



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

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

**Case number and name: 24/09-Maxlin**

**Date of award: 10 March 2009**

**ARBITRAL AWARD**  
(Issued under Article 313 of the Labour Law)

**ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Chhiv Phyum**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

**DISPUTANT PARTIES**

**Employer party:**

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

Address: Trapang Krorsang Village, Bek Chan Commune, Angsnuol District, Kandal  
Province

Telephone: 016 812 738

Fax: N/A

Representative: Absent

**Worker party:**

Name: **Khmer Youth Trade Union Federation (KYFTU)**

**Local Union of KYFTU**

Address: Trapang Krorsang Village, Bek Chan Commune, Angsnuol District, Kandal  
Province

Telephone: 092 902 569

Fax: N/A

Representative: Absent

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer review the rate of the skills bonus. The employer will follow its existing practice.
2. The workers demand that the employer expand the canteen and parking lot. The employer will try to do so.
3. The workers demand that the employer add more fans in the packaging section. The employer will try to do so.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

No. 055/09 KB/AK/VK dated 3 February 2009 was submitted to the Secretariat of the Arbitration Council on 17 February 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:** 27 February 2009 at 2:00 p.m.

**Procedural issues:**

On 16 December 2008, the Department of Labour and Vocational Training of Kandal Province received a complaint from KYFTU outlining the workers' demands for the improvement of working conditions by the employer. Upon receipt of the case, the Department of Labour and Vocational Training of Kandal Province assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 21 January 2009. Two of the five issues were resolved at the session. The three non-conciliated issues were referred to the Arbitration Council on 17 February 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, to be held on 27 February 2009 at 2:00 p.m. Both parties were absent without providing any reasons. Thus, the Arbitration Council will consider this case 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; and

- Having reviewed the additional documents;

**The Arbitration Council finds that:**

The Arbitration Council could not make any findings of fact in relation to the issues in dispute because both the worker and employer parties were absent on the hearing date without providing any reasons for their absence.

**REASONS FOR DECISION**

Clause 21 of *Prakas* No. 099 on the Arbitration Council, dated 21 April 2004, provides that “[i]n 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.”

Furthermore, Rule 4.7 of the Procedural Rules of the Arbitration Council, Annex to *Prakas* No. 099, dated 21 April 2004, states:

If a party fails to appear in person or to be represented at the 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 either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.

In Arbitral Awards 30/05-Maurea, 16/07-Lotus, 27/07-M & V (Branch 3), 95/08-Yung Wah, 132/08-GHG, 138/08-Marlyn, 151/08-Wilson Garment, and 09/09-Nimbus Textile, the Arbitration Council 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 its lack of appearance.

Thus, the Arbitration Council will consider whether the three conditions are fulfilled in this case.

**First condition: the party is properly notified**

As stated in Rule 4.7 above, the Arbitration Council may proceed with the arbitral process in the absence of a party or may terminate the arbitral proceedings by means of an award if one of the parties is absent or if there is no representation during arbitral proceedings if the parties in dispute have been properly notified of the date, time, and venue of the arbitral proceedings.

In this case, the Arbitration Council finds that the Secretariat of the Arbitration Council sent an official notification in writing to both parties. These letters were sent to the parties in compliance with the regular procedure of the Secretariat of the Arbitration Council. The

Secretariat of the Arbitration Council communicated the date, time, and venue of the hearing to the parties via written notifications as well as via telephone calls. Therefore, the Arbitration Council considers that the first condition is met.

**Second condition: the party does not appear at the hearing**

Clause 19 of the *Prakas* on the Arbitration Council No. 099 SKBY, dated 21 April 2004, states that “[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.”

Moreover, Clause 20 of the *Prakas* on the Arbitration Council No. 099 SKBY, dated 21 April 2004, states that “[d]uring the arbitration process...The parties must attend all meetings to which the arbitration panel calls them.”

In this case, the workers and the employer failed to attend the hearing and did not assign a representative (for example, from the union federation, the union, or a lawyer) to represent them at the hearing. Therefore, the Arbitration Council considers that the second condition is also met.

**Third condition: the party does not provide proper reasons for its lack of appearance**

As mentioned in Clause 21 of the abovementioned *Prakas*, the Arbitration Council can choose to either proceed with the arbitral process in the absence of the party or to terminate the arbitral process by means of an arbitral award in cases where the party was duly notified but fails to appear before the Arbitration Council without providing proper reasons. In this case, the Arbitration Council finds that both the employer and the workers were absent without providing proper reasons to the Secretariat of the Arbitration Council. Therefore, the Arbitration Council considers that the third condition is also met.

Therefore, the Arbitration Council decides to close case 24/09-Maxlin because the worker and employer parties were absent from the hearing.

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

**DECISION AND ORDER**

Close Case 24/09-Maxlin.

**SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....