



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 79/09-Yung Wah Laundry

Date of award: 15 July 2009

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: **Tuon Siphann**

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

DISPUTANT PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co., Ltd. (Branch 2)**

Address: Thmei Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 505 410

Fax: N/A

Representatives:

- | | |
|-------------------------|--------------------------|
| 1. Ms Annabel Teh Si Qi | Deputy Director |
| 2. Mr Van Bora | Translator |
| 3. Mr Ly Bun Khim | Head of Administration |
| 4. Mr Oeun Channarith | Administrative Assistant |

Worker party:

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

Local Union of C.CAWDU

Address: No. 6C, Street 467 S/K, Toul Tompoung I, Chamkamorn District, Phnom Penh

Telephone: 012 282 653

Fax: N/A

Representatives:

- | | |
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| 1. Ms Meas Vanny | Officer of C.CAWDU |
| 2. Ms Sok Phalla | President of the Local Union of C.CAWDU |
| 3. Ms Chan Dany | Vice-President of the Local Union of C.CAWDU |

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|------------------------|---|
| 4. Ms Keo Samphos | Secretary of the Local Union of C.CAWDU |
| 5. Ms Morn Vannak | Union Activist |
| 6. Ms Meak Morn | Union Activist |
| 7. Mr Son Sokun | Union Activist |
| 8. Mr Chren Sarom | Union Activist |
| 9. Mr Khlong Bunthoeun | Union Activist |

ISSUES IN DISPUTE

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

1. The workers demand that the employer reassign 45 workers to the noon shift. The employer does not agree to the demand.
2. The workers demand that the employer pay a 13th month's wages to workers who were dismissed. The employer does not agree to the demand.
3. The workers demand that the employer reinstate the worker with ID No. 9430 QW. The employer does not agree to the demand.

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. 219/09 dated 19 March 2009 was submitted to the Secretariat of the Arbitration Council on 23 June 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: 3 July 2009 at 8:30 a.m.

Procedural issues:

On 17 June 2009, the Department of Labour and Vocational Training of Kandal Province assigned an expert officer to conciliate the three issues in dispute, but they remained unresolved. The three non-conciliated issues were referred to the Secretariat of the Arbitration Council on 23 June 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 three non-conciliated issues, held on 3 July 2009 at 8:30 a.m. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the three non-conciliated issues but they remained unresolved. The Arbitration Council will consider the issues in dispute in this case based on the evidence and reasons below.

EVIDENCE

This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.

FACTS

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

The Arbitration Council finds that:

- [The laundry section of] Yung Wah Industrial (Cambodia) Co., Ltd. (Yung Wah) (Branch 2) commenced operation in 2007 and currently employs approximately 138 workers.
- Local Union of C.CAWDU, the claimant in this case, holds a certificate of most representative status (MRS) dated 24 July 2008.

Issue 1: The workers demand the reassignment of 45 workers in the laundry section to the noon shift.

- Previously, workers in branches 1 and 2 of Yung Wah were assigned to one of two shifts: noon shift or night shift. Workers in Yung Wah's laundry section were also divided between two shifts: the noon shift from 6:30 a.m. to 3:00 p.m. and the night shift from 3:00 p.m. to 12:00 a.m. However, in January 2009 the employer discontinued the night shift and reassigned all workers to the noon shift. Currently, of the 130 workers who were placed on the noon shift, 45 have been transferred back to the night shift.
- The employer claims that it is currently facing an economic slump, involving a dramatic decrease in purchase orders. The workers worked for one week and were directed to take leave the following week. Moreover, in March and April 2009, the

employer agreed to rotate the shift every two weeks as requested by the workers. However, due to a decrease in buyers the employer later suspended the contracts of the workers for two months from 11 April to 11 June 2009.

- The employer adds that the Yung Wah laundry section provides a laundry service for other factories in addition to Yung Wah. During the two month work suspension, the marketing section advertised the business, and other companies hired Yung Wah to do their laundry. Therefore, the noon shift workers were required to work the night shift so that they could finish the laundry for other factories on time.
- On 12 June 2009, the employer convened a meeting with the workers to inform them that it had received work from other factories and asked 45 workers working the noon shift to work the night shift.
- On 13 June 2009, the employer issued an announcement that the 45 workers on the noon shift would be required to work the night shift from 15 June 2009.
- On 15 and 19 June 2009, the workers called a strike, demanding that the employer allow them to work the noon shift.
- The workers argue that in January 2009 the employer discontinued the night shift and required all workers to work the noon shift. The workers did not dispute this since the employer told them that it would not allow them to work the night shift anymore. Thus, the workers do not know why the employer recommenced the night shift.
- The workers add that when there was night shift work in the past, the employer always offered transportation to the workers assigned to the night shift in both branches 1 and 2 of Yung Wah, including the night shift workers in the Yung Wah laundry section.
- The workers claim that currently Yung Wah branches 1 and 2 have discontinued the night shift. Now that the night shift has recommenced [in the laundry section] the workers have no means of transport to the factory. Moreover, the night shift finishes at midnight and although the workers are transported home, the truck drops them off on the main road, forcing them to walk through alleyways which pose a threat to their security. Therefore, the 45 workers demand that the employer reassign them to the noon shift.
- The employer maintains that it has a truck to transport the workers home, but it is too big to enter the alleyways leading to the workers' houses. Moreover, the employer is responsible for work-related accidents in accordance with the Labour Law. Although the employer faces an economic downturn and doesn't have much work for the workers, it has tried everything possible to find a market for their labour. In turn, the

workers have refused to work. Therefore, the employer cannot reassign the 45 workers to the noon shift as demanded.

Issue 2: The workers demand that the employer provide a 13th month's wages to the dismissed workers.

- The employer states that it pays a 13th month's wages [an annual bonus paid to workers at the end of the year] to the workers equal to their US\$ 50 main wage. This was paid to workers even if they resigned, were dismissed, or had worked for less than one year.
- The workers state that the employer paid the 13th month's wages to the dismissed workers before 10 April 2009 but the payment was insufficient, totalling only 60% of their total wages. Thus, the workers demand that the employer provide their full wages. For example, Chren Sarom was paid only 60% of his salary (US\$ 30), leaving 40% (US\$ 20) unpaid. The employer does not dispute this argument.
- The employer claims that the reason it did not offer full wages to the workers was that the workers in branches 1 and 2 of Yung Wah did not receive full wages, and the Yung Wah laundry section followed suit.
- The workers claim that the employer terminated the following nine workers' contracts:

No.	Name	ID.	Section	Start date	Termination date
1	Chren Sarom	027	QW 5	05/03/08	05/02/09
2	Mao Pov	024	QW 5	05/03/08	05/02/09
3	Phol Phouen	036	QW 5	05/03/08	05/02/09
4	Heang Him	034	QW 5	05/03/08	05/02/09
5	Vol Bunny	005	QW 5	03/05/08	05/02/09
6	Khoeun Khun	052	QW 5	19/03/08	05/02/09
7	Phat Sophal	065	QW 5	07/03/08	05/02/09
8	Chek Nan	038	QW 5	05/03/08	05/02/09
9	Kim Sinoeun	047	QW 5	10/03/08	30/02/09

- The workers promised to provide a list of the workers who received an insufficient amount of 13th month's wages to the Arbitration Council on 8 July 2009.
- On 8 July 2009, the Arbitration Council received the above list from the workers. The Arbitration Council gave the employer until 10 July to dispute the evidence presented by the workers, but nothing was received.

- The workers add that the employer has had a policy of paying the workers a 13th month's wages since its inception. Thus, even if the employer terminated the contracts before 10 April 2009, it still had to pay the workers a 13th month's wages.
- The employer maintains that if Yung Wah branches 1 and 2 did not pay the 13th month's wages, the Yung Wah laundry section would not do so either.

Issue 3: The workers demand that the employer reinstate Sun Sokun, ID No. 9430 QW, to his former position. If the employer does not reinstate him, it must pay him in accordance with the Labour Law.

- Sun Sokun commenced work on 6 February 2007 on a two-month probationary contract. The employer later offered him a full-time position and verbally promised to employ him permanently (on an undetermined duration contract). Sun Sokun claims that he first worked in the laundry section but was later moved to the cloth counting section and then the sample cloth section.
- Sun Sokun never received a disciplinary warning prior to his dismissal.
- Sun Sokun was dismissed on 1 April 2009 for abusing administration officers.
- Sun Sokun explained at the hearing that on 1 April 2009 at 10:00 a.m. the team leader ordered him to dry the cloth. He did not return to his workstation because he spent about 25 minutes waiting for the cloth to dry in the sun. Because of this, the team leader took him to the administration office for a warning.
- The employer claims that the team leader escorted Sun Sokun to the administration office for a warning, where the team leader stated that if Sun Sokun repeated his offence, the employer might issue a written warning. Sun Sokun accepted the warning and uttered "bullshit" as he walked out. Sun Sokun states that after he accepted the warning, he coincidentally met his friend Chha Oeung who was asking for leave. Sun Sokun uttered to the latter "bullshit", and then walked out.
- The employer argues that Sun Sokun committed misconduct and used offensive language against the administration staff. Therefore, it decided to dismiss him on 1 April 2009. The employer paid his final wages, payment in lieu of annual leave, seniority bonus, and living allowance. However, Sun Sokun refused to accept the payments.
- The workers counter that Sun Sokun did not commit the alleged misconduct of using offensive language against the administration staff because he said "bullshit" after he left the office and met one of his friends. Thus, the workers demand that the employer reinstate Sun Sokun.

- Sun Sokun makes two final requests: (1) He demands that the employer reinstate him and back pay his wages from the date of his dismissal. (2) If he is not reinstated, he demands that the employer terminate his contract (not by reason of serious misconduct) and pay him in accordance with the law.

REASONS FOR DECISION

Issue 1: The workers demand the reassignment of 45 workers in the laundry section to the noon shift.

Article 2, paragraph two of the Labour Law states 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.”

With regard to this provision of the Labour Law, in previous awards the Arbitration Council has found that an employer has the right to direct and manage the enterprise as long as this right is exercised lawfully and reasonably (see *Arbitral Awards 62/06-Quicksew, reasons for decision, issue 5; 108/06-Trinunggal Komara, reasons for decision, issue 1; 33/07-Goldfame, reasons for decision, issue 3; 106/07-M & V (Branch 3), reasons for decision, issue 3; 84/08-Trinunggal Komara, reasons for decision, issue 1; 08/09-Global Apparels; 49/09-Bloomtime, reasons for decision, issue 2; and 22/09-Global Apparels, reasons for decision, issues 1 and 3*).

In previous awards, the Arbitration Council has found that employers have the right to change the workers’ shifts as long as this is done lawfully and reasonably (see *Arbitral Awards 54/06-Bright Sky; 53/08-Yung Wah (Branch 1), reasons for decision, issue 4; 08/09-Global Apparels; and 22/09-Global Apparels, reasons for decision, issues 1 and 3*).

In this case, the Arbitration Council agrees with the interpretation in previous awards that the employer has the right to change the workers’ shifts as long as this is done lawfully and reasonably.

Based on the facts, the 45 workers worked the night shift before being reassigned to the night shift when the employer’s economic difficulties arose. The employer claims that when it received orders from customers, the workers were required to work the night shift so that the required number of goods could be produced on time. The Arbitration Council, the workers, and the employer all acknowledge that the Yung Wah laundry section did suffer an economic downturn and the workers that moved to the noon shift did not have much work to do. Moreover, the workers have not raised any problems related to the benefits due to them.

The Arbitration Council finds that the employer’s explanation for changing the workers’ shifts is reasonable and lawful because its purpose was to ensure the stability of the

enterprise, which in turn provides benefits to the workers in accordance with the law. At the hearing, the workers recognised the necessity of the employer reorganising the shifts.

The Arbitration Council finds that what worries the workers most is that there is no transportation for them because branches 1 and 2 of Yung Wah have discontinued the night shift. Moreover, the workers fear for their safety upon returning home. The employer claims that it will transport the workers home and it will ensure their safety in accordance with the Labour Law.

Clause 6 of *Prakas* No. 80 issued by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation dated 1 March 1999 states:

The owner or director of an enterprise which has workers or employees working at night shall provide the workers and employees with an appropriate place for resting/sleeping after working at night or a means of safe transportation to their abodes after finishing their work.

Based on the above clause, the Arbitration Council finds that when workers work at night the employer is obliged to provide them with proper and safe accommodation or transportation home after finishing work. In this case, the employer provides a truck for transporting the workers home upon completion of the night shift but some workers' houses are in small alleyways which the truck cannot enter. In order to facilitate a resolution of this concern, the Council encourages the two parties to hold discussions to find a solution that will ensure the safety and security of the workers in accordance with the above *Prakas*.

Thus, the Arbitration Council rejects the workers' demand that the employer reassign the 45 workers to the noon shift on the basis that the change was made lawfully and reasonably by the employer.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer reassign the 45 workers to the noon shift.

Issue 2: The workers demand that the employer provide a 13th month's wages to the dismissed workers.

The workers state that the employer paid a 13th month's wages to those workers who were dismissed before 10 April 2009, but it only paid 60% of what was due. Therefore, the workers demand that the employer pay their full wages. The employer maintains that it will not pay the wages since Yung Wah branches 1 and 2 did not pay the full amount.

Article 116, paragraph five of the Labour Law states that "[i]n the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work."

The Arbitration Council finds that this issue pertains to 13th month's wages for 2008 which was due to the workers. Due to the economic slump, the employer promised to pay the workers in two instalments. Therefore, the Arbitration Council finds that the employer owed the amount to its workers and is therefore required to pay even if they resigned or were dismissed before 10 April 2009 because the wages accrued whilst the workers were still working at the factory.

Article 120, paragraph one of the Labour Law provides that "[t]he statute of limitation for a lawsuit for the payment of wages is three years from the date the wage was due."

Based on the above facts, the Arbitration Council finds that nine workers resigned before 10 April 2009, a fact the employer did not dispute. Thus, the Arbitration Council finds that the employer is obliged to make the payments due to the nine workers within two weeks after the issuance of this arbitral award.

Issue 3: The workers demand that the employer reinstate Sun Sokun, ID No. 9430 QW, to his former position. If the employer does not reinstate him, it must pay him in accordance with the Labour Law.

At the hearing, the workers demanded that the employer reinstate Sun Sokun to his former position on the grounds that he did not commit the alleged serious misconduct of abusing the administration staff when he uttered "bullshit" after he had left the office. However, if the employer does not reinstate him, the workers demand that it terminate his contract and pay him in accordance with the Labour Law. The employer claims that Sun Sokun opened the door, said "bullshit" in reference to the administration staff, and then left the room. The employer considers this act as serious misconduct and therefore cannot reinstate Sun Sokun to his former position.

Thus, the Arbitration Council will consider whether or not the employer had the right to dismiss Sun Sokun.

The Arbitration Council finds that an employer generally has the right to supervise and direct its workers, and has the right to dismiss workers as long as the dismissal is in accordance with the Labour Law. Based on the above facts, the Arbitration Council finds that Sun Sokun did not have a written contract (only a verbal contract) with the employer. Based on Article 67(7) of the Labour Law, he held an undetermined duration contract.

Article 74 of the Labour Law states:

The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.

However, no layoff can be taken without a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group.

Based on the article above, the Arbitration Council finds that the employer has the right to dismiss workers at will, but it must notify the worker of a valid reason relating to their aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment, or group. Therefore, the Arbitration Council finds that the employer had the right to dismiss Sun Sokun, but was required to inform the latter of the reason for his dismissal, such as his aptitude or behaviour. In this case, the employer did not do so as it dismissed him on the grounds that he abused the administration staff. The employer considered this an act of serious misconduct as at the time an administration staff member was giving him a warning for violating working hours by waiting outside for 25 minutes for a cloth to dry before returning to his workstation.

Based on the facts, the Arbitration Council finds that Sun Sokun had not previously committed serious misconduct and had not received any warnings. Moreover, he admitted to his guilt in waiting for 25 minutes whilst the cloth dried outside and accepted the warning by the employer. However, when he walked out of the administration office he used the expletive "bullshit". The employer alleges that Sun Sokun used this inappropriate language as an insult to the administration staff. Sun Sokun argues that he used the language after he walked out of the room and it was directed at a friend who was entering the office to ask for leave.

The Arbitration Council finds that Sun Sokun received the warning without dispute or argument, but afterwards he used offensive language as he walked out of the room. The Arbitration Council finds that the word "bullshit" could have three meanings in this context: 1. Sun Sokun directed it at the administration staff. 2. Sun Sokun directed it at his friend. 3. It was the result of his anger. Thus, the Arbitration Council finds that the employer's accusation that the insult was directed at the administration staff and was therefore serious misconduct is inappropriate and unreasonable because the act committed was not proportionate to the penalty of dismissal if in this situation Sun Sokun did not mean to direct his comment at the administration staff. Moreover, he had never committed any prior misconduct.

However, the employer maintains that it cannot reinstate Sun Sokun to his former position. As the termination was inconsistent with Article 67(7) of the Labour Law, the workers demand that the employer terminate his contract and provide him with remuneration in accordance with the Labour Law if it cannot reinstate him. Thus, the Arbitration Council will consider as follows:

Clause 34 of *Prakas* No. 099 dated 21 April 2004 states:

In matters referred to the arbitration panel, the panel shall have the power and authority to fully remedy any violation of provisions provided in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee. Within the limitations of the Labour Law and this *Prakas*, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:

- A. orders to reinstate dismissed employees to their former or any other appropriate position;
- B. orders to the immediate payment of back pay;
- C. orders to cease immediately any industrial action which is being conducted by a party to the dispute;
- D. orders to cease immediately any other illegal or prohibited conduct, including but not limited to retaliation;
- E. orders to bargain;
- F. orders following a settlement under Clause 30 of this *Prakas*;
- G. the establishment of terms for a collective bargaining agreement;
- H. such other relief as is appropriate.

Based on the above clause, the Arbitration Council finds that it can order the employer to pay an indemnity to Sun Sokun for his dismissal. Thus, the Arbitration Council will consider the issue as follows:

A. Payment in lieu of prior notice

Article 75 of the Labour Law states:

The minimum period of a prior notice is set as follows:

- Seven days, if the worker's length of continuous service is less than six months;
- Fifteen days, if the worker's length of continuous service is from six months to two years;
- One month, if the worker's length of continuous service is longer than two years and up to five years.

Article 77 of the Labour Law states:

The termination of a labour contract at will on the part of the employer alone, without prior notice or without compliance with the prior notice periods, entails the obligation of the employer to compensate the worker the amount equal to

the wages and all kinds of benefits that the worker would have received during the official notice period.

Based on the above facts, Sun Sokun commenced work on 6 February 2007 and therefore completed two years of service. The employer did not inform him in advance of his dismissal. Thus, the Arbitration Council finds that the employer must pay one month's wages and perquisites to Sun Sokun due to its failure to give advance notice of his dismissal.

B. Indemnity for dismissal

Article 89 of the Labour Law states:

If the labour 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:

- Seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months.
- 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.

In this case, the Arbitration Council finds that the misconduct committed by Sun Sokun outlined above was not serious misconduct. Thus, based on Article 89 of the Labour Law, Sun Sokun is entitled to an indemnity for dismissal equal to his wages and perquisites for 15 days for each year of service. As he worked for only two years, he is entitled to an indemnity equal 30 days' wages. In this case, based on the interpretation of Articles 102 and 103 of the Labour Law in previous awards, wages include actual wages for work or service, apart from allowances to help the worker perform their job, and include overtime payments and bonuses (see *Arbitral Awards 02/04-Cambodiana, reasons for decision, issue 1 and 27/04-MSI, reasons for decision, issue 1*).

C. Damages

Article 91 of the Labour Law states:

The termination of a labour 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 Article 91 of the Labour Law, the Arbitration Council finds that if there is no valid reason for terminating an employment contract, the worker is entitled to damages equal to the indemnity for dismissal. However, in this case the employer had a reason for terminating the worker's contract. Thus, the Arbitration Council finds that the worker is not entitled to damages.

D. Unpaid final wages and payment in lieu of annual leave:

Article 116, paragraph five of the Labour Law states that “[i]n the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work.”

In this case, the employer has not paid Sun Sokun's final wages because he refused to accept them. Thus, the employer must pay his final wages.

Article 166, paragraph one of the Labour Law states:

Unless there are more favourable provisions in collective agreements or individual labour contracts, 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, paragraphs 1 and 2 of the Labour Law provide:

The right to use paid leave is acquired after one year of service.

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.

In this case, the parties did not provide evidence of how many days of annual leave Sun Sokun has taken and how many days he has remaining for this year. Therefore, Sun Sokun must be given payment in lieu of any remaining annual leave.

In conclusion, the employer must pay the worker as follows:

1. One month's payment in lieu of prior notice in accordance with Articles 75 and 77.
2. An indemnity for dismissal equal to thirty days' wages in accordance with Article 89.
3. Payment in lieu of remaining annual leave in accordance with Articles 166 and 167.
4. Unpaid final wages in accordance with Article 116.

The calculation of his final wages is based on his average daily wage as follows:

Average daily wage = Total wages earned in the 12 months prior to dismissal / 12 months x 26 working days (Final wages include overtime payments and other bonuses earned in the 12 months prior to dismissal).

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

DECISION AND ORDER

Issue 1: Reject the workers' demand that the employer reassign the 45 workers to the noon shift.

Issue 2:

- Order the employer to pay the 13th month's wages in full to workers dismissed before 10 April 2009.
- Order the employer to pay the workers within two weeks after issuance of this arbitral award.

Issue 3: Order the employer to provide the following payments to the worker:

1. One month's payment in lieu of prior notice in accordance with Articles 75 and 77.
2. An indemnity for dismissal equal to thirty days' wages in accordance with Article 89.
3. Payment in lieu of remaining annual leave in accordance with Articles 166 and 167.
4. Unpaid final wages in accordance with Article 116.

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: **Seng Vuoch Hun**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: