



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 54/11-June Textile**

**Date of Award: 17 June 2011**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

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

Arbitrator chosen by the worker party: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

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

Name: **June Textile Co., Ltd**

Address: Russian Federation Boulevard, Boreimuoroyknang Village, Teouk Thla Sub-District  
Sen Sok District, Phnom Penh

Telephone: 012 541 851

Fax: N/A

Representatives in the first hearing:

1. Mr. Albert Teoh Administrative Director
2. Mr. Meng Kry Administrator
3. Mr. Tang Kysay Administrator

Representatives in the second hearing:

1. Mr. Albert Teoh Administrative Director
2. Mr. Sri Kimyou Lawyer
3. Mr. Tang Kysay Administrator
4. Mr. Chet Khemara Officer from the Garment Manufacturers Association in Cambodia (GMAC)

**Worker party:**

Name: **Workers' Representatives of the June Textile Company**

Address: Russian Federation Boulevard, Teouk Thla Sub-District, Sen Sok District, Phnom  
Penh

Telephone: 012 457 751

Fax: N/A

Representatives in the first hearing:

1. Mr. Sok Kruey                      Lawyer
2. Ms. Morm Nhim                      President of the National Independent Federation  
Textile Union of Cambodia (NIFTUC)
3. Ms. Neang Sorphorn              Workers' Representative
4. Ms. Ken Savry                      Workers' Representative
5. Ms. Seak Sokha                      Workers' Representative
6. Ms. Cheng Danou                      Workers' Representative
7. Ms. Morm Touch                      Workers' Representative
8. Ms. Cheak Sineur                      Workers' representative
9. Ms. Seng Sopheap                      Workers' Representative
10. Ms. Yang Van                      Workers' Representative

Representatives in the second hearing:

1. Mr. Sok Kruey                      Lawyer
2. Ms. Sary Botchakya                      Lawyer
3. Ms. Morm Nhim                      President of the National Independent Federation  
Textile Union of Cambodia (NIFTUC)
4. Ms. Neang Sorphorn                      Workers' Representative
5. Ms. Ley Barang                      Workers' Representative
6. Ms. Suon Nary                      Workers' Representative
7. Ms. Huy Nary                      Workers' Representative
8. Ms. Tep Borany                      Workers' Representative
9. Ms. Pon Chanthy                      Workers' Representative
10. Ms. Seak Sokha                      Workers' Representative
11. Ms. Cheng Danou                      Workers' Representative
12. Ms. Morm Touch                      Workers' Representative
13. Ms. Cheak Sineur                      Workers' representative

**ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the company provide them with termination payment and benefits under Articles 75, 89, 91, 116, 166, and 167 of the Labour Law in the event that

the factory ceases operation. However, if the company continues its operation, then it must pay them reimbursement of wages from 1 April 2011 to the date that the issue is resolved. The company states that it will not cease its operations, and asserts that it will give any worker wishing to resign a payment of US\$ 20 for each year of service as well as payment in lieu of unused annual leave. During the no-work period [following the fire], the company will not provide wages to the workers on the grounds of Articles 82, 85 and 71, point 10, of the Labour Law.

#### **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. 470 KB/RK/VK dated 4 May 2011 was submitted to the Secretariat of the Arbitration Council on 4 May 2011.

#### **HEARING AND SUMMARY OF PROCEDURE**

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

**Date of hearing:**     **First hearing: 10 May 2011 at 8:30 a.m.**

**Second hearing: 31 May 2011 at 8:30 a.m.**

#### **Procedural issues:**

On 19 April 2011, the Department of Labour Disputes received a complaint from the company regarding a fire incident at the factory. The workers demand the company to provide them with termination payment in accordance with the Labour Law. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the labour dispute. The last conciliation session was held on 27 April 2011. The issue was not conciliated. The one non-conciliation issue was referred to the Secretariat of the Arbitration Council on 4 May 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summonsed the company and the workers to the hearing and conciliation on the one non-conciliation issue on 10 May 2011 at 8:30 a.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council attempted to further the conciliation on the one non-conciliation issue. However, there was no agreement due to the parties disagreed on the application of the 'act of god' doctrine to the incident. The Arbitration Council requested the parties to adjourn the hearing to allow adequate time to prepare documents and evidence for the Council. The two parties agreed that the hearing would occur on 17 June 2011. The second hearing was held on 31 May 2011 at 8:30 a.m. The two parties were present as invited by the Secretariat.

On the hearing date, the Arbitration Council gave the parties an opportunity to present their arguments to substantiate their claims regarding the incident in this case. Therefore, in this case, the Arbitration Council will consider the issue 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 from Lee Thai Khit, the Owner/Director of the company, to Albert Teoh, the Administrative Director, to represent the company in resolving the dispute in this case, dated 10 May 2011.
2. Report of the International Labour Organization (ILO).
3. Report of Forensic Services (M) Sdn Bhd, dated 19 April 2011.
4. Letter of clarification by the workers at the June Textile Company, regarding the legitimacy of the Internal Work Rules of the company, dated 18 March 1997.
5. Internal Work Rules, No. 027 SKR.RK dated 13 May 1998, of the company.

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

1. Name list of 1,377 workers who authorise Neang Sorphorn, Morm Touch, Cheng Danou, Seak Sokha, and Suon Nary to represent them.
2. Authorisation letter from Neang Sorphorn to Sok Kruey and Morm Nhim, dated 9 May 2011.
3. Authorisation letter from Ley Barang and Suon Nary to Sok Kruey and Morm Nhim, dated 10 May 2011.
4. Authorisation letter from Neang Sorphorn to Sary Botchakya, dated 11 May 2011.
5. Authorisation letter from Cheng Danou to Sary Botchakya, dated 11 May 2011.
6. Authorisation letter from Suon Nary to Sary Botchakya, dated 11 May 2011.
7. Authorisation letter from Neang Sorphorn to Sok Kruey, dated 18 May 2011.
8. Evidentiary submission for case 54/11, dated 18 May 2011, consisting of five CDs, photographs of the fire incident, *Kho Santepheap* (Khmer Daily Newspaper) issue No.

- 7228 (1 April 2011), *Rasmey Khampuchea* (Khmer Daily Newspaper) issue No. 5469 (1 April 2011) and documents concerning the fire incident at the June Textile Factory.
9. Brief statement of the labour dispute between the workers and the company, dated 18 May 2011.
  10. Letter by the workers at the company, confirming the fire incident at the June Textile Factory, dated 18 May 2011.
  11. Brief statement of the labour dispute between the workers and the company, dated 31 May 2011.
  12. Video compact disc (VCD) concerning the fire incident of 31 March 2011 at the June Textile Factory recorded by *Television Khmer*.

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

1. Report of the collective labour dispute resolution at June Textile Company, No. 470 K.B/RK/VK, dated 4 May 2011.
2. Minutes of collective labour dispute resolution at June Textile Company, dated 27 April 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 305 KB/RK/VK/LKR dated 5 May 2011 to the workers to select arbitrators.
2. Minutes of the arbitrator selection from the employee's list, dated 6 May 2011.
3. Invitation letter No. 312 KB/AK/VK/LKA dated 6 May 2011 to the company to attend the first hearing.
4. Invitation letter No. 313 KB/AK/VK/LKA dated 6 May 2011 to the workers to attend the first hearing.
5. Invitation letter No. 343 KB/AK/VK/LKA dated 25 May 2011 to the workers to attend the second hearing.
6. Invitation letter No. 344 KB/AK/VK/LKA dated 25 May 2011 to the company to attend the second hearing.

**FACTS**

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

**The Arbitration Council finds that:**

- June Textile Company Co., Ltd, located at Russian Federation Boulevard, Borei Muoroy Knong Village, Teouk Thla Sub-District Sen Sok District, Phnom Penh, employs a total of 4,096 workers.

- According to the name list with the workers' thumbprints provided to the Secretariat and which is not objected to by the company, a group of 1,377 workers at the factory comprises the claimant in this case.
- The 1,377 workers hold two kinds of employment contracts: fixed and undetermined duration contracts.

**Issue 1: The workers demand that the company provide them with outstanding wages, compensation in lieu of prior notice, payment in lieu of annual leave, termination payment (fixed and undetermined duration contracts) and damages in accordance with the Labour Law of 1997 in this case of contract termination.**

- There are two buildings on the premises of the company: one was built in 1994 (old building) and another one was built in 1997 (new building). The new building houses two warehouses situated on the ground floor each measuring 80 metres in width and 45 metres in breadth. The fire originated in these warehouses and burned down a total of four storeys in the new building.
- To serve as safety measures protecting against fires, the company maintains 150 fire extinguishers, fire alarms on all floors, and a team to oversee the electrical system on a regular basis. On the hearing date, the company could not recall the latest date of checking the electricity system.
- The new building was furnished with electrical wires in 1997.
- The company had fire drills for the workers.
- The defaced building was insured by an insurance company; however, as of the hearing date, there was no compensation pay out to the company.

**The fire incident in the new building of 31 March 2011**

- At around 4:30 p.m. a fire began in a warehouse on the ground floor, where the company stored fabric, cotton thread and other materials for manufacture. At that time, approximately 2,000 day-shift workers were working in the factory.
- The fire started on a small scale with smoke coming out from the warehouse. Shortly after, an administrator, who was present in the hearing, unsuccessfully attempted to put out the fire with a fire extinguisher.
- The fire alarms in the new building malfunctioned. Within a few minutes of the fire's ignition, the security guards informed staff and workers in the factory to flee the building.
- The company counted over 30 fire trucks arriving at the scene at approximately 4:45 p.m. The fire, however, persisted because the firefighters lacked proper equipment in the form of face masks and thus could not enter the building.

- As a result, until 1 April, the building remained demolished. Based on the company's provisional conclusion, the fire was caused by an electrical fault. Even by the date of the hearing, there was no report identifying the cause of the fire.

### **The company's arguments**

- The company asserted that the fire incident constituted an 'act of god' and thus precluded the company's obligation to pay the workers' termination payment.
- The company asserted that it terminated the workers on 1 April 2011 after the incident. The company further maintained that, while it had no obligation to provide the workers with a termination payment, the company offered the workers US\$ 20 per year of service, as well as payment in lieu of unused annual leave. For the outstanding wages for March, the company had already paid the workers.
- In the hearing, the company argued that according to the Glossary of the Cambodian Civil Code of 2007, the term 'act of god' applies to an event that: (1) the parties did not intend to occur; (2) the parties could not foresee; and (3) the parties could not prevent or overcome. Condition 1 of the term requires that the company did not intend to set a fire on its building. Condition 2 holds that the company did not foresee the incident. That is to say, if the company had anticipated the fire, they would have had firefighters and fire trucks in place to extinguish the fire. Condition 3 dictates that the fire proved insurmountable and thus demolished the entire building notwithstanding the company's intensified efforts.
- The company added that the fire did not sweep through the whole building after it had erupted for 15 minutes, and the fire brigade also arrived at the factory. Although there were 30 fire trucks, the firefighters could enter any section of the building due to not being equipped with face masks. Therefore, instead of entering the building, they smashed the glass windows and sprayed water into the building to prevent the fire from spreading to the other buildings. The company submitted that it thought the fire brigade could contain the fire but the fire nonetheless burned down the entire building.
- The company stated that the Labour Law of 1997 did not define the term 'act of god', but rather, stipulated events deemed as disasters.

### **The workers' arguments**

- The workers refuted the company's arguments that the incident constitutes an act of god.
- The workers stated that the Labour Law does not classify a fire as an act of god.
- The workers mentioned the 'act of god' definition in the Land Law of 2001 and offered an explanation of the term 'act of god' based on the Civil Code [outlined above].

Condition 1 applies to events of which neither party intended or possessed the capacity to prevent. In this case the fire was caused by technical negligence in managing the electricity circuit. Condition 2 stipulates that the timing and magnitude of the event must not be foreseeable. In this case, it was generally accepted that a fire constitutes a predictable consequence of a faulty electrical system. Moreover, the company could foresee a fire caused by old electrical wires used since 1997. The workers, finally, refused to accept the company's argument related to Condition 3 because the company failed to provide any evidence to substantiate the company's claim [that the fire was insurmountable because it could not be extinguished despite the intensified efforts of the company and the fire brigade]. .

- The workers maintained their demand for the company to pay them outstanding wages until the time the company terminated their contracts. The workers asserted that after the fire incident, the company did not give them specific notification regarding contract termination. Rather, it had just made a decision and revealed it at the arbitral hearing.
- The workers acknowledged that the company had paid them wages for March.
- The workers made additional demands, including compensation in lieu of prior notice, payment in lieu of unused annual leave, termination payment (for fixed and undetermined duration contracts), and damages in accordance with the Labour Law.

#### **Evidence in a foreign language**

- The company submitted the evidence in the English language to the Arbitration Council.

#### **REASONS FOR DECISION**

In this case, the workers, who hold fixed and undetermined duration contracts, are terminated; they demand the company to pay outstanding wages, compensation in lieu of prior notice, payment in lieu of unused annual leave, termination payment (for fixed and undetermined duration contracts) and damages in accordance with the Labour Law applicable to contract termination. The company does not agree to the demand, asserting that on the grounds of the fire being an act of god, it discharges the company from legal liability; however, the company stated it will give them a payment of US\$ 20 for each year of service and payment in lieu of unused annual leave. The Arbitration Council considers whether or not the fire incident at the June Textile Factory is an act of god.

In previous Arbitral Awards, the claimant who alleges an act has had the burden of proof. (*See AA 79/05-Ever Green; 101/08-GDM, reasons for decision, issue 1&2; 108/08-Hugo, reasons for decision, issue 4; 163/09-Tack Fat, reasons for decision, issue 2; 168/09-*

*Teuk Thla Plaza II, reasons for decision, issue 2; 115/10-G-Formost, reasons for decision, issue 18).*

The Arbitration Council, in this case, agrees with this interpretation. Therefore, the company that claims the incident as an act of god has the burden of proof. The company submitted the evidence in English; however, clause 23 of *Prakas* 099 SKBY dated 21 April 2004 on Arbitration Council states that “[t]he language to be used during the arbitral proceedings shall be Khmer...” Consequently, the Arbitration Council will not consider the evidence provided by the company in a language other than the Khmer language.

Article 87, paragraph 3 of the Labour Law states, “[t]he closing of an enterprise, except for acts of God, does not release the employer from his[/her] obligations as stated in this section III.”

Based on this article, the closing of an enterprise releases the company from his/her obligation unless it is an act of god. In this case, the new building ceased operation on 1 April 2011 and the company claimed that it was an act of god; thus, it is asserted that it is not obliged to pay the workers a termination payment.

The Arbitration Council finds that there is no article in the Labour Law of 1997 defining an ‘act of god’. For this reason, the Council will consider this issue based on other laws of Cambodia.

In the hearing, the parties cited the Cambodian Civil Code, adopted on 8 December 2007 and defining an act of god; however, the Arbitration Council finds that [this law has not entered into force. This is because] no other laws promulgate the civil code as of the hearing date and Article 1305, paragraph 1 of the Civil Code states, “[t]he code shall be implemented from the date determined by other laws.”

Based on this provision, the Arbitration Council will not take the definition of an act of god in the Civil Code into consideration. However, the Council finds that the definition of an act of god is stipulated in the Glossary of the Land Law, adopted on 30 August 2001. Therefore, the Council will use this definition to interpret the term, act of god, in this case.

The Glossary of the Land Law defines the term ‘act of god’ as *an event resulting from unforeseeability and insurmountability*.

Based on this glossary, the Arbitration Council considers that the glossary is the legal dictionary which is part of the law and therefore, the explanation of each legal term is a part of the substance of the law. In light of this explanation, the Arbitration Council is of the view that an event deemed as an act of god has to satisfy two conditions, The event is 1. unforeseeable and 2. insurmountable.

- 1. The event is unforeseeable:** means that one cannot anticipate the event in advance, as in the case of a natural disaster. Although there may be an alert and

tracking system for the disaster, one still cannot predict the specific event because it is not caused by a human act.

2. **The event is insurmountable:** refers to the magnitude of the event which is insuperable.

In this case, the company asserted that the fire qualifies as an act of god, but the workers thought that it was not. Based on the facts, the company and the workers made assertions to support their claim. *Accordingly, the Arbitration Council will consider whether or not the fire is an act of god.*

1. **The event is unforeseeable:** In this case, based on the explanation above, the Arbitration Council considers that the incident is not unforeseeable because the risk of damage caused by a fire, particularly a fire caught on a building, is widely assumed as most companies have measures to safeguard their buildings from fire, for example, installation of a fire alarm system, practice of fire drills and evacuation, and purchase of insurance.

In fact, at the June Textile Factory, the company had a fire safety system, practiced fire drills with the workers, installed 150 fire extinguishers in the building, and hired a maintenance team to oversee the electricity system and bought insurance to cover fire incidents. These arrangements confirm that a fire is generally foreseeable. Even though the company cannot conceive a specific fire incident and its magnitude, in having such an arrangement in place, it has anticipated a fire incident in the company.

The company argued that if it knew the incident was going to happen when it did, then it would have pre-arranged for the firefighters to come to the premises. Hence, the company concluded that this fire incident was unforeseeable. The Arbitration Council considers that the company's argument is unwarranted since 'foreseeability' in the law does not require the company to know the exact date and magnitude of the fire incident. Instead, the law stipulates that the fire is a foreseeable event which could occur.

Consequently, based on this explanation, the first condition of the act of god doctrine is not met.

2. **The event is insurmountable:** The Council is of the view that a fire which qualifies as an act of god is of a magnitude that is unprecedented for the area in which the incident occurred and to the extent it is insuperable because it is caused by natural events, as opposed to human acts, such as lightning, *tsunami*, earthquake and

flood, which lead to a fire in a factory building.

In this case, the fire started on a small scale from a warehouse; the fire was not caused by a natural disaster, and the Arbitration Council found that at first instance only an administrator attempted to extinguish it without any assistance from other staff or workers.

The company stated in the hearing that the fire was widespread due to a shortage of firefighting equipment, even though there were more than 30 fire brigades trying to overcome the fire. In light of this, the company argued that if the firefighters were adequately equipped with firefighting equipment, then the fire could have been extinguished. Even so, the Arbitration Council considers that the failure to extinguish the fire is not because the fire was of such a large scale which was insurmountable [by human effort].

Besides the arguments above, the company did not submit specific evidence compelling the Arbitration Council to believe that the magnitude of the fire was insuperable and of a kind which could not be prevented or overcome.

In conclusion, the Arbitration Council considers that the second condition of the act of god doctrine is not met.

Based on the foregoing, the Arbitration Council considers that the company does not have sufficient evidence to prove that the fire incident at the June Textile Factory qualifies as an act of god. Thus, the Arbitration Council will consider the company's liability as follows:

#### **Case of fixed duration contracts**

##### **A. Damages**

Article 73, paragraph 3 of the Labour Law states,

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

In this case, the company prematurely terminated the workers' contracts on its will and not by an act of god. Therefore, the workers are entitled to receive damages at least equal to the wages they would have received until the termination of the contract.

The Arbitration Council considers that the parties to this type of contract are usually clear about job tenure because fixed duration contracts must clearly specify the commencement and end date. For this reason, it is reasonable that the workers receive damages when the company terminates the contracts by its will and not by an act of god before the expiry date anticipated by the parties.

##### **B. Severance payment**

Article 73, paragraph 6 of the Labour Law states,

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

In this case, the company terminated the workers' contracts. Thus, the company must provide severance payment of at least equal to 5% of wages during the length of the contract to the workers.

### **Case of undetermined duration contract**

Article 74 of the Labour states,

The labour contract of an 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 this article, one party has the right to terminate the contracts by giving prior written notice to the other party. However, if the company wishes to terminate undetermined duration contracts, then it must have valid reasons relating to the workers' aptitude or behaviour based on the requirements of the operation of the enterprise, establishment or group. Therefore, the Arbitration Council makes a determination as follows:

#### **1. Compensation in lieu of prior notice**

Article 75 of the Labour Law states,

The minimum period of 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.
- Two months, if the worker's length of continuous service is longer than five years and up to ten years.

- Three months, if the worker's length of continuous service is longer than then years.

The method for calculating the length of service of workers, who are not employed on a monthly basis, shall be determined by a Prakas (ministerial order) of the Ministry in Charge of Labour.

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 facts, the company terminated the workers on 1 April 2011 and did not give them prior notice. Based on Articles 75 and 77 of the Labour Law above, the company must pay compensation in lieu of prior notice to the workers who hold undetermined duration contracts, depending on each worker's seniority.

## **2. 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 offence by the worker, the employer is required to give the dismissed worker, in addition to the prior notice stipulated in the present Section, 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.

The worker is also entitled to this indemnity if he [/she] is laid off for reasons of health.

Based on the above interpretation, the termination is not on the grounds of an act of god. Hence, based on this article, the company must provide indemnity for dismissal to the workers, depending on each worker's seniority.

### **3. 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 indemnity for dismissal. In this case, he [/she] is relieved of the obligation to provide proof of damage incurred.

Based on the facts, the termination was grounded on the fire incident. The parties agreed that the fire incident caused the termination. The Arbitration Council considers that the company has a valid reason to terminate the workers. Therefore, the workers are unable to receive damages in accordance with Article 91 of the Labour Law.

In relation to this type of contract, the Arbitration Council considers that the company is able to terminate the contract as long as it has a valid reason regarding the workers' aptitude or behaviour based on the requirements of the enterprise in accordance with Article 74 of the Labour Law. For this reason, the workers are only entitled to receive damages in case of illegitimate reasons for termination.

### **Outstanding wages for the workers who hold the two kinds of contracts above**

According to the two parties' statements, the outstanding wages for the workers were for the month of March 2011 and that the company had paid this to the workers. Therefore, the Arbitration Council rejects the workers' demand for the company to pay outstanding wages to the workers who hold fixed and undetermined duration contracts.

### **Payment in lieu of unused annual leave for the workers who hold the two kinds of contracts above**

Article 166, paragraph 2 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, paragraph 2 of the Labour Law states,

If the contract is terminated or expires before the worker has acquired the right to use his[/her] paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker.

Based on this interpretation, when the company terminates the workers who have not used all of their annual leave, it must pay them payment in lieu of unused annual leave.

In this case, the Arbitration Council orders the company to provide payment in lieu of annual leave to the workers who hold the two types of the contracts.

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

#### **DECISION AND ORDER**

##### **1. Case of fixed duration contracts**

- Order the company to pay damages at least equal to the wages the workers would have received until the termination of the contract.

- Order the company to pay a severance payment at least equal to 5% of the wages the workers would have received until the termination of the contract.

- Reject the workers' demand for outstanding wages.

- Order the company to provide the workers with payment in lieu of unused annual leave.

##### **2. Case of undetermined duration contracts**

- Order the company to pay compensation in lieu of prior notice to the workers in accordance with their seniority.

- Order the company to pay indemnity for dismissal to the workers in accordance with their seniority.

- Reject the workers' demand for damages.

- Reject the workers' demand for outstanding wages.

- Order the company to provide the workers with payment in lieu of unused annual leave.

**3.** Order the company to provide payment in points 1 and 2 to the workers as soon as the award comes into force.

**Type of Award: Non Binding Award**

This award 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: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....