



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 34/11-Lim Line

Date of Award: 3 May 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Seng Vuochhun**

Arbitrator chosen by the worker party: **Sin Kimsean**

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

DISPUTING PARTIES

Employer party:

Name: **Lim Line International (Cambodia) Co., Ltd**

Address: Tuol Sangke Commune, Reusseykeo District, Phnom Penh

Telephone: 012 903 892

Fax: N/A

Representative:

1. Mr. Ho Lihow Lawyer
2. Mr. Norng Mean Assistant to the Lawyer
3. Mr. Chan Manyung Assistant to the Lawyer

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU)**

Address: #2-3G, St.26BT, Boeung Tompun Commune, Meanchey Khan, Phnom Penh

Telephone: 089 960 860

Fax: N/A

Representative:

1. Mr. Muong Chhean Dispute Resolution Officer of C.CAWDU
2. Mr. Chhem Kheang Dispute Resolution Officer of C.CAWDU
3. Mr. Chev Vannara President of the Local Union of C.CAWDU
4. Mr. Khen Hor Advisor to the Local Union of C.CAWDU

5. Ms. Thoeun Sophea Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company provide a sufficient amount of medicine for the workers' illness.
- 2- The workers demand that the company allow them to be treated by coin rubbing and to rest in the infirmary.
- 3- The workers demand that the company change sewing needles for them in the event that they break them and not punish the workers by demanding them to find the tips of broken needles.
- 4- The workers demand that the company distribute safety cords to them to hang scissors and arrange to have a board to hang up their punch-in cards.
- 5- The workers demand that the company build a day-care center and nursing room.
- 6- The workers demand that the company build a canteen for them to have meals at lunch and dinner.
- 7- The workers demand that the company reinstate That Chantha, Advisor to the union, and pay her reimbursement of wages from the date of termination to the date of reinstatement. Ho Lyhov, a lawyer for the company, stated that the Local Union of C.CAWDU does not have legal standing to file a complaint against the company because the Department of Labour Disputes has temporarily suspended its application for registration.

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. 281 KB/RK/VK dated 11 March 2011 was submitted to the Secretariat of the Arbitration Council on 14 March 2010.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School) Boeung Kak II Quarter, Tuol Kork District, Phnom Penh

Date of hearing: First hearing: 23 March 2011 at 2:00 p.m.
Second hearing: 28 April 2011 at 4:30 p.m.

Procedural issues:

On 10 February 2011, the Department of Labour Disputes received a complaint from the C.CAWDU, regarding the demand for the company to improve working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 10 February 2011; as a result, none of the seven issues were conciliated. The seven non-conciliation issues were referred to the Secretariat of the Arbitration Council on 14 March 2011 via non-conciliation report No. 281 K.B/RK/VK dated 1 March 2010.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the company and the workers to the hearing and conciliation on the seven non-conciliation issues in the first hearing of 23 March 2011 (2:00 p.m.) and in the second hearing of 28 April 2011 (4:30 p.m.).

Both parties were present as invited by the Arbitration Council at both hearings. The Arbitration Council attempted to further the conciliation on the seven non-conciliation issues; and as a result, five issues were conciliated, that is, Issues 1, 2, 3, 4, and 5; the remaining, non conciliated issues were issues 6 and 7.

Normally, the parties who appear before the Arbitration Council have the right to choose between a binding or non-binding award, regardless of their dispute being an interests or rights dispute. However, based on 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 confederation unions on 28 September 2010, the signatories agreed to submit their labour disputes to binding arbitration on rights dispute. For interests disputes, the signatories are able to choose either binding or non-binding award at the hearing.

In the hearings, since both parties were signatories to the MoU, dated 28 September 2010, the Arbitration Council will divide the issues into two kinds: rights and interests disputes. Both parties are unable to object to binding arbitration on the rights dispute because they have agreed in writing to choose binding arbitration on rights disputes in accordance with the MoU dated 28 September 2010; however, the parties can object to an arbitral award on interests disputes if the parties choose non-binding award on this dispute. The objection by the parties to the award on the interests dispute will not affect their obligation to implement the award on the rights dispute in accordance with the spirit of the MoU.

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

EVIDENCE

Witnesses and Experts: N/A

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

A. Provided by the employer party:

1. Authorisation letter, dated 25 February 2011, from the Director of the company to Ho Lihow, the company's lawyer.
2. Brief statement of the labour dispute, dated 22 March 2011.
3. Certificate, No. 3341 PN.BRP dated 23 July 2010, of commercial registration for the company.
4. Statute of the company, dated 19 April 2010.
5. Internal Work Rules of the company, dated 7 July 2010.
6. Seven photographs, showing the day-care room, treatment room, breastfeeding room, and place where the workers hang their punch-in cards.
7. Request to examine evidence and the notification related to the dispute referred to the Arbitration Council, dated 30 March 2011.
8. Letter, No. 358 KB dated 30 March 2011, from the Minister of Labour and Vocational Training to the President of C.CAWDU, regarding a request to register the Local Union of C.CAWDU at Xang Wu Company, Meng Yan Company, Lim Line Company, SL Company, Enterprise Company, and the Union of Cambodian Sunrise Children's Village Organisation.
9. Fixed duration contract of six months with Tha Chanthat, dated 17 July 2010.
10. Fixed duration contract with Choub Narein, dated 17 July 2010.
11. List of workers who were recruited from early to mid January.
12. Letter objecting to the evidence and information provided by the workers, dated 1 April 2011.
13. Letter by the company, objecting to the complaint by Ny Sreyam, Hor Seiha, Hor, Chhum, Sor Sophea, Chhun Borey, Chhon Sophal, Sam Boleak, Mao, Sreyov, Ren Englang, Srey Mai, Pich Pum, Ean Vey, Ung, Rorng, dated 1 April 2011.
14. Letter from the C.CAWDU to the Head of the Department of Labour Disputes, regarding the request to resolve the issue of termination of illegal workers.
15. Letter from the Local Union of C.CAWDU to the President of C.CAWDU, regarding the request to resolve the workers' demand, dated 9 February 2011.
16. Letter from the lawyer representing the company, regarding a request to issue the Arbitral Award by the determined date, on 2 May 2011.

B. Provided by the worker party:

1. Letter, No. 36/11 dated 26 March 2011, from C.CAWDU to the Secretariat of the Arbitration Council, regarding the brief statement of labour dispute at the company.

2. Letter, No. 26/11 dated 7 February 2011, from C.CAWDU to the Minister of Labour and Vocational Training, regarding an application for union registration.
3. Letter, No.1166 dated 21 December 2010, from the Department of Labour Disputes to Chev Vannara, regarding the application for union registration.
4. Application for registration of the Local Union of C.CAWDU.
5. Letter, No. 160/10 dated 4 November 2010, from C.CAWDU to the Director of the company, regarding the result of the election to establish the Local Union of C.CAWDU.
6. Letter, No. 156/10 dated 25 October 2010, from C.CAWDU to the Director of the company, regarding the result of the election to establish a new union.
7. Authorisation letter from the workers to the President of the C.CAWDU.
8. Thumbprints of the workers requesting the company to deduct their wages for union contribution fees.
9. Letter from C.CAWDU to the Arbitration Council, regarding the objection against the statement and documents provided by the company, 1 April 2011.
10. Notification, No. 16 dated 26 September 2002, of the Ministry of Social Affairs, Labour, and Vocational Training, regarding registration of a professional organisation, and certification of union representation.
11. Notification, No. 021 dated 15 February 2006, of the Ministry of Labour and Vocational Training, regarding registration of a professional organisation.
12. Letter, 44/11 dated 3 May 2011, from the President of C.CAWDU to the Arbitration Council, regarding the brief statement of labour disputes at the company.
13. Letter, 46/11 dated 29 April 2011, certifying that Muo Chheang, an official of C.CAWDU, has legal standing to resolve the dispute at the Arbitration Council.
14. Application for registration of the Local Union of C.CAWDU, dated 28 October 2010.

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

1. Report of collective labour dispute resolution at Lim Line Company, No. 281 K.B/RK/VK, dated 11 March 2011.
2. Minutes of collective labour dispute resolution at Lim Line Company, dated 5 March 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 208 KB/AK/VK/LKA dated 16 March 2011 to the company to attend the hearing.
2. Invitation letter No. 209 KB/AK/VK/LKA dated 16 March 2011 to the workers to attend the hearing.
3. Agreement on binding award on rights dispute, dated 23 March 2011.

FACTS

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

The Arbitration Council finds that:

- Lim Line International (Cambodia) Co., Ltd was registered to conduct its business operation on 16 July 2010. The company employs a total of 650 workers.
- The Local Union of C.CAWDU is the claimant in this case, but the union has not yet formally registered.
- The workers stated that the union represents 200 workers. The company does not know the number of the union's members because the union has not requested the company to deduct union contribution fees.
- The workers submitted a letter by 163 workers, authorising the President of C.CAWDU to represent them. The Arbitration Council finds that on 1 April 2011, there were 13 workers among the 163 workers objecting to the seven-point demand brought by the union, one of which concerned the demand for reinstatement of Tha Chanthat. In light of the objection, there were only 150 workers, demanding the company to reinstate Tha Chanthat.
- The company considered that the workers authorise the President of C.CAWDU and not Muo Chhean, a dispute resolution officer of C.CAWDU.
- In the second hearing, the Arbitration Council ordered the workers to submit another letter by the President of C.CAWDU to confirm the representation. On 3 May 2011, the workers submitted the required letter to the Council to confirm the legal standing of Muo Chheang in resolving the disputes.

Issue 6: The workers demand that the company build a canteen for them to have meals at lunch and dinner.

- The working hours of the company are from 7:00 a.m. to 11:00 a.m. (11:00 a.m. to 12:00 p.m. is break time) and from 12:00 p.m. to 4:00 p.m.
- The workers mostly work overtime from 4:00 p.m. to 6:00 p.m. Some workers continue to work overtime from 6:30 p.m. to 8:30 p.m.
- Since mid-2010, the company issued a policy that required the workers to go out of the factory outside normal working hours, including lunch and dinner breaks. The policy was not written. Later on, (the parties did not remember the exact date), at the

request of the workers, the company allowed them to have lunch and dinner along the corridors of the factory.

- The workers demanded the company build a canteen on the grounds that they had meals on the pedestrian road while cars and motorbikes were travelling past, thus making dust blow into their food; some workers sat on the cement ground or grass, and others stood to have their meals. This situation affected the workers' health; the lunch break lasted only one hour, and the dinner break lasted only 30 minutes. The breaks were too short for the workers to return home to have their meals. The workers asserted that the Labour Law and jurisprudence of the Arbitration Council affirmed that the company was obliged to build a canteen for the workers. The workers did not specify any article of the Labour Law nor any case of the jurisprudence of the Arbitration Council.
- The company argued that it was not required to build a canteen for the workers. The company did not raise legal reasoning to uphold its position, but stated that its policy allowing the workers to have meals along the corridor of the factory was good enough.
- The two parties did not have an agreement regarding the arrangement for a canteen.

Issue 7: The workers demand that the company reinstate That Chantha, Advisor to the union, and pay her reimbursement of wages from the date of termination to the date of reinstatement.

Collective or individual labour dispute?:

- The company argued that this dispute was not a collective one because the dispute arose between Tha Chanthat, one worker, and the company. Therefore, the company argued, based on Article 300 of the Labour Law, the Arbitration Council did not have jurisdiction to resolve this dispute.
- The workers argued that the dispute was collective due to the endorsement [by the union and its members] of the demand for reinstatement of Tha Chanthat. Moreover, the non-conciliation report by the Ministry confirmed that the dispute was collective.

Case of Tha Chanthat:

- Tha Chanthat held a two-month probationary contract, effective from 17 May 2010 to 16 July 2010. Then she signed a fixed duration contract of six months, effective from 17 July 2010 to 16 January 2011.
- The company gave her prior notice of not renewing her contract on 7 January 2011 before the contract's expiry date of 16 January 2011. The workers stated that on 7 January 2011, the Head of Administration, Sot Sorphorn, told her of the non-renewal

of her contract and said that if she withdrew her membership from the union, then the company would renew her contract.

- The workers asserted that the non-renewal of the contract was the result of union discrimination because she was the advisor to the union.
- Besides the above-mentioned reasons, the workers submitted evidence, showing that the company renewed nine workers' contracts out of 10 workers in the section Tha Chanthat worked in.
- Tha Chanthat received US\$ 61 of main wages and US\$ 5 of bonus as well as overtime payment; on average, she earned from US\$ 90 to US\$ 100 per month.
- Tha Chanthat was paid her outstanding wages, severance payment, and other benefits.
- The company also submitted evidence to show the number of the contracts expired on 16 January 2011. Based on the evidence, the Arbitration Council finds that the workers' claim was correct; the contracts of the nine workers in Tha Chanthat's section were renewed, except for that of her.
- The company stated that the Head of Administration did not talk about union-related issues with her and the company had not discriminated against the union because it did not know that she was elected as an advisor to the union; the company learned of her position when the union filed a complaint to the Ministry of Labour and Vocational Training.
- The company argued that the reasons for the non-renewal of her contract were that her work performance was poor and she had not complied with the Internal Work Rules. She took unauthorised leave of five days in December 2010 and refused direction from her supervisor. The company did not submit evidence for those instances such as attendance sheet or warning letter. Moreover, according to the company's brief, the company did not renew two workers' contracts (Tha Chanthat and Choub Narein who worked in different sections) because they had the same problem and Choub Narein did not make any demand.
- The workers argued that Tha Chanthat had not taken unauthorised leave or received any warning letter and she was skillful in sewing with one and two needles. The company acknowledged that she was a skilled worker; however, it stated that the non-renewal for her contract was due to unauthorised leave, refusing direction from her supervisor, and poor performance.

Claimant's position as the advisor to the union:

- On 25 October 2010, the union notified the company of the candidates standing for its leadership and Tha Chanthat was one of them.
- On 28 October 2010, the union held an election.

- On 12 November 2010, the union submitted an application for union registration.
- On 17 December 2010, the company submitted an objection letter to the union's application.
- The Arbitration Council finds that there was no evidence or any document, certifying that Tha Chanthat was the elected advisor to the union.

REASONS FOR DECISION

Before turning to the two issues above, the Arbitration Council considers as follows:

Does the C.CAWDU have legal standing to represent the 150 workers who authorised the union in writing to resolve their disputes before the Arbitration Council?

In this case, the Arbitration Council finds that three workers, as disputant parties, appear before the Arbitration Panel and the other 150 workers authorised the President of C.CAWDU to represent them before the Council.

Clause 19, of *Prakas* 099 KSBY dated 21 April 2004 states,

A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorised in writing by that party.

Based on this clause, the Arbitration Council considers that the President of the C.CAWDU received an authorisation letter from the 150 workers and confirms that Muo Chheang has the right to resolve this dispute. Therefore, Muo Chheang, an official from the C.CAWDU, can represent the 150 workers.

Issue 6: The workers demand that the company build a canteen for them to have meals at lunch or dinner.

In this case, the workers assert that the company is obliged to build a canteen for the workers. The company supposes that it has no obligation to build a canteen. Thus, the Arbitration Council considers whether the company is obliged to arrange a canteen.

The Arbitration Council finds that there is no article in the Labour Law and provision in the labour regulations imposing the obligation on the company to arrange to have a canteen. The company is required to do that when it is bound by an agreement to do so or the non-existence of a canteen could cause damage to the workers' health. (*See AA 35/04-Jacqsintex, reasons for decision, issue 2; 81/07-Supreme, reasons for decision, issue 8; and 55/07-Siu Quinh, reasons for decision, issue 2*).

In this case, the company and the workers do not have any agreement regarding this issue and the Internal Work Rules do not impose an obligation on the company to do that as well.

The Arbitration Council considers that the workers' argument is inconsistent with the actual practice of the company and the workers also agree with the company's statement that "Workers are permitted to have meals along the corridor of the company" and not on the pedestrian road. Consequently, the workers' claim is groundless.

The workers' demand is more than the law provided, thus making it an interests dispute.

With respect to an interests dispute, the Arbitration Council considers the most representative status of the union who is a disputant party. In this case, the Local Union of C.CAWDU, the claimant, does not have most representative status [that is, membership of more than 50% of the workers in the workplace].

In previous Arbitral Awards, the Arbitration Council declines to consider an interests dispute if the union that brings a dispute to the Council does not have most representative status. (See AA 84/07-Yung Wah, reasons for decision, issue 1; 143/08-Charm Textile, reasons for decision, issue 2; 152/08-Wilson, reasons for decision, issue 2; 48/09-Rosing, reasons for decision, issue 2).

Clause 43 of *Prakas* 099 SKBY dated 21 April 2004 states,

An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

Based on this clause, the Arbitration Council holds that if the Council issues an regarding an interests dispute, then it will become a one-year collective agreement. Normally, a collective agreement applies to all workers in the factory and the right to strike cannot be exercised to review the collective agreement whilst it is in force. (See AA 152/08-Wilson, reasons for decision, issue 2).

In addition, in previous Arbitral Awards, the Arbitration Council determines that a union, which does not have most representative status, does not have legal standing to represent all the workers to resolve a dispute concerning collective benefits for the workers in a company. (See AA 48/09-Roo Hsing, reasons for decision, issue 2; and 24/10-Reliable, reasons for decision, issue 5).

The Arbitration Council agrees with the interpretation above. In this case, the Local Union of C.CAWDU, the claimant, does not have a certificate for most representative status. For that reason, the union does not have legal standing to bring an interests dispute to the Arbitration Council for resolution; as that is the right of the union that possess most representative status.

In conclusion, the Arbitration Council rejects the workers' demand for the company to build a canteen for them.

Issue 7: The workers demand that the company reinstate That Chantha, Advisor to the union, and pay reimbursement of wages from the date of termination to the date of reinstatement.

Before considering on this issue, the Arbitration Council considers whether it has jurisdiction over this dispute.

In principle, the Labour Inspector and the Minister for the Labour and Vocational training have a duty to determine whether or not the labour disputes are collective before referring them to the Arbitration Council. (*See AA 64/09-Sinomax*)

In previous Arbitral Awards, the Arbitration Council presumed that demands in the non-conciliation report of the Ministry in charge of labour are collective. Since the company makes an objection to this presumption, the company bears the burden of proof for its allegation. (*See AA 45/07-Wilson, reasons for decision, issue 4 and 64/09-Sinomax*)

Based on the facts, the company argued that the dispute is not a collective labour dispute as it arises between only one worker, Tha Chanthat, and the company. Accordingly, the company has argued, based on Article 300 of the Labour Law, that the Arbitration Council is incompetent to resolve the dispute.

Article 302 of the Labour Law states,

A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognised rights of professional organizations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardise the effective operation of the enterprise or social peace.

In Arbitral Award 45/07-Wilson, issue 4, the Arbitration Council interpreted that a collective labour dispute must satisfy three conditions as follows:

- a. It is a dispute between some workers and one or more employer;

- b. Subject of the dispute is related to working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and;
- c. The dispute could jeopardise the effective operation of the enterprise or social peace.

With respect to the article and the interpretation above, in order to call a collective labour dispute, it must fulfill three conditions. In this case, the Arbitration Council is of the view that the dispute does not only arise between Tha Chanthat and the company but also with the 150 workers who have affixed their thumbprints to endorse the demand for her reinstatement. By that, the first condition is met. The claim concerns working conditions, that is, a demand for Tha Chanthat's reinstatement. Thus, the second condition is fulfilled. Furthermore, 150 workers endorse her demand, meaning that if the issue is not resolved, then it may cause disruption to the company's operation. Hence, the third condition is also met.

Since the three conditions are fulfilled, this dispute is a collective dispute. Therefore, the Arbitration Council will consider the demand as follows:

Before deciding on this case, the Arbitration Council considers whether or not the demand is a rights dispute.

Article 312, paragraph 2, of the Labour Law, states that,

The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes.

Based on this article, the Arbitration Council makes a decision on a rights dispute based on the laws and an interests dispute based on equity.

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

In this case, the Arbitration Council considers that the demand is a rights dispute because the non-renewal of contract is provided for in Article 73 of the Labour Law. Article 73, paragraph 1, of the Labour Law, states that "A labour contract of specific duration normally terminates at the specified ending date..."

In this case, Tha Chanthat signs a fixed duration contract of six months with the company and the contract will expire on 16 January 2011.

Article 73, paragraph 5, of the Labour Law states,

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

Based on this article, the notification is required for a contract that is longer than six months. It is a fact that Tha Chanthat's contract has a duration of only six months. So the company gave her prior notice as required by the law.

The Arbitration Council now considers whether the non-renewal of the contract is the result of union discrimination.

Article 12 of the Labour Law states,

Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions... no employer shall consider on account of:

...

membership of workers' union or the exercise of union activities to be the invocation in order to make a decision on:

...

discipline or termination of employment contract.

Article 279 of the Labour Law states,

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

In previous Arbitral Awards, the Arbitration Council held that the workers have the burden of proof for its allegations. (See AA 90/06-Ever Green, reasons for decision, issue 1; 112/06-River Rich, reasons for decision, issue 1; and 01/07-Supreme, reasons for decision,

issue 1) It means that the workers must have sufficient evidence to substantiate its claim. (See AA 19/04-Kabal Kah, reasons for decision, issue 1; and 17/07-Charm Textile, reasons for decision, issue 1)

Besides the workers' evidence, the Arbitration Council will consider the relevant facts regarding the [alleged] discrimination.

Based on the facts, the Arbitration Council considers that the discrimination claim is legitimate in demanding for reinstatement.

Based on the facts, the workers' evidence and their claims which are relevant to union discrimination; for example, the company renewed the other workers' contracts, except for her's. The company cited the quality of her work as a reason for the non-renewal, but failed to provide evidence regarding work performance. For Choun Narein's case, the Arbitration Panel will not consider it on the grounds that Choun Narein works in Line B7 [and is not a claimant in this case].

In fact, regarding the case of taking unauthorised leave, the Arbitration Council considers that the company should take action in accordance with the Internal Work Rules and the employment contract.

The Arbitration Council finds that Clause 6 of the Internal Work Rules, dated 14 June 2010, states,

...Unauthorised leave is deemed to be an act of misconduct as follows:

- Taking less than two days off per month is considered as minor misconduct.
- Taking more than two but less than six days per month is considered as medium level of misconduct.

Moreover, Clause 6 of Tha Chanthat's fixed duration contract of six months, effective from 17 July 2010 to 16 January 2011, states,

Any worker who is absent from the workplace without permission is deemed as a violator of the employment contract and must be notified as follows:

- A. A letter of reprimand to the workers for the absence of one day.
- B. For the absence of more than one day, a letter of reprimand and a letter of warning will be given to the workers as follows:
 - Letter of reprimand to the workers for the absence of one day.
 - Letter of reprimand to the workers for the absence of two days.
 - Letter of warning to the workers for the absence of three days.
 - Letter of warning to the workers for the absence of four days.
 - Letter of warning to the workers for the absence of five days.
 - For the absence of six days, it is deemed that the workers decide to terminate its contract or otherwise abandon their work.

According to the Internal Work Rules of the company and her employment contract, Tha Chanthat must receive a warning letter from the company; however, the Arbitration Council did not obtain a warning letter for the unauthorised leave of five instances. Therefore, the Arbitration Council is convinced by the workers' argument that Tha Chanthat has not taken unauthorised leave.

In addition, the Arbitration Council finds that the company is not sure whether she is elected or not, but it is aware that she is a candidate for the union's leadership.

Based on the interpretation above, the company does not provide an additional explanation and supporting evidence against the discrimination claim.

In previous Arbitral Awards, the Arbitration Council ordered the company to reinstate the workers on the grounds of union discrimination which is against Articles 12 and 279 of the Labour Law prohibiting the company to take the union's membership or activity into account to make a decision to hire, to discipline or to terminate the workers' employment contracts. (See AA 28/07-Dae kwang, reasons for decision, issue 3; 123/07-E Garment, reasons for decision, issue 1; and 06-08-Kingslang, reasons for decision, issue 2).

In this case, the Arbitration Council agrees with the above-mentioned interpretation. In conclusion, the Arbitration Council orders the company to reinstate Tha Chanthat, but does not order the payment to Tha Chanthat, the reimbursement of her wages because the Council finds that the company has not renewed nor terminated her.

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

DECISION AND ORDER

1. Rights dispute:

Issue 7: Order the company to reinstate Tha Chanthat.

Type of Award: Binding award

The award of the Arbitration Council in part I will be final and is enforceable for the parties in accordance with the Garment Industry's Memorandum of Understanding, dated 28 September 2010.

2. Interests dispute:

Issue 6: Decline to consider the workers' demand for the company to build a canteen for the workers.

Type of Award: Non binding awards

This award in part II will become binding 8 days after the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Seng Vuochhun**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kimsean**

Signature:Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: