



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាធរកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 94/13-Eternity Global Sporting (Cambodia)

Date of award: 13 June 2013

Dissenting Opinion by Arbitrator Tuon Siphann

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

DISPUTANT PARTIES

Employer party:

Name: **Eternity Global Sporting (Cambodia) (EGS)**

Address: Damnak Ampil Village, Damnak Ampil Commune, Angsnoul District, Kandal
Province

Telephone: 088 82 111 88

Fax: N/A

Representatives attending the first hearing:

- | | |
|-----------------|-----------------------------------|
| 1. Mr Vong Dara | Head of Administration Department |
| 2. Mr Heng Mesa | Administrator |

Representatives attending the second hearing:

- | | |
|-----------------|-----------------------------------|
| 1. Mr Vong Dara | Head of Administration Department |
| 2. Mr Heng Mesa | Administrator |

Worker party:

Name: - **Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC)**

- **Local Union of FTUWKC (the union)**

Address: House no. 16A, Street 360, Beong Keng Kang III Commune, Chamkarmon District,
Phnom Penh

Telephone: 017 552 542 N/A

Representatives attending the first hearing:

- | | |
|---------------------|--------------------------------------|
| 1. Mr Ry Sethy Neth | Dispute Resolution Officer of FTUWKC |
| 2. Mr Suy Polyvann | Dispute Resolution Officer of FTUWKC |
| 3. Mr Soy Chanthou | Dispute Resolution Officer of FTUWKC |
| 4. Mr Dam Sok | worker |
| 5. Mr Theun Chek | worker |
| 6. Mr Kuy Veasna | worker |

Representatives attending the second hearing:

- | | |
|---------------------|--------------------------------------|
| 1. Mr Ry Sethy Neth | Dispute Resolution Officer of FTUWKC |
| 2. Mr Vuthy Ravuth | President of the union |
| 3. Mr Theun Chek | Vice-President of the union |
| 4. Mr Eun Ty | Secretary of the union |
| 5. Dam Sok | member of the union |
| 6. Pen Piseth | member of the union |

ISSUES IN DISPUTE

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

The workers demand that the employer reinstate the union leaders: Vuthy Ravuth, Theun Chek and Eun Ty and Union Activists namely, Dam Sok, Kuy Veasna, Sorn Vanny, Pen Piseth and Bech Neang and maintain their wages and benefits until the date of reinstatement.

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. 121 dated 7 June 2012 (Tenth 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. 121/13 dated 3 May 2013 was submitted to the Secretariat of the Arbitration Council on 6 May 2013.

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: 17 May 2013 at 8:30 a.m.
- Second hearing: 23 May 2013 at 8:30 a.m.

Procedural issues:

On 26 April 2013, the Department of Labour Disputes of Kandal province undertook conciliation of a collective labour dispute at Eternity Global Sporting (Cambodia) resulting in one issue being unresolved. The non-conciliated issue was referred to the Secretariat of the Arbitration Council (SAC) on 6 May 2013 through non-conciliation report no. 321 dated 3 May 2013.

Upon receipt of the case, the Arbitration Panel was formed on 7 May 2013. The SAC summoned the employer and the workers to a hearing and conciliation of the non-conciliated issue, held on 17 May 2013 at 8:30 a.m. Both parties were present. At the hearing, the Arbitration Council conducted a further conciliation of the non-conciliated issue, but it remained unresolved.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interests disputes. The parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties choose non-binding arbitration for their interests disputes.

The Arbitral Award was supposed to be issued on 5 June 2013 but both parties agree to defer the date of award issuance to 13 June 2013.

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

- Eternity Global Sporting (Cambodia) is a glove and ball manufacturer. Currently, it employs a total of 545 workers.
- The union is the claimant in this case. It received a certificate of registration on 5 April 2013.

Issue: The workers demand that the employer reinstate union leaders: Vuthy Ravuth, Theun Chek and Eun Ty and Union Activists: Dam Sok, Kuy Veasna, Sorn Vanny, Pen Piseth and Bech Neang, and maintain their wages and benefits until the date of reinstatement.

- At the hearing, the workers claim they are not demanding the reinstatement of Sorn Vanny and Bech Neang because both of them has already resigned, rather they are demanding the reinstatement of the union leaders: Vuthy Ravuth, Theun Chek, Eun Ty, and Union Activists Dam Sok, Kuy Veasna and Pen Piseth.
- The workers demand the employer reinstate the union leaders and activists because the employer has acted discriminately against the union.
- The employer claims the dismissal of the workers was not union discrimination because it was not aware of the union status of the workers.

Information in relation to the dispute:

- On 22 February 2013, the workers staged a strike in respect of six demands. (On 26 February 2013, the Arbitration Council received a non-conciliation report no. 127/13 dated 26 February 2013 from the Department of Labour Disputes. The report was registered to Case no. 49/13-Eternity Global Sporting (Cambodia).)
- On 22 February 2013, the Department of Labour Disputes went to the company to conduct conciliation.
- The employer claims on 23 February 2013, strikers resorted to violence in front of the factory such as strangling and pulling a company executive to the ground, resulting in injury to his neck and hospitalisation. The employer sued the workers allegedly involved in the case (report from Police Commissariat of Kandal province no. 01/2013 dated 23 February 2013.)
- On 27 February 2013, the Primary Court issued an injunction:
 1. Order the workers staging strike at Eternity Global Sporting located at Damank Ampil Village, Damnak Ampil Commune, Angsnoul District, Kandal Province to immediately stop the strike and return to work in their respective teams, shifts, and positions within 48 hours in accordance with Article 337 of the Labour Law and the workers shall refrain from engaging in such activity as blocking the factory's entrance and exits, installing loud

speakers in front of or inside the factory compound, intimidating other workers into boycotting work, and blocking transportation in and out of the factory as well as other activity that may cause disruption to production chain and its regular operation.

2. Expense incurred in the case which is under the burden of the claimant is already covered.

3. This junction is put into force for immediate implementation though there is objection.

- It is open for any objection in accordance with the law.

- The employer claims it posted the injunction in front of the company after it was issued.
- On 27 February 2013, the Arbitration Council ordered the workers who were on strike to return to work on 28 February 2013, but the workers did not comply with the Arbitration Council's order. Therefore, the Arbitration Council decided to close the case. The arbitration process was terminated and the workers continued with the strike.
- The employer claims on 1 March 2013, strikers attended the workplace for two hours but they did not work. Some of them shouted, turned off the lights, and made threats, as well as forcing other workers on duty to leave the company and take part in the strike.
- The employer claims, on 2 March 2013, strikers attended the production line and shouted loud to scare other workers.
- At the hearing, the workers and the employer agree that the strike started on 22 February 2013 and went until 9 March 2013.

Information in relation to formation of the union:

- The workers claim they arranged the union election on 17 February 2013. As a result, Vuthy Ravuth was elected Union President, Theun Chek Union Vice-, and Eun Ty Union Secretary.
- At the first hearing, the workers claim they mailed a notification on the elected leaders to the employer on 22 February 2013. The workers claim that they did not directly inform the employer about the elected leaders because they thought the employer would not accept the notification letter. Therefore, they sent the notification of the elected leaders via post. At the second hearing, the workers reclaim that they notified the employer about the elected leaders via security guards on 22 February 2013. The security guards did not accept the notification letter. Therefore, the union sent the notification letter to the employer through the post on 26 February 2013. At the second hearing, the workers submitted receipt of the notification letter sent via local express mail service (EMS).
- The employer claims it was not aware of the elected leaders and that the security guard did not receive the notification letter either. The employer claims it requires security guards to receive any letter at all; they cannot object any letters sent to the

company. If the persons who wish to send letter fail to meet the security guards, they can drop it in the company's post box.

Facts in relation to Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok, Mr Kuy Veasna, and Mr Pen Piseth:

- Mr Vuthy Ravuth commenced his job on 1 August 2012 on a contract with a two months' probationary period. At the conclusion of the probation period, he signed a three-month contract from 1 October 2012 to 1 January 2013. At the conclusion of his contract on 1 January 2013, Mr Vuthy Ravuth continued working under a verbal agreement until the day he was dismissed on 22 February 2013. Vuthy Ravuth is a mechanic.
- Mr Theun Chek commenced his job on 9 August 2012 on a contract with two months' probationary period. At the conclusion of the probation, he signed a three-month contract from 1 October 2012 to 1 January 2013. At the conclusion of the contract on 1 January 2013, he continued working under a verbal agreement until the day he was dismissed. Mr Theun Chek sews gloves.
- Mr Dam Sok commenced his job on 20 August 2012 on a contract with a two months' probationary period. At the conclusion of the probationary period, he signed a three-month contract valid from 1 September 2012 to 1 December 2012. At the conclusion of the contract on 1 December 2012, he continued working under a verbal agreement. Dam Sok is the leader of the team responsible for sewing balls.
- Mr Eun Ty commenced his work on 18 October 2012 on a two months' probationary period. At the conclusion of the probation, he signed a three-month contract valid from 1 December 2012 to 1 March 2013. He sews gloves.
- Mr Kuy Veasna commenced his work on 18 October 2012 on a contract with a two months' probationary period. At the conclusion of the probation, he signed a three-month contract valid from 1 December 2012 to 1 March 2013. He is in charge of stringing the gloves.
- Pen Piseth commenced his work on 20 September 2012 on a contract with two months' probationary period. At the conclusion of the probation, he signed a three-month contract valid from 1 October 2012 to 1 January 2013. He is an electrician.

The employer's claim:

- At the hearing, the employer claims it dismissed Mr Vuthy Ravuth on 22 February 2013. The employer requested permission from the Department of Labour Disputes of Kandal province to dismiss him because (1) on 20 and 21 February 2013 he incited other workers to leave work at 4:00 p.m. without performing overtime work, (2) on 23 February 2013, he incited other workers to stage a strike violating the lawful strike

procedure and (3) on 23 February 2013 at 9:00 a.m., he caused an injury to the employer.

- The employer claims it dismissed Mr Theun Chek, Mr Eun Ty, Mr Dam Sok and Kuy Veasna on 25 February 2013 based on Article 83 of the Labour Law. The employer alleges the five workers hit the company executive on 23 February 2013 at 9:00 a.m.
- The employer submits the following evidence to support its allegation that Mr Theun Chek, Mr Eun Ty, Mr Dam Sok, and Mr Kuy Veasna hit the employer:

(1) Report from Police Commissariat of Kandal Province dated 23 February 2013 on violence against the company executive:

Prior to the incident, the victim, Theang E Meng...walked out of the company and watched the workers staging strike. Seun Phally darted to subdue the victim and grab his phone...instantly, Mr Vuthy Ravuth...Mr Theun Chek... Mr Dam Sok... Mr Eun Ty... and Mr Kuy Veasna also darted to help (Seun Phally) subdue the victim leading to a struggle which resulted in the victim having swelling of the neck, left hand, and right leg as well as a backache.

(2) Prosecutorial Order for investigation issued by the Primary Court of Kandal province no. 229 dated 4 March 2013 states:

On 23 February 2013 at 9:30 a.m., the workers at Eternity Global ... staged a strike to demand for the workers' right and freedom at the factory. While the workers were on strike, the victim, Mr Theang E Ming, Executive of the factory, was using his phone to film the strike. Seeing such action, the workers darted to take away the phone from the victim because they did not want to appear in the video, but the victim refused to let go of the phone. Then the suspects namely Dam Sok, Vuthy Ravuth, Theun Chek, Eun Ty, Seun Phally and Kuy Veasna subdued the victim, slapped his neck, and kicked him until he fell to the ground sustaining injuries to his whole body.

(3) A letter from the Department of Labour Disputes of Kandal province to Under-Secretary of State of the Ministry of Labour and Vocational Training no. 127 dated 23 February 2013 states:

On 23 February 2013 at 9:30 a.m., there was an incident involving violence in front of the factory. Among the strikers, there was a group of violent men who join hand to strangle the company executive; the victim was rescued by the authority and brought into the factory. This group shouted out loud that the company executive hit the workers and it also cursed as well as intimidated other workers working in the factory to come out and take part in the strike. It also blocked guests and truck transporting merchandise in and out of the factory. The company executive sustained injury on his neck and limb, and he requested to visit the hospital, so the conciliation could not be proceeded.

(4) A certificate issued by Bek Chan Health Centre shows that the executive from Eternity Global Sporting sustained a back injury. The Arbitration Council set the

date for evidence submissions as 29 May 2013 and for objections were permitted until 31 May 2013 for both parties. The workers did not object to the documents submitted by the employer.

- The employer dismissed Mr Pen Piseth on 9 March 2013 because Pen Piseth did not return to work in accordance with the injunction issued by the Primary Court of Kandal Province and he has not shown up since the strike.
- The workers claim Mr Pen Piseth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok and Mr Kuy Veasna did not hit the company executive. They claim that had they hit the company executive during the strike, the police would have arrested them at the time. The workers still allege that the employer dismissed the six workers because they formed the Free Trade Union of Workers.

REASONS FOR DECISION

Firstly, the Arbitration Council considers whether the issue gives rise to a rights or interests dispute.

In previous cases, the Arbitration Panel has found that *“Rights disputes are disputes concerning the rights stated in the law, agreements or collective agreements about the demand.”* (see *Arbitral Award no. 5/11 M & V1, Issue 1 and 5, no. 13/11 Gold Kamvimex, Issue 1 and 2, 14/11 GHG, Issue 4*).

The Arbitration Panel in this case agrees with the interpretation made in the previous cases.

The issue in this case is about reinstatement and union discrimination, as stated in the Labour Law. Therefore, the Arbitration Council finds that the issue is a rights dispute.

Issue: The workers demand that the employer reinstate union leaders: Vuthy Ravuth, Theun Chek and Eun Ty and the Union Activists: Dam Sok, Kuy Veasna, Sorn Vanny, Pen Piseth and Bech Neang and maintain their wages and benefits until the date of reinstatement.

In this case, the workers claim the dismissal of the six workers is related to union discrimination since those workers are leaders of and activists for the union and they formed a new union. The employer claims it dismissed Mr Vuthy Ravuth because he incited other workers to stage an illegal strike and hit a company executive. The employer dismissed Mr Theun Chek, Mr Eun Ty, Mr Dam Sok and Mr Kuy Veasna because they hit the company executive. The employer dismissed Mr Pen Piseth because he did not comply with the injunction issued by Primary Court of Kandal Province which ordered strikers to return to work within 48 hours and he has been absent from work since the strike.

The Arbitration Council considers (A) whether or not the dismissal of the six workers is related to the formation of the union, (B) whether or not the dismissal of the six workers is

related to union discrimination and (C) whether or not the six workers committed serious misconduct.

(A) Whether or not the dismissal of the six workers is based on the formation of the union

In this case, Mr Vuthy Ravuth, Mr Theun Chek and Mr Eun Ty are the elected union leaders. The Arbitration Council will consider whether or not the three workers are protected from the dismissal.

Article 293 of the Labour Law states: *“The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector.”*

Clause 3, paragraph 3 of Prakas 305 dated 22 November 2001 states:

All workers who are candidates for election as union leader shall also receive protection from work dismissal like worker delegates. This protection lasts for 45 days prior to the election and ends 45 days after the election if these candidates are not selected.

Based on Clause 3, Paragraph 3 of Prakas 305, the duration for special protection is limited for non-elected candidates of the union. In short, the duration of the special protection is 45 days prior to the election and it will end within 45 days after the election. However, for the elected union leaders, Clause 3 of Prakas 305 above does not set a specific duration period for their protection.

In case no. 40/10-Meng Yan, the Arbitration Council interprets:

In this case, the Arbitration Council notes the duration of protection for non-elected candidates should be at least 45 days after the election or can be extended to until the date they submit their application for union registration.

In previous awards, the Arbitration Panel interprets that the workers must fulfill three conditions to receive special protection from dismissal. Therefore, workers shall receive the protection when they meet the requirements as follows: (i) workers are truly those who receive special protection (ii) the dismissal is made during the protection period (iii) workers must inform the employer of the names of workers to be protected by any reliable means (*see Arbitral Awards no. 50/05-Fortune, Issue 1, no. 64/05-Chian Hwey, Issue 1, no. 07/06-Dai Young, Issue 1, no. 09/06-Grand Diamond City, Issue 1 and no. 148/07-Pay Her*).

The Arbitration Panel in this case agrees with the interpretation made in the previous cases.

The Arbitration Council will consider whether or not the three workers fulfill the three requirements.

(1) The workers are truly those who receive special protection

On 17 February 2013, the workers organised the election for the union's leaders. Mr Vuthy Ravuth was elected Union President, Theun Chek Vice-President and Eun Ty Secretary of the union. Based on this, the first requirement is fulfilled.

(2) The dismissal was made during the protection period.

The employer dismissed Vuthy Ravuth on 22 February 2013, Theun Chek and Eun Ty on 25 February 2013. Based on the interpretation of the Arbitration Panel in case no. 40/10-Meng Yan, the three elected workers were under 45 days of special protection subsequent to the election. Therefore, the Arbitration Council finds that the three workers were dismissed during the period in which they were receiving special protection from dismissal. Therefore, condition 2 was fulfilled.

(3) The workers shall notify the employer of the names of workers to be protected by any reliable means.

The workers claim the union notified the employer of the elected union leaders on 22 February 2013 via the security guards but the security guards did not accept the notification letter. The employer claims that it was not aware of the union's leadership and claims that the security guard did not receive the notification letter about the leadership candidates. The employer explains its process of receiving letters, namely that the security guard is required to take receipt of all letters, which mean that they cannot reject any. If a person wishing to send a letter to the company fails to meet the security guards, he or she can drop the letter in the company's post box.

In this case, the workers did not describe or name the aforementioned security guards. Therefore, the Arbitration Council cannot accept the workers' claim that the security guards of the company did not accept the notification letter on the elected union leaders. The workers claim that they sent the notification letter to the employer via the post on 26 January 2013. The Arbitration Council finds that the employer dismissed the three workers prior to the date on which the workers claim they sent the notification letter via the post. Therefore, the Arbitration Council finds that the union did not fulfill its obligation to send the notification letter on the elected union leadership candidates by any reliable means to the employer. Therefore, the third requirement is not fulfilled.

In the previous cases, the Arbitration Council decides that the workers are not eligible to receive special protection when the union fails to notify its elected union leaders before the employer dismisses them (*see Arbitral Award no. 64/05-Chian Hwey and 66/07-Jia Fung*).

The Arbitration Council finds that though the three workers are elected union leaders, they do not receive special protection in accordance with Article 293 of the Labour Law and Clause 3 of Prakas 305 because they did not fulfill the three prerequisites for special protection.

(B) Whether or not the dismissal of the six workers is based on union discrimination.

Article 12 of the Labour Law states:

...no employer shall consider on account of creed... membership of workers' union or the exercise of union activities to be the invocation in order to make a decision on... discipline or termination of employment contract.

Article 279 of the Labour Law states:

Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.

In previous awards, the Arbitration Council consistently states, *“Generally, the Arbitration Council holds that the party making the allegations bear the burden of proof for its allegations.”* (see *Arbitral Award no. 148/07-Pay Her, 34/11-Lim Line, Issue 7 and 155/11-Ying Dong, Issue 1*)

Concerning evidence proving union discrimination, the Arbitration Council generally considers oral evidence provided at the hearing and reviews relevant evidence in the case to determine whether or not there has been union discrimination (see *Arbitral Award no. 148/07-Pay Her*).

The Arbitration Panel in this case agrees with the interpretation made in previous cases.

In this case, the workers claim that they arranged the union election on 17 February 2013 and they sent a notification letter on the elected union leadership candidates to the employer on 22 February 2013 via security guards but the security guards did not accept the notification letter. The employer claims that it was not aware of the elected union leaders nor did the security guards not receive any notification letter.

The workers failed to provide sufficient evidence to convince the Arbitration Council that the employer was aware of their positions as union leaders and activists when they were dismissed. The Arbitration Council finds that the workers did not have sufficient evidence to allege that the dismissal of the six workers was based on union discrimination.

(C) Whether or not the six workers have committed serious misconduct

(a) The dismissal of Mr Vuthy Ravuth is on the grounds that he incited workers to leave at 4 p.m. and stage a strike.

In this case, the employer claims that Mr Vuthy Ravuth committed serious misconduct (1) on 21 February 2013 as he incited other workers to leave work at 4:00 p.m. without staying for overtime work, (2) on 22 February 2013, he incited other workers to stage an illegal strike and (3) on 23 February 2013 at 9:00 a.m. he hit the company executive.

The Arbitration Council will consider the facts on the allegation that Mr Vuthy Ravuth and four other workers hit the employer.

Article 83 of the Labour Law states:

“The following are considered to be serious offences:

...

B. On the part of the worker:

...

4. Threat, abusive language or assault against the employer or other workers.

5. Inciting other workers to commit serious offences.

...”

The Arbitration Council in case no. 20/05-Fortune, Issue 2, interprets Article 83 B (5) above that:

Serious misconducts shall not apply to inciting or calling workers to go on strike even if the strike did not follow the proper legal procedures (see case 08/05-Winner Knitting dated June 23, 2005) unless the employer has evidence to prove that the particular workers incited workers to use violence during the strike.

In this case, the Arbitration Panel agrees with the interpretation made in the previous cases that whether the strike was staged by following proper legal procedures or not is irrelevant as it is not serious misconduct. Moreover, the employer fails to provide evidence to prove that Mr Vuthy Ravuth incited other workers on strike using violence.

Concerning the allegation that Mr Vuthy Ravuth incited other workers to leave early and avoid overtime work, the Arbitration Council finds that Article 83 of the Labour Law does not stipulate that this is serious misconduct. Therefore, the Arbitration Council finds that the employer cannot dismiss Vuthy Ravuth on the grounds that he has committed serious misconduct by inciting other workers to stage a strike or leave before 4 p.m.

(B) The dismissal of Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok and Mr Kuy Veasna on the grounds that they hit the company executive.

In this case, the employer dismissed Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok and Mr Kuy Veasna based on Article 83 of the Labour Law. In short, the employer alleged that they hit the company executive on 23 February 2013 at 9:00 a.m. The workers claim that if they hit the company executive, police would have arrested them during the strike.

Article 83 of the Labour Law states:

The following are considered to be serious offences:

...

B. On the part of the worker:

...

4. Threat, abusive language or assault against the employer or other workers.

5. Inciting other workers to commit serious offences.

...

In this case, the employer submits evidence supporting its allegations that Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok, and Mr Kuy Veasna hit the company director such as (1) the report from Police Commissariat of Kandal Province dated 23

February 2013, (2) Prosecutor Order for Investigation dated 4 March 2013 issued by the Primary Court of Kandal Province, (3) A letter from the Department of Labour Disputes of Kandal province no. 127 dated 23 February 2013 to the Under-Secretary of State of the Ministry of Labour and Vocational Training and (4) A certificate from Bek Chan Health Center attesting that the employer of Eternity Global Sporting sustains injury on his back.

The workers did not object to the documents submitted by the employer. At the hearing, the workers claim that had they hit the company executive during the strike, the police would have arrested them at that time but fail to provide evidence supporting their claim. In this case, the Arbitration Panel finds that the employer has evidence convincing the Arbitration Council that Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok and Mr Kuy Veasna did hit the company executive on 23 March 2013, which was an act of serious misconduct.

(C) The dismissal of Mr Pen Piseth on the grounds that he did not comply with the injunction issued by the Primary Court of Kandal Province

In this case, the employer dismissed Mr Pen Piseth on 9 March 2013 because he did not return to work after the strike, violating injunction no. 82 dated 27 February 2013 issued by the Primary Court of Kandal Province ordering all strikers to return to work within 48 hours after the injunction issuance.

The Arbitration Council finds that on 27 February 2013, the Primary Court issued an injunction with the following decisions:

1. Order the workers staging a strike at Eternity Global Sporting located at Damank Ampil Village, Damnak Ampil Commune, Angsnoul District, Kandal Province to immediately stop the strike and return to work in their respective teams, shifts, and positions within 48 hours in accordance with Article 337 of the Labour Law and the workers shall refrain from engaging in such activity as blocking the factory's entrance and exits, installing loud speakers in front of or inside the factory compound, intimidating other workers into boycotting work, and blocking transportation in and out of the factory as well as other activity that may cause disruption to production chains and its regular operation.
2. Expenses incurred in the case, which is under the burden of the claimant, are already covered.
3. This injunction is put into force for immediate implementation though there is objection.
 - It is open for any objection in accordance with the law.

Article 337 of the Labour Law states:

The Labour Courts or, in the absence of the Labour Courts, the common courts, have sole jurisdiction to determine the legality or illegality of a strike.

If the strike is declared illegal, the strikers must return to work within forty-eight hours from the time when this declaration is given out. A worker who, without valid reason, fails to return to work by the end of this period is considered guilty of serious misconduct.

Based on Article 337 of the Labour Law, the Arbitration Council finds that when the court orders the worker to return to work within 48 hours from the injunction issuance, the workers are required to return to work in accordance with the injunction. The workers are considered to be committing serious misconduct if they do not return to work within 48 hours, in accordance with the injunction.

In this case, the Arbitration Council finds that after the warrant was issued on 27 December 2011, the employer posted the injunction at the gate of the company. Mr Pen Piseth did not return to work within 48 hours and has been absent since the strike.

Therefore, the Arbitration Council finds that Mr Pen Piseth is considered to have committed serious misconduct when he did not return to work with respect to the court injunction.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer reinstate Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok, Mr Kuy Veasna and Pen Piseth and maintain their wages and other perquisites until the date of reinstatement.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue:

Reject the workers' demand that the employer reinstate Mr Vuthy Ravuth, Mr Theun Chek, Mr Eun Ty, Mr Dam Sok, Mr Kuy Veasna and Mr Pen Piseth and maintain their wages and other perquisites until the date of reinstatement.

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 28 September 2010.

Part II. Interests dispute: N/A

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

Annex to Arbitral Award 94/13-Eternity Global Sporting (Cambodia)

Dissenting Opinion

Clause 37 of Prakas No. 099, dated 21 April 2004, issued by the Ministry of Labour and Vocational Training states:

The arbitral panel shall record its decisions in an award which shall be signed by all three arbitrators. If one of the arbitrators does not agree with the decision of the majority, the dissenting arbitrator may record his dissent as an annex to the award.

Based on this clause, I, Arbitrator **Tuon Siphann**, would like to record my dissent to the Arbitral Award **94/13-Eternity Global Sporting (Cambodia)**. I would like to explain the reasons for my dissent:

FTUWKC was formed and held an election on 17 February 2013 and as a result, Mr Vuthy Ravuth was elected Union President, Mr Thoeun Chek, Union Vice-President, and Mr Oeun Ty, Union Secretary.

Paragraph 3, Clause 3 of Prakas no. 305 dated 22 November 2011 states:

All workers who are candidates for election as union leader shall also receive protection from work dismissal like worker delegates. This protection lasts for 45 days prior to the election and ends 45 days after the election if these candidates are not selected.

Paragraph 2, Clause 4 of the same Prakas states:

...this protection will be granted to 3 union leaders pursuant to the conditions set out in Articles 282 and 293 of the Labour Law... In order to receive this protection, the union shall notify the employer of the names of people receiving protection by official means.

Article 282 of the Labour Law states:

Union stewards or former union stewards who relinquished their position for less than six months are entitled to benefits provided for in the provisions of Articles 292, 293 and 294 regarding the dismissal, re-assignment or transfer of shop stewards...

According to the findings of fact, the union notified the employer about the elected union leadership in writing through company security guards on 22 February 2013, but the security guards did not accept it and another notification was made through the post office on 26 February 2013, but still, the employer did not accept it. The employer claims it was not aware of such notification. The employer's claim that it was not aware of such notification because it did not receive it is not the workers' fault.

Article 293 of the Labour Law states *"The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector..."*

Paragraph 5, Clause 4 of Prakas no. 305 states:

Any employer who terminates or dismisses workers from work who receive protection in accordance with above provisions without prior permission from the Labour Inspector or causes any damage to those workers shall be penalized in compliance with Article 373 of the

Labour Law. The employer's actions which abuse the above provisions shall be deemed null and void...

The three union leaders were employed on contracts of unspecified duration when they were dismissed. The employer sought approval of their dismissals from the Department of Labour and Vocational Training of Kandal Province, but the latter did not respond. Such action shows that when the employer dismissed them, the employer was aware that the three of them were union leaders and the employer also knew these dismissals required approval from the Department of Labour and Vocational Training of Kandal Province.

As the Department of Labour and Vocational Training of Kandal Province did not respond, the three union leaders protected in accordance with Prakas no. 305 are still workers at the company.

Therefore, the employer is under an obligation to account for its workers as usual.

Phnom Penh, 13 June 2013

Signature

Arbitrator **Tuon Siphann**