



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**  
**THE ARBITRATION COUNCIL**

**Case number and name: 41/09-ASD**

**Date of award: 22 April 2009**

**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: **An Nan**

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

**DISPUTANT PARTIES**

**Employer party:**

Name: **ASD (Cambodia) Co., Ltd. (the employer)**

Address: Angkeo Village, Kantork Commune, Angsnoul District, Kandal Province

Telephone: 012 928 966

Fax: N/A

Representative:

1. Mr Pov Arun

Head of Administration

**Worker party:**

Name: **Cambodia Federation Voices' of Worker Union (CFWU)**

**Local Union of CWFU**

Address: Trapang Lvea Village, Kakab Commune, Dangkor District, Phnom Penh

Telephone: 092 77 68 62

Fax: N/A

Representatives:

1. Mr Phorn May

President of CFWU

2. Mr Sok Vuthy

President of the Local Union of CFWU

3. Mr Chhay Nam

Secretary of the Local Union of CFWU

## **ISSUES IN DISPUTE**

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

1. The employer agrees to verbally advise the head of production to stop shouting at, insulting, and displaying bad behaviour towards workers. The workers insist that the employer give him a written warning.
2. The workers demand that the employer stop threatening and limiting the freedom of workers who have earned the skill bonus. The employer states that this issue has been resolved and that Chhay Nam's case is a separate issue.
3. The workers demand that the employer lower production targets to be proportionate to an eight hour day and that the workers be allowed to relax when they reach the target. The employer will follow its existing practice.
4. The workers demand that the employer check the boiler pipes, as smoke and ashes trouble workers when they are trying to work, and that it consider moving the workers' canteen which is located next to the garbage pile and toilets.
5. The workers demand that the employer provide a parking lot for their motorbikes and bicycles so that they can avoid flooding and mud.
6. The workers demand that the employer supply sufficient medicine for them.
7. The workers demand that the employer pay the meal allowance regularly and on time to workers who work overtime from 6:00 p.m. to 8:30 p.m.
8. The workers demand that the employer reinstate Chhay Nam, the secretary of the Local Union of CFWU.

## **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. 110/09 KB/KN dated 14 March 2009 was submitted to the Secretariat of the Arbitration Council on 19 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:** 24 March 2009 at 3:00 p.m.

### **Procedural issues:**

On 23 February 2009, the Department of Labour Disputes received a complaint from CFWU, dated 18 December 2008, that the director of ASD had refused to hold discussions with the union. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute on 13 March 2009, resulting in one of the nine issues being resolved. The eight non-conciliated issues were referred to the Secretariat of the Arbitration Council on 19 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 eight non-conciliated issues, held on 24 March 2009. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the eight non-conciliated issues and agreement was reached in relation to issues 1, 4, 5, and 6. The workers agreed to combine issues 2 and 8 (which relate to Chhay Nam). Therefore, the Arbitration Council will consider issues 2 and 8 (which relate to Chhay Nam), issue 3, and issue 7 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:**

- ASD (Cambodia) Co., Ltd. employs 850 workers.
- CFWU is the claimant in this case.

**A. Issues upon which the parties agreed.**

**Issue 1:** The parties agreed that the employer would educate the head of production and other workers using the same strategies; first on a verbal basis and then on a written basis.

**Issue 4:** On 25 March 2009, the parties agreed to co-examine the boiler chimney and wasted ash and find ways to make changes to lessen the negative impact on workers.

**Issue 5:** The employer has prepared to lay gravel in the parking lot, but if it is still flooded in the coming rainy season, it will further examine the matter and make changes.

**Issue 6:** The employer has agreed to provide an adequate amount of medicine.

**B. Non-conciliated issues which the Arbitration Council will consider in the award.**

**Issues 2 and 8: The workers demand that the employer reinstate Chhay Nam and stop threatening him and restraining his rights.**

- Chhay Nam is a mechanic at the ASD factory.
- The employer transferred Chhay Nam from the mechanic section to a new place near the accounting office before deciding to suspend him. This transfer was prompted by the fact that Chhay Nam was not willing to work as actively as before, that is, he would not work unless he was told to do so. He was transferred to a new location near the accounting office because this is where the mechanics are provided with supplies.
- Chhay Nam claims that he wouldn't perform a job unless there was an order because he was afraid that he would make mistakes without an order. He had once been accused of spending 50% more than the original budget when building the hall.
- The employer states that Chhay Nam's transfer to the new location did not have any impact on his wage, and he continued to work the same hours. The distance between the old and new locations is approximately 10 metres. Chhay Nam still worked as a mechanic, so the skills used were the same.
- The employer states that it decided to suspend Chhay Nam on 10 January 2009 because he refused to work in the new location. However, the Kandal Vocational Training and Employment Office found that the employer had inappropriately dismissed Chhay Nam and ordered his reinstatement in a letter dated 17 February 2009 which stated "...you must reinstate Chhay Nam and back pay his wages..."
- Chhay Nam refused to work in the new location because he is the secretary of the local union and he cannot meet other workers in the new location. The old location was close to other workers. In relation to the expense he incurred building the hall, he argues that he just acted in accordance with the employer's orders.

- At the hearing, the employer agreed to reinstate Chhay Nam but to the new location close to the accounting office. However, Chhay Nam refuses to work there and demands to work in his previous location.
- Chhay Nam demands that the employer stop making threats, such as calling the police to arrest him. The employer responds that it did not call the police to arrest him. The employer threatened to call the police to measure the steel for building the hall because it cost so much and everyone else was too afraid of having problems with Chhay Nam to measure the steel themselves. However, the employer did not call the police.
- The workers did not provide any other evidence of threats or restraint of rights.

**Issue 3: The workers demand that the employer lower the production target to be proportionate to an eight hour working day.**

- The employer's present practice is to determine the production target in proportion to an eight, 10, or 12 hour working day. For example, it requires a group of workers to sew 1,200 pieces within 10 or 12 hours. If the workers finish the task at 3:00 p.m., they can go home and the employer will calculate their wages based on the original number of hours allocated, either 10 or 12 hours.
- The workers demand that the employer determine the production target in proportion to an eight hour working day because sometimes they are forced to work for more than 10 or 12 hours in order to meet the target. The workers demand that the employer determine the production target in proportion to eight ordinary hours plus overtime because the Labour Law limits normal working hours to eight hours plus two hours of overtime. The workers state that the employer determines the production target in proportion to 10 or 12 hours almost every day each week.
- The employer refutes this claim because the target is determined by the production section.

**Issue 7: The workers demand that the employer regularly pay the meal allowance for overtime work from 6:00 to 8:30 p.m.**

- Normal working hours at the ASD factory run from 7:00 until 11:30 a.m. and from 12:30 until 4:00 p.m. if there is no overtime.
- The parties agree that there are sometimes two hours of overtime work, when the workers finish at 6:00 p.m. and the employer pays each worker a meal allowance of 1000 riel. This allowance is paid along with the workers' wages, and this point is not

disputed. For longer overtime work from 6:00 p.m. to 8:30 p.m., the employer has agreed to provide workers with an additional 1000 riel.

- The workers claim that when the factory commenced operation the meal allowance for overtime until 8:30 p.m. was paid on a daily basis by the head of the group. However, since the beginning of 2009 the payment has been up to three or four days or a week late and sometimes it is not paid at all.
- The employer admits that payment was made late but never more than one week.

### **REASONS FOR DECISION**

#### **A. Issues upon which the parties agreed.**

The Arbitration Council will not consider issues 1, 4, 5, and 6 because the parties have reached agreement on these issues.

#### **B. Non-conciliated issues which the Arbitration Council will consider in the award.**

##### **Issues 2 and 8: The workers demand that the employer reinstate Chhay Nam and stop threatening him and restraining his rights.**

In this case, the workers demand that the employer reinstate Chhay Nam, the secretary of the union. At the hearing, the employer agreed to reinstate Chhay Nam to the same position and wage, but he would be required to work cleaning machine parts at the new location near the accounting office. Therefore, there is no dispute regarding the reinstatement, rather the dispute relates to the change in Chhay Nam's work location. Therefore, the Arbitration Council will consider whether the dispute regarding the change of work location was recorded in the non-conciliation report of the Ministry of Labour or is a direct consequence of the dispute.

Article 312 of the Labour Law (1997) states that "[t]he 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.

In previous cases the Arbitration Council has declined to consider demands which are not contained in the non-conciliation report of the Ministry of Labour and are not the direct consequence of the dispute (*see Arbitral Awards 153/08-Hytex, issues 1, 2, & 3; 06/08-Kingsland, issue 2; 14/07-Supreme, additional issues; 42/07-South Bay, issue 3; and 29/05-Kang Ning, issue 7*).

According to the facts, the dispute regarding the change in Chhay Nam's work location did not arise subsequent to the non-conciliation report. Rather, it arose prior to the report. As Chhay Nam did not agree to the transfer, the employer decided to suspend him.

This dispute was not recorded in the non-conciliation report. Therefore, the Arbitration Council declines to consider the demand that the company reinstate Chhay Nam, the secretary of the Local Union CFWU, to his previous location.

As for the demand that the employer cease all threats and restraints on the workers' rights, the workers failed to provide concrete evidence. In previous cases, the Arbitration Council has determined that the claimant party is responsible for presenting evidence (see *Arbitral Awards 79/05-Evergreen; 77/08-Xing Tai, issue 1; 101/08-GDM, issues 1 and 2; and 108/08-Hugo International, issue 4*).

In this case, the Arbitration Council applies the interpretation in previous arbitral awards. As a result, the Arbitration Council rejects the demand that the employer cease all threats and restraints on workers' rights.

In conclusion, the Arbitration Council declines to consider the demand that the employer reinstate Chhay Nam, the secretary of CFWU, and rejects the demand that the employer cease all threats and restraints on workers' rights.

**Issue 3: The workers demand that the employer lower the production target to be proportionate to an eight hour working day.**

In this case, the workers do not demand that the employer re-evaluate the production target because it is too high, but that it be limited to eight working hours. Therefore, the Arbitration Council will consider whether the employer has set a production target which is more than can be achieved by the workers in eight working hours.

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 found that the above paragraph means that employers are entitled to direct and supervise the enterprise as long as this entitlement is exercised lawfully and reasonably (see *Arbitral Awards 29/05-Kang Ning, issue 6; 116/07-Grace Sun, issue 2; and 79/08-New Max, issue 1*). The Arbitration Council applies this interpretation in this case; employers are entitled to determine the production target as long as this is done lawfully and reasonably.

Article 108 of the Labour Law (1997) states:

For task-work or piecework, whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker **of mediocre ability working normally to earn, for the same amount of time worked, a**

wage at least equal to the guaranteed minimum wage as determined for a worker [emphasis added].

Article 137 of the Labour Law (1997) states:

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

Based on Articles 108 and 137, the Arbitration Council finds that the employer must determine the working hours of both task-work and piece rate workers to be no more than eight hours per day or 48 hours per week.

Furthermore, in case 14/03-Chu Hsing, the Arbitration Council found that “[i]t is the prerogative of the employer to set reasonable production targets which a worker of usual ability can meet in an eight hour day with a reasonable amount of rest.”

Clause 4 of *Prakas* No. 80 on overtime work, dated 1 March 1999, provides that “[a]n arrangement for overtime work shall be executed on a voluntary basis, which means that the owner or director of an establishment/enterprise shall not coerce or discipline the workers who do not volunteer to work overtime.”

In this case, the present practice of the employer is to determine the production target in proportion to eight, 10, or 12 working hours on almost every day per week. Therefore, the workers demand that the employer determine the production target in proportion to an eight hour working day because sometimes they cannot meet the target on time and are forced against their will to work for more than 10 or 12 hours.

Based on Clause 4 of *Prakas* No. 80 above, the Arbitration Council finds that employers must arrange overtime work based on workers’ volunteerism and refrain from using any coercion (*see Arbitral Awards 107/08-Seratex, issue 1; 118/07-Ja Ding, issue 2; and 23/07-Jung Min, issue 5*).

In this case, the employer’s practice of setting a production target in proportion to more than eight hours’ work is unlawful and unreasonable because any work additional to the eight hour limit must be voluntary.

Therefore, the Arbitration Council orders the employer to determine the production target in proportion to an eight hour working day in order to ensure that overtime is worked on a voluntary basis. If the employer determines the production target in proportion to more than eight hours’ work, there must be a voluntary agreement by the workers.



**Issue 7: The workers demand that the employer regularly pay the meal allowance for overtime work from 6:00 to 8:30 p.m.**

In this case, the workers demand that the employer pay the meal allowance for overtime work from 6:00 to 8:30 p.m. regularly each day. However, the employer says that it cannot do this every day. Therefore, the Arbitration Council will consider whether the employer must pay the meal allowance for overtime work from 6:00 to 8:30 p.m. every day.

Article 103 of the Labour Law (1997) provides that “[w]age does not include: ...benefits granted exclusively to help the worker do his or her job”.

According to the facts, the employer has agreed to pay the workers an additional 1000 riel when working overtime from 6:00 to 8:30 p.m. According to Article 103 of the Labour Law, the additional 1000 riel meal allowance is not a component of the workers’ wages. It is a benefit granted exclusively to help the worker to do his or her job. Therefore, the Arbitration Council finds that there is no law governing how the allowance is provided.

Further, the Arbitration Councils finds that there is no written agreement on the additional 1000 riel meal allowance paid when workers work overtime from 6:00 to 8:30 p.m.

Therefore, the Arbitration Council rejects the demand that the employer pay the additional meal allowance for overtime work from 6:00 to 8:30 p.m. each day.

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

**DECISION AND ORDER**

**Issues 2 and 8:** Decline to consider the demand that the employer reinstate Chhay Nam, the secretary of CFWU, and reject the demand that the employer cease all threats and restraints on workers’ rights.

**Issue 3:** Order the employer to determine the production target in proportion to an eight hour working day in order to ensure that overtime is worked on a voluntary basis. If the employer determines the production target in proportion to more than eight hours’ work, there must be a voluntary agreement by the workers.

**Issue 7:** Reject the workers’ demand that the employer pay the additional meal allowance for overtime work from 6:00 to 8:30 p.m. each day.

**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: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....