year since 2007, their contract would become undetermined duration contracts when they exceeded two years.

In conclusion, the Arbitration Council orders the company to convert the 34 workers' contracts, which have the total length of over two years, to undetermined duration contracts

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

DECISION AND ORDER

Issue 1: Order the company to reimburse an additional US\$ 2 from 13 November 2007 to 13 December 2010 to the 34 workers.

Issue 2: Order the company to convert the 34 workers' contracts, which have the total length of over two years, to undetermined duration contracts.

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 to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **You Suonty**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: