KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 39/09-Quint Major Industrial

Date of award: 21 April 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTANT PARTIES

Employer party:

Name: **Quint Major Industrial Co., Ltd. (the employer)**

Address: Perk Village, Perk Commune, Angsnoul District, Kandal Province

Telephone: 012 522 266 Fax: N/A

Representatives:

1. Mr Long Heang — Senior officer of the employer association
2. Mr Peter Pan — Assistant to the Company Director
3. Mr Kim Mora — Administration staff

Worker party:

Name: **Cambodian Labor Union Federation (CLUF)**

Local Union of CLUF

Address: No. 30C, Borey Solar, Teouk Thla Commune, Sen Sok District, Phnom Penh

Telephone: 012 529 404 Fax: N/A

Representatives:

1. Mr Khin Sokhan — Secretary of CLUF
2. Mr Chey Sovann — Officer of CLUF
3. Mr Var Sart — President of the Local Union of CLUF
4. Mr Seng Sambath — First Vice-President of the Local Union of CLUF

5. Mr Chheun Soknoy	Second Vice-President of the Local Union of CLUF
6. Mr Ann Rin	Secretary of the Local Union of CLUF

ISSUES IN DISPUTE

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

1. The workers demand that the employer reinstate Chheun Soknoy, the second vice-president of the Local Union of CLUF, to his former position. The employer does not agree to the demand, stating that it must assign Chheun Soknoy to the position of head of the cleaning group because the female worker who was the vice group leader of the sewing group has returned to work.
2. The workers demand that the employer implement a past agreement on the skill bonus under which a competition must take place each week to select two to three workers. The employer refuses to follow this new agreement and follows an old one.
3. The workers demand that the employer make payments in lieu of unused annual leave as this has been its practice in the past. The employer does not agree to do so and will follow the Labour Law.
4. The workers demand that the employer make it easier for them to obtain permission for sick leave with a medical certificate from a qualified doctor. The employer agreed to make it easier for them to obtain permission but they must have a medical certificate from a state doctor.
5. The workers demand that the employer make it easier for them to obtain leave for personal commitments. The employer agrees to make it easier for them to obtain leave for personal commitments but they must provide evidence.
6. The workers demand that the employer show the certificate of union registration of the Independent Quint Major Union led by a Mr Roger. The employer will post an announcement to all workers in the factory.

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. 076 dated 10 May 2007 (Fifth 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.108/09 KB/KN dated 17 March 2009 was submitted to the Secretariat of the Arbitration Council on 18 March 2009.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Tonle Bassac Commune, Chamkarmorn District, Phnom Penh

Date of hearing: 25 March 2009 at 8:00 a.m.

Procedural issues:

On 6 March 2009, the Department of Labour Disputes received a complaint from CLUF, dated 5 March 2009, outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 10 March 2009, at which one of the seven issues was resolved. The six non-conciliated issues were referred to the Secretariat of the Arbitration Council on 18 March 2009.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the six non-conciliated issues, held on 25 March 2009. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the six non-conciliated issues, resulting in issues 3, 5, and 6 being resolved. Therefore, the Arbitration Council will consider issues 1, 2, and 4 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:

- Quint Major Industrial Co., Ltd. employs approximately 1,400 workers.
- The Local Union of CLUF is the claimant in this case.

Issue 1: The workers demand that the employer reinstate Chheun Soknoy, the second vice-president of the Local Union of CLUF.

- Chheun Soknoy commenced work on 25 January 2007 on an undetermined duration contract. At the hearing, the workers asserted that Chheun Soknoy was the second vice-president of the local union, but the employer did not acknowledge this because his name was not found on the list of union leaders acknowledged by the Ministry of Labour and Vocational Training in letter No. 965 KB/AK/VK dated 1 September 2008. The Ministry acknowledged only the following officers: Var Sart, the president; Seng Sambath, the vice president; and Ann Rin, the secretary of the Local Union of CLUF.

- Chheun Soknoy was appointed to perform various positions including head of sewing section A10, chief of the sample group, head of the sewing group in building 2, and finally, on 1 March 2009, head of the cleaning group.

- Chheun Soknoy did not agree to work as the head of the cleaning group, preferring the roles of head of the sewing section, head of the sewing group in building 2, or head of any section compatible with his skills. He argued that cleaning work does not fit his skills. Moreover, the group of sewing workers in building 2 support and like him.

- The employer rejected his arguments and wanted him to continue working in the cleaning group because the head of the sewing group in building 2 had returned from maternity leave and there was no one leading the cleaning group. However, Chheun Soknoy asserts that the head of the sewing group in building 2 has not returned.

- Chheun Soknoy states that the employer did not inform him that he would only work temporarily as the head of the sewing group in building 2.

- The employer told Chheun Soknoy that it would maintain his wages and number of working hours in his new role, but his location would be mobile because the job requires walking around to inspect production and helping with office work. If he did not agree to the new role, the employer would dismiss him in accordance with the law. Chheun Soknoy asserts that cleaning work does not fit his skills because he was the head of sewing group. However, but he does not specify the differences between the two positions.

- The employer dismissed Chheun Soknoy on 4 March 2009 because he did not follow the employer's appointment. It offered him his final wage of US$ 6.93, comprised of three days' pay; payment in lieu of one day of annual leave equal to US$ 3.40; payment in lieu of 30 days' notice, i.e. US$ 102; a seniority bonus of US$ 3; and an incentive bonus of US$ 6. In total, Chheun Soknoy was offered US$ 325.33. However, he refused to accept the money.

- Clauses 5 and 8 of the employer's Internal Work Rules, registered at the Kandal Labour and Vocational Training Office on 10 May 2007, state:

  Clause 5. The rules for work practice at the factory…

  2. Each worker must comply with and be responsible for his/her own role, duties, and appointments by the employer…

  Clause 8. The dismissal of workers

  …workers can be dismissed in the following cases:

  - violation of the Internal Work Rules after receiving a final written warning…

- Chheun Soknoy states that he had never been warned by the employer since he commenced work. The employer does not reject this claim.

- The workers demand that the employer reinstate Chheun Soknoy but the employer does not agree to the demand, asserting that it has already provided him with the lawful indemnity for dismissal and it cannot allow Chheun Soknoy to work as the head of the sewing group in building 2.

Issue 2: The workers demand that the employer implement an agreement on the skill bonus providing that a competition must take place once a week to select two or three workers.

- The workers demand that the employer implement an agreement dated 23 October 2008 on the skill bonus, which provides that a competition must take place once a week to select two or three workers. The agreement provides that "[t]he employer agrees to continue holding the competition for all workers on a stage-by-stage basis and to provide the workers with a skill bonus based on the exact results of the competition and a determination by the employer".

- The workers claim that prior to this agreement, the employer held the competition once a week, each Sunday. However, it stopped the competition once the agreement was signed. The workers demand that the employer resume the competition in accordance with the agreement dated 23 October 2008. Since the date of the agreement, the employer has never followed its provisions. The employer agrees that the competition has not taken place since the agreement was made.

- The employer agrees that the competition originally took place as described by the workers, but the buyers considered the competition to be inappropriate because it was held on Sundays, meaning that workers were unable to relax. Therefore, the employer decided to simply select workers to be offered the bonus. This was announced to the workers on 25 October 2008.

- The employer argues that Sunday was the only day on which the competition could be held, and it generally took the whole morning.
- The employer explains that fast sewers were selected from each sewing group each week to participate in the competition, held on Sunday. The current practice is to award the bonus to workers who sew quickly and exceed the set target. The employer adds that the previous and current bonuses are of a similar amount.
- The workers do not disagree with this explanation. However, they maintain the demand that the employer honour the agreement dated 23 October 2008 and continue the previous practice. That is, they demand that the employer hold the competition because it ensured an equitable allocation of the skill bonus.

Issue 4: The workers demand that the employer make it easier for them to obtain permission for sick leave with a medical certificate from a qualified doctor.

- The workers demand that the employer make it easier for them to obtain permission for sick leave with a medical certificate from a qualified doctor, consistent with past practice. The employer rejects the demand and maintains that it will only accept a medical certificate from the Kandal Referral Hospital because it discovered a fake medical certificate issued by a private hospital.
- The workers do not reject the employer's claim, but ask that it accept medical certificates provided by the authorities, which includes state and private hospitals.
- Clause 4(K) on paid leave at Point 5 of the Internal Work Rules states that "[s]ick leave can only be granted where the worker fills out the permission form appropriately accompanied by a medical certificate from a state hospital."
- There is no agreement between the parties regarding this point.

REASONS FOR DECISION

Issue 1: The workers demand that the employer reinstate Chheun Soknoy, the second vice-president of the Local Union of CLUF.

In this case, the workers demand that the employer reinstate Chheun Soknoy, but the employer rejects this demand. Therefore, the Arbitration Council will consider whether the employer lawfully dismissed Chheun Soknoy.

Based on the facts, the Arbitration Council finds that Chheun Soknoy was not entitled to special protection against dismissal because his name was not included in the list of the union leaders acknowledged by the Ministry of Labour and Vocational Training. Therefore,

the Arbitration Council finds that Chheun Soknoy is considered an ordinary worker for the purposes of dismissal under the Labour Law.

Clause 8 of the employer's Internal Work Rules provides that a worker can be dismissed for "violation of the Internal Work Rules after receiving a final written warning".

According to the facts, the employer did not issue Chheun Soknoy with a written warning when he refused to work as the head of the cleaning group. Rather, it dismissed him immediately. Therefore, the Arbitration Council finds that Chheun Soknoy's dismissal was not consistent with the provision in the Internal Work Rules. Consequently, the employer must reinstate Chheun Soknoy. The Arbitration Council will now consider whether the employer must reinstate Chheun Soknoy to the position of head of the cleaning group.

Clause 5 of the Internal Work Rules states that "[e]ach worker must comply with and be responsible for his/her own role, duties, and appointments by the employer". This means that workers must comply with appointments made by the employer.

Article 2, paragraph two of the Labour Law (1997) provides that "[e]very enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in [a] factory, workshop, work site, etc., under the supervision and direction of the employer".

In previous cases, the Arbitration Council has interpreted this article to mean that an employer is entitled to supervise and direct the enterprise as long as this right is exercised lawfully and reasonably *(see Arbitral Awards 62/06-Quicksew, reasons for decision, issue 5; 108/06-Trinunggal Komara, reasons for decision, issue 1; 33/07-Goldfame, reasons for decision, issue 3; 106/07-M & V (Branch 3), reasons for decision, issue 3; 84/08-Trinunggal Komara, reasons for decision, issue 1; and 08/09-Global Apparels)*.

According to the facts, Chheun Soknoy refused the employer's order to work as the head of the cleaning group because he preferred to work as the leader or sub-leader of the sewing group in building 2 or the leader of any section matching his skills. He argues that cleaning is not compatible with his skills, and that the workers in the sewing group in building 2 support and like him. The employer maintains its refusal to this demand. It transferred Chheun Soknoy to the position of head of the cleaning group because the head of the sewing group in building 2 had returned from maternity leave and there was no one leading the cleaning group.

The Arbitration Council finds that the reassignment of Chheun Soknoy from head of the sewing group, which matched his skills, to head of the cleaning group, which did not match his skills, would not be reasonable because the skills he earned in the sewing group would deteriorate. Moreover, the workers did not argue that the positions of head of the

cleaning group and head of the sewing group were really different and further, they did not show sufficient evidence to explain why Chheun Soknoy could not work in different sections which are more or less consistent with his skills.

The Arbitration Council finds that the employer has the right to organise the production chain at the enterprise. Therefore, if there is no free vacancy for the position of group leader, the employer should transfer the worker to another section in which the worker can use their skills in the same or a similar way and receive the same wages and benefits.

In conclusion, the Arbitration Council orders the employer to reinstate Chheun Soknoy to a position that requires the same or similar skills and provide him with the same benefits he received as head of the sewing group.

Issue 2: The workers demand that the employer implement an agreement on the skill bonus providing that a competition must take place once a week to select two or three workers.

In this case, the workers demand that the employer implement an agreement made at the Kandal Labour and Vocational Training Office, dated 23 October 2008, which states that "[t]he employer agrees to continue holding the competition for all workers on a stage-by-stage basis and to provide the workers with a skill bonus based on the exact results of the competition and a determination by the employer".

However, the employer states that it changed the method for awarding the bonus from competition-based selection to the selection of workers based on speed and the achievement of set targets. Therefore, the Arbitration Council will consider whether the agreement dated 23 October 2008 made between the workers and the employer at the Kandal Labour and Vocational Training Office is valid.

Article 22 of Decree No. 38 on Contracts and Other Liabilities, dated 28 October 1988, states that "[a] contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties."

Article 5 of Decree No. 38 states:

> Every contract shall be deemed void:
>
> - that is illegal, and not consistent with public order or good customs;
> - that is contrary to social interests or violating social ethics;
> - whose subject matter is impossible to perform.

Based on Article 22 of Decree No. 38, the Arbitration Council finds that the agreement dated 23 October 2008 made between the workers and the employer at the Kandal Labour and Vocational Training Office is a legally binding agreement entered into

between the workers and the employer. Furthermore, the content of the agreement is not nullified by virtue of Article 5. The shift from competition to work-based selection was a unilateral change implemented by the employer without the consent of the worker party. A change made unilaterally does not enable the employer to avoid the obligations stipulated in the agreement. Therefore, the agreement dated 23 October 2008 executed at the Kandal Labour and Vocational Training Office is still valid. The employer stated that the buyers found the skill competition inappropriate because it was held on Sundays, meaning that workers were unable to relax. Consequently, it implemented a work-based selection process. The Arbitration Council finds that the employer did not support this statement with concrete evidence.

Therefore, the Arbitration Council orders the employer to hold a competition for the purposes of awarding the skill bonus, in accordance with the agreement. This means that it must arrange a competition for workers in all groups in accordance with the stages of production and provide the skill bonus based on the actual results of the competition, as determined by the employer.

Issue 4: The workers demand that the employer make it easier for them to obtain permission for sick leave with a medical certificate from a qualified doctor.

In this case, the workers demand that the employer make it easier for them to obtain permission for sick leave with a medical certificate from a qualified doctor. The employer rejects this demand, stating that it will only accept a medical certificate from the Kandal Referral Hospital. The Arbitration Council will consider the issue as follows:

Clause 4(K) on paid leave at Point 5 of the Internal Work Rules states that "[s]ick leave can only be granted where the worker fills out the permission form appropriately accompanied by a medical certificate from a state hospital."

Therefore, the Arbitration Council will consider whether the employer's recognition of only Kandal Referral Hospital as a "state hospital" in accordance with the Internal Work Rules is valid.

Article 71(3) of the Labour Law provides that a labour contract shall be suspended by reason of "[t]he absence of the worker for [an] illness certified by a qualified doctor. This absence is limited to six months, but can, however, be extended until there is a replacement".

According to this article, a labour contract is suspended when a worker is absent due to an illness certified by a qualified doctor.

In previous cases, the Arbitration Council has found that qualified doctors are those trained by medical schools acknowledged by the Ministry of Health, with certificates and

letters of permission to practice the profession from the Ministry of Health *(see Arbitral Awards 102/07-Terratex, reasons for decision, issue 2 and 72/08-Yung Wah (Branch 2), reasons for decision, issue 3).*

The Arbitration Council applies the above interpretation in this case. The Arbitration Council finds that "state hospitals" include urban and provincial supporting hospitals, district supporting hospitals, quarter supporting hospitals, commune health care centres, and district health care centres, which are under the National Health Structure, especially the Ministry of Health. Therefore, consistent with the Internal Work Rules and Article 71(3) of the Labour Law, the employer must accept medical certificates from all urban and provincial supporting hospitals, district supporting hospitals, quarter supporting hospitals, commune health care centres, and district health care centres, without limiting this to any particular hospital. Furthermore, the Arbitration Council finds that the employer must accept medical certificates from doctors who have been trained under the framework of the Ministry of Health and who have medical qualifications and authorisation to work at state or private hospitals. Moreover, in order to ensure the veracity of the certificate and the doctor's authority, a medical certificate from a state hospital should feature its official seal, and a medical certificate from a private hospital should be attached to the patent for its operation.

In conclusion, the Arbitration Council orders the employer to comply with Clause 4(K) on paid leave at Point 5 of the Internal Work Rules from the date that this award takes effect. This means that the employer must accept medical certificates issued by doctors trained under the framework of the Ministry of Health, who hold certificates and are permitted to practice their vocation, as the basis for approving sick leave.

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 reinstate Chheun Soknoy to a position that requires the same or similar skills and provide him with the same benefits.

Issue 2: Order the employer to hold a competition for the purposes of awarding the skill bonus, in accordance with the agreement. This means that it must arrange a competition for workers in all groups in accordance with the steps of production and provide the skill bonus based on the actual results of the competition, as determined by the employer

Issue 4: Order the employer to accept medical certificates issued by doctors recognised by the Ministry of Health when they ask for permission to take sick leave.

Type of award: non-binding award

This award of the Arbitration Council will become binding eight days after the date of its notification unless one of the parties lodges a written opposition with the Minister of Labour through the Secretariat of the Arbitration Council within this period.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....