



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 84/11-Supertex**

**Date of Award: 4 August 2011**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

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

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

#### **DISPUTANT PARTIES**

##### **Employer party:**

Name: **Supertex Ltd. (the employer)**

Address: National Road 2, Chakangrekrom Commune, Meanchey District, Phnom Penh

Telephone: 017 878 388

Fax: N/A

Representatives at the first hearing:

1. Mr Shen Xin Qi Director of Supertex Ltd.
2. Mr Liv Man Administrator (interpreter)

Representatives at the second hearing:

1. Mr Shen Xin Qi Director of Supertex Ltd.
2. Mr Liv Man Administrator
3. Mr Sri Kimyou Lawyer

##### **Worker party:**

Names:

1. **The Local Union of Voice Khmer Youth Union Federation (VKYUF)**
2. **The Local Union of Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU)**
3. **The first Local Union of Cambodian Union Federation (CUF)**

4. **The second Local Union of CUF**
5. **The Local Union of Cambodian Labour Union Federation (CLUF)**
6. **The third Local Union of CUF**
7. **The first Local Union of Free Union Federation of Khmer Labor (FUF)**
8. **The Local Union of Independence Trade Union of Cambodian Workers (ITUCW)**
9. **The second Local Union of FUF**
10. **The Local Union of Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**
11. **Workers' representatives at Supertex Ltd.**

Address: National Road 2, Chakangrekrom Commune, Meanchey District, Phnom Penh

Telephone: 016 825 789

Fax: N/A

Representatives at the first hearing:

- |                         |   |
|-------------------------|---|
| 1. Ms Tep Kimvannary    | President of ITUCW                              |
| 2. Ms Touch Nary        | President of the Local Union of ITUCW           |
| 3. Mr Seng Menghong     | Officer of CLUF                                 |
| 4. Mr Tu Monghor        | President of the Local Union of CLUF            |
| 5. Mr Srey Sereyvathana | Vice-President of FUF                           |
| 6. Mr Pen Vuthy         | President of the first Local Union of FUF       |
| 7. Mr Chhun Samoun      | Officer of FTUWKC                               |
| 8. Ms Seng Sokheang     | President of the Local Union of FTUWKC          |
| 9. Ms Sok Symontha      | Officer of CUF                                  |
| 10. Ms Sok Thach        | Secretary-General of CUF                        |
| 11. Mr Lor Thanak       | President of the third Local Union CUF          |
| 12. Ms Pen Kimseang     | President of the first Local Union of CUF       |
| 13. Mr Nguon Vanna      | Vice-President of the first Local Union of CUF  |
| 14. Ms Chou Savoeun     | Secretary of the first Local Union of CUF       |
| 15. Mr Sin Sophy        | Vice-President of the third Local Union of CUF  |
| 16. Ms Saray Synun      | Secretary of the third Local Union of CUF       |
| 17. Mr Sang Phany       | President of the second Local Union of CUF      |
| 18. Mr Chum Sophy       | Vice-President of the second Local Union of CUF |
| 19. Mr Prum Sophy       | Secretary of the second Local Union of CUF      |
| 20. Ms Chhem Pidor      | President of the Local Union of C.CAWDU         |
| 21. Mr Muo Chheang      | Officer of C.CAWDU                              |
| 22. Ms Zhvo Gui Yao     | Supervisor                                      |
| 23. Ms Huang Xin Chan   | Supervisor                                      |
| 24. Ms Khem Bopha       | President of the Local Union of VKYUF           |
| 25. Ms Kleav Kimsreang  | Secretary of VKYUF                              |

26. Ms Pheng Laisim	Workers' representative
27. Ms Pheng Seaklim	Workers' representative
28. Mr Lok Sreykich	Workers' representative
29. Ms Khem Sovanna	Workers' representative
30. Ms Ros Channa	Secretary of ITUCW
31. Mr Kong Mony	President of the second Local Union of FUF
32. Mr Long Keurn	Vice-President of the second Local Union of FUF

Representatives at the second hearing:

1. Mr Chhun Samoun	Officer of FTUWKC
2. Ms Tep Kimvannary	President of ITUCW
3. Ms Touch Nary	President of the Local Union of ITUCW
4. Mr Seng Menghong	Officer of CLUF
5. Mr Tu Monghor	President of the Local Union of CLUF
6. Mr Pen Vuthy	President of the first Local Union of FUF
7. Ms Sok Thach	Secretary-General of CUF
8. Mr Lor Thanak	President of the third Local Union of CUF
9. Ms Pen Kimseang	President of the first Local Union of CUF
10. Mr Nguon Vanna	Vice-President of the first Local Union of CUF
11. Ms Chou Savoeun	Secretary of the first Local Union of CUF
12. Mr Sin Sophy	Vice-President of the third Local Union of CUF
13. Mr Sang Phany	President of the second Local Union of CUF
14. Mr Chum Sophy	Vice-President of the second Local Union of CUF
15. Mr Prum Sophy	Secretary of the second Local Union of CUF
16. Ms Chhem Pidor	President of the Local Union of C.CAWDU
17. Mr Muo Chheang	Officer of C.CAWDU
18. Ms Khem Bopha	President of the Local Union of VKYUF
19. Ms Keo Kimsang	Vice-President of the Local Union of VKYUF
20. Ms Kleav Kimsreang	Secretary of VKYUF
21. Ms Pheng Laisim	Workers' representative
22. Mr Lok Sreykich	Workers' representative
23. Mr Kong Mony	President of the second Local Union of FUF
24. Ms Chou Sareoun	Worker Delegate
25. Mr Ly Kimsron	Officer of FUF
26. Mr Mom Thon	Officer of FUF
27. Ms Kim Thouch	Secretary of the second Local Union of FUF

### **ISSUES IN DISPUTE**

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

1- The workers demand that Supertex Ltd. pay 100% of their wages for June 2011, when it had no work available and failed to hold a meeting with the worker delegates or leaders of the unions and failed to request approval from the Ministry of Labour and Vocational Training for a work suspension. The employer has paid only 50% of the workers' wages for 2 to 20 June 2011 because the workers were informed of the work suspension and because this has been the employer's practice in the past.

2- The workers, and 20 workers whom the employer dismissed between 13 and 16 September 2010, demand that Supertex Ltd. pay their outstanding wages, a termination payment, and other money it owes them, because the labour disputes between the employer and the workers lasted over 20 days, during which time there was no fabric, [sewing] equipment, water or electricity at the factory. The factory's Chinese management transported the goods out of the factory. The employer refuses to accommodate their demand because [it claims] it was authorised by the Ministry of Labour and Vocational Training to suspend work, effective from 21 June 2011 to 20 August 2011, and that it did not dismiss the 20 workers, who are members of C.CAWDU, rather the workers abandoned their employment voluntarily.

3- The workers from China demand that Supertex Ltd. pay them the same termination payments that are given to the Cambodian workers. Supertex Ltd. says it cannot provide a termination payment to them because they are not its workers. Rather, they hold shares [in Supertex Ltd. or its parent company] based in Hong Kong, and come to work in Cambodia.

4- The workers on the third and fourth floors and in the Warehouse Section of the factory demand that the employer provide 100% of their wages for work they completed between 1 and 15 June 2011. The employer states that there is no one responsible for payment of these wages (i.e. Kok Vij gave authority to Peng Ding, another Director of Supertex Ltd., and Peng Ding refused to accept and returned the responsibility to Kok Vij).

### **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. 746 KB/RK/VK, dated 6 July 2011, was submitted to the Secretariat of the Arbitration Council on 7 July 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 hearings:** **First hearing: 18 July 2011 at 8:30 a.m.**  
**Second hearing: 21 July 2011 at 8:00 a.m.**

#### **Procedural issues:**

On 10 June 2011, the Department of Labour Disputes received the CFITU's complaint, No. 060/2011 SSEK dated 7 June 2011, the FTUWKC's complaint, No. 290/11 SSKPK dated 25 May 2011, the first and the second Local Unions of CUF's complaints, dated 13 June 2011, and the C.CAWDU's complaint, No. 062/11 SBK dated 14 June 2011, regarding the workers' demand that the employer provide their outstanding wages and termination payments. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 29 June 2011. As a result, one issue was conciliated. The four remaining issues were referred to the Secretariat of the Arbitration Council on 7 July 2011 via non-conciliation report No. 746 KB/RK/VK, dated 6 July 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the four non-conciliated issues. The first hearing was held on 18 July 2011 at 8:30 a.m. and the second hearing was held on 21 July 2011 at 8:00 a.m. Both parties were present at each hearing. The Arbitration Council attempted to conciliate the four issues; but the issues remained unresolved.

Normally, the parties who appear before the Arbitration Council have the right to choose between a binding or non-binding award, regardless of whether their dispute is an interests or rights dispute. However, in the *Memorandum of Understanding On Improving Industrial Relations in the Garment Industry* (MoU) signed by the Garment Manufacturers Association in Cambodia (GMAC) and six leading union confederations on 28 September 2010, the signatories agreed to submit their rights disputes to binding arbitration. For interests disputes, the signatories are able to choose either a binding or non-binding award at the hearing.

The ten Local Unions and worker delegates represented the workers in this case. Among the ten unions, only the Local Union of VKYUF is a non-signatory to the MoU.

Consequently, any award by the Council on rights disputes will not bind that union, even though it, along with the other unions, brings the above demands to the Council. Therefore, the Local Union of VKYUF has the right to lodge an objection to awards made by the Council on both rights and interests disputes.

The other nine unions and the worker delegates (who are all members of the nine unions) are signatories to the MoU. Thus, they have agreed to choose binding arbitration on rights disputes. Any award by the Council on rights disputes will be binding on both parties. The parties are able to choose non-binding arbitration on interests disputes, and can object to an arbitral award on such disputes. Any objection by the parties to an award on interests disputes will not affect their obligation to implement an award on rights disputes in accordance with the spirit of the MoU.

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. 008/2011, dated 28 June 2011, from the Director of Supertex Ltd. to the Head of the Department of Labour Inspection, requesting approval to suspend 1,816 workers for two months, from 20 June 2011 to 20 August 2011.
2. Internal Work Rules of the employer, dated 16 August 2005.
3. Statute of the company, dated 27 January 2011.

### **B. Provided by the worker party:**

#### **B-1. Local Union of C.CAWDU:**

1. Certificate of registration of the Local Union of C.CAWDU, dated 25 November 2008.
2. News announcement by the Minister for Social Affairs, Veterans and Youth Rehabilitation and Head of the Industrial Relations Working Group, calling for a meeting to discuss benefits for workers in the footwear and garment sector.
3. Letter, No. 1150 SCN, dated 12 October 2010, from the Council of Ministers to the Minister for Social Affairs, Veterans and Youth Rehabilitation and Head of the Industrial Relations Working Group, informing him of a report on the situation dated 29 September 2010, and a request to continue to implement the Prime Minister's recommendation that the strike be ended and all leaders of the Local Unions at garment and footwear factories be reinstated.
4. Notification, dated 18 August 2010 and endorsed by 60,000 workers, from the leaders of confederations, federations, unions, and associations, representing over 110,000

workers, to Van Sou Leng, the Chairman of the Garment Manufacturers Association in Cambodia, that workers in the garment and footwear sector will go on strike from 13 to 18 September 2010 at factories throughout the country.

5. List of names of the 20 workers whom the employer dismissed between 13-16 September 2010.
6. Letter, No. 82/11 SBK, dated 22 July 2011, from C.CAWDU to the Secretariat of the Arbitration Council, regarding a brief statement of labour disputes at Supertex Ltd.
7. Letter, No. 83/11 SBK, dated 22 July 2011, from C.CAWDU to the Secretariat of the Arbitration Council, regarding the submission of additional arguments to the brief statement of labour disputes at Supertex Ltd.
8. Last wages paid to the 20 workers on 10 August 2010.
9. Minutes of a meeting, dated 26 October 2010, regarding an inquiry for information from some union leaders sued in court by Supertex Ltd. because they participated in a strike from 13-16 September 2010. The meeting was presided over by Huon Sour and Soy Sopheap, members of the Strike-Riot Resolution Commission.
10. List of names of 15 union leaders holding undetermined duration contracts and another five holding fixed duration contracts.
11. Monthly timetable for the 20 workers.

**B-2. Local Union of ITUCW:**

1. Letter, No. 070/2011 SSEK, dated 19 July 2011, requesting the Arbitration Council to resolve the labour disputes at Supertex Ltd. as soon as possible.
2. Letter, No. 608 KB/RK/VK, dated 12 July 2010, from the Department of Labour Disputes to ITUCW, regarding the union's request for recognition of new union leaders and its third term.
3. Certificate of registration of the Local Union of ITUCW, dated 16 February 1998.
4. Statute of the Local Union of ITUCW, dated 8 June 2010.
5. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

**B-3. Local Union of CLUF:**

1. Certificate of registration of the Local Union of CLUF, No. 1791 KB/VK, dated 23 March 2010.

**B-4. Local Union of VKYUF:**

1. Certificate of registration of the Local Union of VKYUF, No. 1836 KB/VK, dated 1 June 2010.
2. Statute of the Local Union of VKYUF, No. 1538 KB/VK, dated 28 October 2008.
3. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

**B-5. First Local Union of FUF:**

1. Certificate of registration of the First Local Union of FUF, No. 1008 KKBV/VK, dated 13 September 2006.
2. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.
3. Minutes from meeting on settlement of wages of workers at Supertex Ltd. for May 2011, dated 17 June 2011.
4. Letter, dated 13 June 2011, from the union leaders, worker delegates, and the workers at Supertex Ltd. to the Prime Minister of Cambodia, making a complaint against Kok Vij, Director of Supertex Ltd. The workers claim that Kok Vij tried to maneuver them into resigning.
5. Letter, dated 13 June 2011, from the union leaders, worker delegates, and the workers at Supertex Ltd. to the Prime Minister of Cambodia, making a complaint against Mao Wei Kang, Director of Supertex Ltd. The workers claim that Mao Wei Kang tried to maneuver them into resigning.
6. Letter, No. 520 XN/011, dated 14 June 2011, from the office of the Prime Minister to the Minister for Labour and Vocational Training, informing him of the letters from the union leaders, worker delegates, and workers at Supertex Ltd.

**B-6. Second Local Union of CUF:**

1. Statute of the second Local Union of CUF, dated 20 February 2006.
2. Certificate of registration of the second Local Union of CUF, No. 707 KKBV/RK, dated 7 February 2005.
3. Brief statement by the Local Union of CLUF and the first and second Local Unions of CUF, regarding labour disputes at Supertex Ltd.
4. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

**B-7. Second Local Union of FUF:**

1. Brief statement by the Local Union of CLUF and the first and second Local Unions of CUF, regarding labour disputes at Supertex Ltd.
2. Certificate of registration of the second Local Union of FUF, No. 484 SKBY/RK, dated 8 September 2003.
3. Letter, No. 841 KKBV/RK, dated 10 June 2005, from the Department of Labour Disputes to the President of the second Local Union of FUF, regarding the union's request for recognition of new leaders and its second term.
4. Statute of the second Local Union of FUF, dated 20 February 2006.
5. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

**B-8. First Local Union of CUF:**

1. Brief statement by the Local Union of CLUF and the first and second Local Unions of CUF, regarding labour disputes at Supertex Ltd.

2. Certificate of registration of the Local Union of CUF, No. 924 KKBV/VK, dated 30 March 2006.
3. Letter, No. 252/10 SSX, dated 13 September 2010, from the CUF to the Director of Supertex Ltd., notifying him of an election for new leaders of the Local Union of CUF.
4. Statute of the first Local Union of CUF, No. 924 KKBV/VK, dated 30 March 2006.
5. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.
6. Minutes of an inquiry for information from the workers' representatives at Supertex Ltd., dated 15 June 2011.
7. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

B-9. Local Union of FTUWKC:

1. Certificate of registration of the Local Union of FTUWKC, No. 1326, dated 14 January 2008.
2. Letter, No. 662 KB/RK/VK, dated 24 June 2011, from the Department of Labour Disputes to the President of the Local Union of FTUWKC, regarding a request for recognition of new union leaders and its second term.
3. Letter, No. 290/11 SSKPK, dated 13 June 2011, from the Local Union of FTUWKC to the Department of Labour Disputes, making a complaint against the Director of Supertex Ltd. The complaint alleges that the employer does not pay wages to its workers.
4. Minutes of an inquiry for information from the workers' representatives at the company, dated 15 June 2011.
5. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

B-10. Workers' representatives:

1. Brief statement of labour disputes between the workers and the employer, dated 14 July 2011.
2. Letter from 479 workers authorising Khem Vanna, Cheang Seaklim, Lok Sreypich, and Peng Laisim to represent them in resolving the dispute at Supertex Ltd., dated 1 July 2011.
3. Application for an order of provisional relief, dated 10 June 2011. The application was submitted to the Phnom Penh Court of first instance by the lawyer of Abito (Taiwan) International Inc, requesting the court to restrain Supertex Ltd., its shareholders, directors, and all its representatives from selling off, exchanging, leasing, transferring, securitising, converting into shares, donating, or bequeathing any of the company's moveable and immovable property. An order of provisional relief was granted, temporarily refraining all the company's shareholders from selling off, exchanging, transferring, securitising, and bequeathing the company's property.

4. Minutes from meeting on settlement of wages of workers at Supertex Ltd. for May 2011, dated 17 June 2011.
5. Minutes of a meeting on labour dispute resolution presided over by the Head of the Riot-Strike Intervention Commission with the nine trade unions.
6. Minutes of inquiry for information on labour contract suspension from 20 June to 20 August 2011 from Supertex Ltd.'s representative. The meeting was presided over by Ouk Chanthou, the Deputy Head of the Department of Labour Inspection.
7. Patent certificate 2010 of Supertex Ltd., dated 3 March 2010.

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

1. Report of collective labour dispute resolution at Supertex Ltd., No. 746 KB/RK/VK, dated 6 July 2011.
2. Minutes of collective labour dispute resolution at Supertex Ltd., dated 29 June 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend the first hearing, addressed to the employer, No. 473 KB/AK/VK/LKA, dated 11 July 2011.
2. Notice to attend the first hearing, addressed to the workers, No. 474 KB/AK/VK/LKA dated 11 July 2011.
3. Notice to attend the second hearing, addressed to the employer, No. 502 KB/AK/VK/LKA, dated 19 July 2011.
4. Notice to attend the second hearing, addressed to the workers, No. 503 KB/AK/VK/LKA dated 19 July 2011.
5. Agreement on a binding award on rights disputes, dated 21 July 2011.

FACTS

- Having examined the report of 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:**

- Supertex Ltd. employs approximately 1,816 workers.
- 10 unions are claimants in this case, namely the Local Union of VKYUF, the Local Union of C.CAWDU, the first Local Union of CUF, the second Local Union of CUF, the Local Union of CLUF, the third Local Union of CUF, the first Local Union of FUF, the Local Union of ITUCW, the second Local Union of FUF, and the Local Union of FTUWKC.
- Other claimants include the workers from China and worker delegates.

- According to the employer's argument and the letter requesting approval for work suspension from the Ministry of Labour and Vocational Training, Abito (Taiwan) International Inc rents the factory buildings and has an agreement with Supertex Ltd. whereby Supertex Ltd. produces clothes exclusively in accordance with Abito (Taiwan)'s orders. Since Abito (Taiwan) withdrew its orders from Supertex Ltd. on 31 May 2011, the employer has had trouble providing its workers with work and wages.
- The employer sold off 500 sewing machines in order to pay its workers' wages for May 2011.
- In June 2011, the employer began to suspend workers' contracts for two periods: the first period effective from 2 to 20 June 2011 and the second effective from 20 June to 20 August 2011.
- The employer submitted a request for approval of work suspension to the Labour Inspector [at the Ministry of Labour and Vocational Training] on 28 June 2011, after it had already suspended the workers' contracts. As at the hearing date, however, the Labour Inspector had not responded to the request. The request was submitted 8 days after the employer suspended the workers' employment contracts.
- The employer has ceased all operation, cutting off the electricity and water supply to the factory.

**Issue 1: The workers demand that the employer pay their wages at a rate of 100% for the period of work suspension effective from 2 to 20 June 2011.**

- The employer suspended the workers' employment contracts and offered to pay their wages at a rate of 50% from 2 to 20 June 2011. The workers, however, did not agree to this offer.
- The employer has not obtained approval for the suspension from the Labour Inspector.
- The employer claims that in the past, after prior consultation with the workers, it has paid them at a rate of 50% of their wages when it has had no work for them. In this case, however, the employer failed to consult the workers because of the immediate withdrawal of purchase orders by Abito (Taiwan).
- The workers did not agree to the offer of 50% wage payment. The workers assert that the employer failed to consult them about the offer. The workers further state that they only realised that the employer had no work for them when they arrived at work.

**Issue 2: The workers demand that the employer terminate the contracts of workers holding undetermined and fixed duration contracts**

- The workers demand that the employer terminate the employment contracts of workers holding undetermined and fixed duration contracts.
- Approximately 1,000 workers hold undetermined duration contracts and approximately 800 hold fixed duration contracts.
- The lengths of the fixed duration contracts are one, three, and six months.

**A/ Case of workers holding undetermined duration contracts**

- The workers demand that the employer pay them compensation in lieu of prior notice, indemnity for dismissal, payment in lieu of annual leave, and outstanding wages.
- The workers demand that the employer calculate the termination payment on the basis of wages they received and not on their main wages.

**B/ Case of workers holding fixed duration contracts**

- The workers demand that the employer pay the wages that they would have received until the expiration of the contracts, severance pay comprising of 5% of their wages, and payment in lieu of annual leave.
- In addition to this demand, the workers demand that the employer pay the money owed to them [from previous contracts], including severance pay and 15 days' wages. The employer has agreed to pay as demanded by the workers.

**Workers' argument**

- The workers make this demand because the employer has had no work for them. Moreover, the workers assert that the employer is unable to continue its operations, since it has sold off sewing machines and cut off the electricity and water supply.
- In the first hearing, the employer stated that it would terminate all employment contracts. It claimed that it was unable to continue the workers' contracts. In the second hearing, however, the employer stated that it will not terminate the workers' contracts and has decided to put them on suspension instead, but it has no clear plan as to when it will have work for the workers.

**Employer's argument**

- The employer says that it will not terminate the workers' contracts because the contracts are on suspension effective from 20 June 2011 to 20 August 2011.

- The employer submitted a request for approval of work suspension to the Labour Inspector but, as at the hearing date, the Labour Inspector had not yet responded to the request.
- The employer states that it will terminate the workers' contracts only if the workers agree to accept the benefits that it provides.
- The employer claims that it is having a hard time and cannot find work for the workers. The employer further states that it cannot say exactly when it will have work for the workers.

### **C/ Case of the 20 dismissed workers**

- The 20 workers are members of the Local Union of C.CAWDU.
- The workers demand that the employer terminate their contracts following the correct legal procedure and pay their outstanding wages. They claim that the employer dismissed them in violation of the Labour Law.
- Of the 20 workers, 5 workers hold fixed duration contracts and the rest hold undetermined duration contracts.
- On the afternoon of 13-16 September 2010, the 20 workers participated in a strike.
- The workers state that the strike was staged to demand an increase in minimum wages.
- On 17 September 2010, the 20 workers returned to work. The employer, however, stated at the hearing that even though they had come back to work, it would not pay them.

### **Employer's argument**

- The employer claims that the 20 workers abandoned their work when they left the workplace without permission to participate in the strike. The employer contends that the act of leaving the workplace without permission is considered an abandonment of work. The employer also considers it to be serious misconduct.
- The employer further states that the government will help resolve the dispute with the 20 workers and the employer will act accordingly.

### **Workers' argument**

- The workers argue that the dismissal was illegitimate.
- According to the workers' brief statement and Notification 1150, the government ordered that the 20 workers be reinstated. Furthermore, the strike was lawful. Thus, the employer must reinstate them.

- The workers demand that the employer terminate their contracts in accordance with the law and pay them termination payments as paid to other workers, including outstanding wages dating back to the date they were dismissed.
- The workers who allegedly abandoned their work are listed as follows:

No.	Name	Position	ID Number
1	Chhem Pidor	President	85615
2	Tuoch Sarith	Vice-President	12548
3	Nak Nop	Secretary	11820
4	Hong Hout	Treasurer	13536
5	Hak Sokhim	Advisor	15079
6	Leoung Bunhang	Advisor	12907
7	Sean Sros	Member	12258
8	Prum Sokchea	Member	12093
9	Khin Savoun	Member	15444
10	Sar Vannak	Member	12195
11	Chum Chanthoeun	Member	11267
12	Phon Sophea	Member	12033
13	Nov Sreyrna	Member	11884
14	Thou Non	Member	15092
15	Khan Synan	Member	11446
16	Pou Chantra	Member	20871
17	Khun Sreynich	Member	21478
18	Khat Chanoun	Member	21829
19	Khim Channy	Member	21828
20	Tu Khunthea	Member	21328

**Issue 3: The workers from China demand that the employer terminate their contracts.**

- At the first hearing of 18 July 2011, the workers from China appeared before the Arbitration Council. At the second hearing of 21 July 2011, however, they were absent without providing any reason.
- The Secretariat notified them of the second hearing through the notice to attend the hearing, No. 503/KB/RK/VK/LKA, dated 19 July 2011.
- They did not authorise the unions or any person to represent them at the hearing.

**Issue 4: The workers on the third and fourth floors and in the Warehouse Section of the factory demand that the employer pay their wages for 1-15 June 2011.**

- About 450 workers make this demand.

- These workers completed work for the employer from 1 to 15 June 2011; the employer has not paid them yet.
- The employer states that it will pay the workers but it is not sure who is responsible for the payment because Kok Vij has given authority to Peng Ding.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the employer pay their wages at a rate of 100% for the period of work suspension effective from 2 to 20 June 2011.**

Before turning to the issue above, the Arbitration Council considers whether or not the demand gives rise to a rights dispute.

In previous Arbitral Awards, the Arbitration Council has held that “a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement” (see AA 05/11-M&V 1, reasons for decision, issue 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issue 1 and 2; 14/11-GHG, reasons for decision, issue 4).

The demand for wage payment at a rate of 100% during the no-work period is a rights dispute because it has a basis in the law.

The Arbitration Council considers whether or not the work suspension from 2-20 June 2011 has complied with the legal procedure.

Article 71 (11) states:

The labor contract shall be suspended under the following reasons:

When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector.

Based on this article, a labour contract can be suspended when the Labour Inspector confirms that the employer is in serious economic or material difficulty or any particularly unusual difficulty. The suspension must not surpass two months and will be under the control of the Labour Inspector.

In Arbitral Award 22/05-Ocean, issue 2, the Arbitration Council stated that “the suspension of the labour contract must have been notified to and approved by the Labour Inspector” (see AA 22/05-Ocean, reasons for decision, issue 2; 72/05-North Gaiety, reasons for decision, issue 1). Accordingly, the employer must notify the Department of Labour Inspection and obtain approval from the Department. This means that the Labour Inspector has a duty to perform a site investigation and to confirm whether or not the employer is in serious economic difficulty. This is done to avoid a heavy burden on the national economy

and a loss of workers' benefits (see AA 27/08-Archid, reasons for decision, issue 6; 105/04-United Eternity, reasons for decision, issue 1).

Based on the facts, the Arbitration Council finds that the employer is in serious economic difficulty due to the immediate withdrawal of the orders. Thus, the suspension is warranted. Moreover, the suspension lasted only 19 days and not beyond two months. However, the Council finds that the employer has not obtained approval from the Labour Inspector to suspend the workers' contracts. The employer must obtain approval from the Labour Inspector even though it has proper reasons to suspend the workers' contracts and the suspension lasted less than two months. The suspension is contrary to the legal procedure in the Labour Law.

Article 72 point 1 of the Labour Law states:

The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

Article 72 clearly states that the workers are not required to work and the employer is not required to pay wages in the case of a work suspension.

In previous Arbitral Awards, the Arbitration Council has held that an employer is not obliged to pay its workers in the case of a labour contract suspension which has complied with the legal procedure in the Labour Law. The Council has also ruled that if an employer has failed to suspend the contracts in accordance with Article 71 (11) of the Labour Law, it is obliged to pay 100% of the workers' wages (see AA 21/03-Loyal, reasons for decision, issue 8; 01/04-New Point and 46/04-MNA, reasons for decision, issue 1; 60/06-Newmax, reasons for decision, issue 2; 74/07-Global Apparel, reasons for decision, issue 1; 27/08-Archid, reasons for decision, issue 6; 28/08-Finegis, reasons for decision, issue 1 and 2; 53/08-Yung Wah 1, reasons for decision, issue 1).

In conclusion, the employer must pay full wages to the workers for the period of the unauthorised work suspension from 2-20 June 2011.

## **Issue 2: The workers demand that the employer terminate the contracts of workers holding undetermined and fixed duration contracts.**

Before turning to the issue above, the Arbitration Council considers whether or not the demand gives rise to a rights dispute.

In previous Arbitral Awards, the Arbitration Council has held that "a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement" (see AA

*05/11-M&V 1, reasons for decision, issue 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issue 1 and 2; 14/11-GHG, reasons for decision, issue 4).*

Based on this interpretation, this is a rights dispute because the demand for contract termination has a basis in the law.

In the hearing, the workers demanded that the employer terminate their contracts if it does not have work for them. The Arbitration Council considers whether or not the employer is obliged to terminate the workers' contracts when it does not have work for them.

#### **A/ Case of workers holding undetermined duration contracts**

Article 74 of the Labour Law states that “[t]he labour contract of unspecified duration can be terminated at will by one of the contracting parties.”

In Arbitral Award 09/05-Kin Tai, issue 1, the Arbitration Council interpreted this article to mean that:

each party to an undetermined duration contract can cancel the contract individually... However the employee cannot force the employer to cancel the employment contract because the employer can hire, rehire or terminate the employment contract of any worker in accordance with the law; and in this case the company argued that they still wish to employ all the workers and were not willing to terminate any worker. Therefore the Arbitration Council finds that the demand to force the employer to cancel the employment contract in this dispute is not in accordance with legal rules and the Labor Law.

The Arbitration Council agrees with this interpretation.

In this case, the Arbitration Council finds that the employer is unwilling to terminate the workers.

Based on Article 74 of the Labour Law and the interpretation above, the workers are not entitled to make such a demand. However, if they do not want to work for the employer, the workers can cancel their contracts individually by giving prior notice.

In Arbitral Award 09/05-Kin Tai, issue 2, the Arbitration Council held that:

if the company terminates a contract by its own intention and the termination does not follow the Labor Law procedures, the employees have sufficient rights under the law to demand the employer pay termination compensation under Article 75, 89 and 91 of [the] Labour Law... [The Arbitration Council finds that] the workers' demand for the company to pay termination compensation under Article 75, 89 and 91 of the Labour Law for those who resign individually is above the law because a resignation is a right of the employees but they do not receive benefits under Article 75, 89, and 91 of the Labor Law.

Based on this interpretation, the workers are unable to receive benefits in accordance with Articles 75, 89, and 91 of the Labour Law if they resign. Only if the employer terminates their contracts can the workers receive the benefits in Articles 75, 89, and 91.

However, Article 90 of the Labour Law states:

Indemnity for dismissal must be granted to the worker and, if applicable, he can also claim damages even though the contract was not terminated by the employer, but the latter, through his incitements, pushed the worker into ending the contract himself.

Based on the facts, the Arbitration Council finds that the employer is in serious economic difficulty and does not have the ability to pay the workers' wages for May. Moreover, the employer cannot find work for the workers from June to August 2011. For this reason, the employer suspended the workers' contracts without approval from the Labour Inspector.

According to the law, the employer has two options; either to suspend or terminate the workers' contracts when it does not have work for them. The employer argued in the first hearing that it was unable to continue the workers' contracts, but in the second hearing the employer changed its position, deciding to suspend the workers' contracts instead. However, it failed to present evidence or to offer an explanation as to when it will be able to provide work beyond the work suspensions in June and August. The employer only argued that it is in a difficult situation. In this regard, the Arbitration Council considers that, even though it is difficult to continue the workers' contracts in this situation, the decision to suspend the contracts without a clear plan is improper because it affects the workers' livelihood, time, and the benefits that they would have received during their tenure, and their hope to continue their work at the factory diminishes their prospects of getting a new job.

Based on the foregoing, the Arbitration Council considers that the workers make this demand because of the uncertain situation at Supertex Ltd. after the unauthorised work suspensions in June and August. The Council is of the view that this uncertain situation compels the workers to cancel their contracts individually. For this reason, the workers are entitled to indemnity for dismissal and damages in accordance with Article 90.

In conclusion, the employer must pay the workers indemnity for dismissal and damages in accordance with Article 90 of the Labour Law.

- **Compensation in lieu of prior notice**

Based on the above interpretation, Article 90 of the Labour Law entitles the workers to obtain only indemnity for dismissal and damages. The Arbitration Council considers that compensation in lieu of prior notice, provided for in Articles 75 and 77 of the Labour Law, is paid to workers only in cases where the *employer terminates* their contracts without prior notice. In this case, the employer has not terminated the workers' contracts. The workers did not accept the employer's offer to suspend their contracts and demanded to have their contracts terminated with termination payments.

In conclusion, the Arbitration Council rejects the workers' demand that the employer pay them compensation in lieu of prior notice.

- **Indemnity for dismissal**

Article 89 of the Labour Law states:

If the labor contract is terminated by the employer alone, except in the case of a serious offense 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. If the worker's length of service is longer than one year, time fractions of service of six months or more shall be counted as an entire year.

Based on this article, the employer must pay indemnity for dismissal to the workers in accordance with their seniority.

- **Damages:**

Article 91 of the Labour Law states:

The termination of a labor 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.

Based on this provision, the workers can obtain damages if the employer terminates their contracts with no valid reasons.

The Arbitration Council considers that it will be reasonable for the employer not to pay damages to the workers if it terminates their contracts on the grounds of no work; however, the employer continues to employ them although it is unable to provide work. Such a decision incurs loss of benefits for the workers.

Therefore, although the workers cancel their contracts individually, the employer must pay damages because it pushed them into terminating their contracts, in accordance with Article 90.

The workers failed to specify the amount of damages they want to be paid. Based on the above article, the workers should receive damages equal to indemnity for dismissal.

- **Calculation method for indemnity for dismissal and damages**

The employer must calculate the amount of indemnity for dismissal and damages on the basis of average daily wages as below:

$$\text{Average daily wages} = \frac{\text{total wages received in the 12 month period prior to termination}}{12 \text{ months} \times 26 \text{ working days}}$$

Total wages include overtime payments and bonuses received in the 12 months prior to termination (*AA 27/04-MSI, reasons for decision, issue 1; 51/04-Sam Han, reasons for decision, issue 1; 51/08-ASD, reasons for decision, issue 3*).

**B/ Case of workers holding fixed duration contracts**

According to the above interpretation, although the workers demand that the employer terminate their contracts, they are still entitled to receive indemnity for dismissal and damages because of the employer's uncertain situation. This also applies in the case of fixed duration contracts.

- **Severance pay:**

Article 73 paragraph 6 of the Labour Law states:

At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing is set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.

Based on this article, the workers are entitled to receive severance pay at least equal to 5% of the total wages they would have received during the length of the contract.

- **Damages:**

Article 73 paragraph 3 of the Labour Law states:

The premature termination of the contract by the will of the employer alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract.

According to the above interpretation, the effect of the workers cancelling their contracts individually is the same as where the employer terminates their contracts. Thus, the workers are entitled to receive damages equal to the wages they would have received until the termination of the contract.

- **Outstanding wages:**

According to the facts, the employer agrees to pay the workers' outstanding wages [from previous contracts], including 15 days worth of unpaid wages and severance pay equal to 5% of their wages. Thus, the Arbitration Council holds that the employer must pay these wages to the workers.

- **Employment certificate:**

Article 73 paragraph 8 of the Labour Law states that "[i]n every case of contract termination, the worker can require the employer to provide him with an employment certificate."

This means that [where required by the worker] the employer must issue an employment certificate to each worker upon termination of the contract.

According to the facts, the workers demand that the employer provide an employment certificate to them. Therefore, in accordance with the above article, the Arbitration Council holds that the employer must issue an employment certificate to each worker.

- **Payment in lieu of unused annual leave for the workers holding undetermined or fixed duration contracts:**

Article 166 paragraph 1 of the Labour Law states:

Unless there are more favorable provisions in collective agreements...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.

Article 167 paragraph 2 of the Labour Law states:

If 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 this article, the workers are entitled to receive payment in lieu of unused annual leave even though they terminated their contracts voluntarily. The employer must make such payment to the workers.

In previous Arbitral Awards, the Arbitration Council has held that the employer must calculate payment in lieu of annual leave on the basis of the total wages earned by the worker in the last 12 months, divided by 12 to get the monthly average wage, and then divided by 26 to get the daily average wage. This is the basis for calculating payment in lieu of annual leave for the workers (*see AA 27/04-MS, reasons for decision, issue 3; 94/07-Fortune, reasons for decision, issue 2*).

In conclusion, the Arbitration Council orders the employer to provide payment in lieu of unused annual leave to the workers holding fixed and undetermined duration contracts.

- **Outstanding wages for workers holding undetermined or fixed duration contracts:**

1. For the workers whose wages are outstanding for work they have completed: their wages from 1 to 15 June 2011 are outstanding. Thus, the employer must pay these wages to the workers.
2. For suspended workers: Their wages from 2 to 20 June 2011 are outstanding. Based on the above interpretation of issue 1, the employer must pay wages during the no-work period because it failed to obtain approval for the work suspension from the Labour Inspector.

**C/ Case of the 20 dismissed workers:**

According to the facts, the workers demand that the employer terminate their contracts in accordance with the correct legal procedure. They assert that they were wrongfully dismissed and therefore are entitled to be reinstated. The employer claims that the Arbitration Council has no jurisdiction over this dispute because it is under the authority of the government.

The Arbitration Council considers whether it has jurisdiction to resolve the dispute involving the 20 workers.

Article 312 of the Labour Law states:

The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, that are the direct consequence of the current dispute.

This article means that the Arbitration Council has jurisdiction over disputes specified in the non-conciliation report provided by the Ministry of Labour and Vocational Training.

In principle, the Labour Inspector and the Ministry of Labour and Vocational Training have a duty to decide which disputes are individual and which are collective before sending a case to the Arbitration Council. Normally, the Arbitration Council will follow such a decision of the Labour Inspector and the Ministry of Labour and Vocational Training unless there is an explicit reason to object to the decision (*see AA 10/03-Jacqsintex, 07/05-Coca Cola, 41/04-MiCasa, and 02/04-Cambodiana Hotel*).

In this case, since the employer has not raised any argument as to whether or not the dispute is collective, the Arbitration Council has jurisdiction to resolve this collective labour dispute between the 20 workers and the employer.

According to the facts, the employer contends that the 20 workers abandoned their work. The employer claims that the workers left their workstations to participate in a strike and that their acts are considered an abandonment of work in accordance with the Internal Work Rules.

Clause 6 point B of the Internal Work Rules states that consecutive unauthorised leave of 7 days will result in termination without prior notice. Based on the facts, the Arbitration Council considers that the employer's assumption of work abandonment because of the workers' participation in the strike is unwarranted. The ground for termination is that the workers were absent for three and a half days. The employer's alternative claim that the workers' participation in the strike constitutes serious misconduct is also unwarranted.

In previous Arbitral Awards, the Arbitration Council has held that "participation in a strike does not constitute serious misconduct (*see AA 76/04-M&V, reasons for decision, issue 3; 70/04-Ha Na, reasons for decision, issue 1; 125/09-Wincam Corporation, reasons for decision, issue 1*).

The Arbitration Council agrees with the above interpretation. The Council is of the view that the right of workers to strike is provided for in the Labour Law and the constitution of the Kingdom of Cambodia. Lawful or unlawful strike action does not constitute serious misconduct which is a basis for termination.

Moreover, Article 332 paragraph 2 of the Labour Law states: “The worker shall be reinstated in his job at the end of the strike.”

Article 333 of the Labour Law states:

The employer is prohibited from imposing any sanction on a worker because of his participation in a strike. Such sanction shall be nullified and the employer shall be punishable by a fine in the amount set in Article 369 of Chapter XVI.

Arbitral Award 01/06-Goldtex Hing Shing, issue 7, reads: “Dismissing the workers based on their participation in a strike is illegal.”

The Arbitration Council considers that such dismissal is contrary to Articles 332, 333, and previous jurisprudence of the Council. Therefore, the Council holds that the dismissal has no valid reason. As a result, the 20 workers are entitled to receive the same termination benefits as those received by the other workers in issue 2. Moreover, the employer must pay outstanding wages from the date it dismissed the workers to 20 June [2011], the date that the workers demanded that the employer terminate their contracts after work suspension.

### **Issue 3: The workers from China demand that Supertex Ltd. terminate their contracts.**

The workers from China failed to authorise the unions or any person to represent them at the second hearing.

Clause 21 of *Prakas* 099 dated 21 April 2004 on the Arbitration Council states:

In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.

Rule 4.7 of the Procedural Rules of the Arbitration Council, Annex to *Prakas* 099 dated 21 April 2004 states:

If a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award.

In Arbitral Awards 16/07-Lotus, 27/07-M&V 3, 95/08-Yung Wah 1, 132/08-GHG, and 138/08-Maxlin, the Arbitration Council has interpreted this clause to mean that three conditions must be fulfilled for the Council to close a case:

The first condition [is] that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for this lack of appearance.

The Arbitration Council will consider the case of the Chinese workers as follows:

First condition: The Secretariat of the Arbitration Council has notified the Chinese workers to attend the second hearing through letter No. 503 KB/RK/VK dated 19 July 2011. Thus, this condition is met.

Second condition: Having been duly notified, the Chinese workers failed to attend the hearing of 21 July 2011. Thus, this condition is also met.

Third condition: The Chinese workers failed to provide any reason for their non-appearance. Thus, this condition is met.

Based on the above, the Arbitration Council holds that the Chinese workers have dropped their claim, and therefore the Council will not consider their demand.

**Issue 4: The workers on the third and fourth floors and in the Warehouse Section of the factory demand that the employer pay their wages for 1 to 15 June 2011.**

Before turning to this demand, the Arbitration Council considers whether or not the demand is a rights dispute.

In previous Arbitral Awards, the Arbitration Council has held that “a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement” (see AA 05/11-M&V 1, reasons for decision, issue 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issue 1 and 2; 14/11-GHG, reasons for decision, issue 4).

The demand for wages for days worked for the employer has a basis in the law, thus making it a rights dispute.

Based on the facts, the Arbitration Council finds that the 450 workers worked for the employer between 1 and 15 June 2011.

Article 102 of the Labour Law states:

For the purposes of this law, the term "wage", irrespective of what the determination or the method of calculation is, means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered.

This article means that the employer must pay wages to the workers in accordance with their employment contracts. It also means that the employer must pay wages for the period the workers worked for the employer.

Based on the facts, the workers worked for the employer from 1 to 15 June 2011 and the employer acknowledges this.

Therefore, the employer must pay wages to the workers for the period from 1 to 15 June 2011.

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

### **DECISION AND ORDER**

#### **Issue 3:**

- Decline to consider the Chinese workers' demand.

#### **Part I. Rights dispute:**

##### **Issue 1:**

- Order the employer to pay wages at a rate of 100% to workers for the no-work period from 2-20 June 2011.

##### **Issue 2:**

#### **A. Case of workers holding undetermined duration contracts**

- Reject workers' demand that the employer pay compensation in lieu of prior notice.
- Order the employer to pay indemnity for dismissal in accordance with workers' seniority.
- Order the employer to pay damages equal to indemnity for dismissal.
- Order the employer to pay outstanding wages to those workers who have not yet received their wages.
- Order the employer to provide payment in lieu of unused annual leave to the workers.

#### **B. Case of workers holding fixed duration contracts**

- Order the employer to provide severance pay equal to at least 5% of the wages the workers would have received during the length of contract.
- Order the employer to pay damages at least equal to the wages the workers would have received until the termination of the contract.
- Order the employer to pay the workers the money it owes, as promised.
- Order the employer to issue an employment certificate to each worker.
- Order the employer to provide payment in lieu of unused annual leave to the workers.

**C. Case of the 20 dismissed workers**

- Order the employer to pay wages to workers from the date of termination to 20 June 2011.
- Order the employer to provide termination payments to the 20 workers as stipulated in issue 2, points a and b.

**Issue 4:**

- Order the employer to pay the workers' outstanding wages for the period of 1-15 June 2011.

**Type of Award: Binding award**

The award of the Arbitration Council in part I will be final and is enforceable by the nine unions, except for the Local Union of VKYUF, and by the employer in accordance with the MoU.

The award in Part I will become binding on the Local Union of VKYUF and the employer 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.

**Part II. Interests dispute: N/A**

**Type of Award: Non binding award**

The award in Part II 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 ARBITRAL PANEL:**

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Sin Kimsean**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....