



Legal Pointer

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- **Dispute Resolution in Cambodia**

Reference

1. Labour Law 1997
2. Prakas 317 dated 29 November 2001 on Procedures for Resolution of Collective Labour Dispute
3. Prakas 318 dated 29 November 2001 on Procedures for Resolution of Individual Labour Dispute
4. Prakas on 099 dated 21 April 2004 on Arbitration Council
5. Circular 12 dated 05 July 2002 on Labour Dispute Resolution
6. Instruction 08 dated 06 May 2003

Labor Dispute Resolution in Cambodia



Industrial relations are relations between the employer or employer representative or employer organization with workers/employees or the professional organization of workers/employees in the workplace or enterprise level or industrial level, etc. A dispute in industrial relations always arises although there is a good management in the enterprise/establishment but the dispute may be easily resolved if the parties to the dispute adhere to the behavior and activity based on some resolution mechanisms:

- Negotiate peacefully
- Focusing on sharing of a common interest with each other
- Not stick to the stance of win-lose
- Carry out the legal procedures in resolving the dispute

A labour dispute is an inevitable part in industrial relations between workers/employees and their employer and it may result from various reasons in the workplace.

- Violate the obligation of paying wages
- Have no good working conditions
- Failure to fulfill the obligation of employment contract or CBA or internal regulation
- Discrimination
- Try to take advantage of the other party

1. Type of Labour Dispute

The Cambodian Labour Law 1997 classifies labour disputes into two: individual labour dispute (Article 300) and Collective Labour Dispute (Article 302). The classification of disputes is important as it identifies the mechanism as well as proper procedure for resolving the dispute.

A. Individual Dispute

Paragraph 1, Article 300 of the Labour Law gives a definition that “*An individual dispute is the one that arises between the employer and one or more workers or apprentices individually, and relates to the interpretation or enforcement of the terms of a labor contract or apprenticeship contract, or the provisions of a collective agreement as well as regulations or laws in effect.*” This definition also covers the apprenticeship contractor. Based on this definition, we see that the criteria for an individual dispute include:

- **Parties to the dispute:** Parties to an individual dispute may be between the employer and one worker/employee or between the employer and many workers/employees. The labour law does not specify how many workers/employees are called many workers/employees but it depends on each actual case.
- **Subject of the dispute:** An individual dispute arises from individual matter of each worker or apprentice related to the interpretation or enforcement of the terms and conditions of an employment contract or apprenticeship contract, or CBA as well as other regulations in effect. Individual dispute generally involves rights only which is mainly related to the interpretation or implementation of the employment contract, CBA or other regulations. For example, a complaint to nullify or cancel an employment contract or complaint against the employer for not implementing the obligation stated in the employment contract or complaint to demand additional better wage according to skills and responsibilities.

However, it is possible that an individual dispute become a collective labour dispute when the dispute is supported by a union or a group of workers/employees which can affect the process of the enterprise/establishment. Generally a union plays a major role in transforming an individual dispute into a collective labour dispute and doing like this leads the dispute:

- To have influence for resolution
- Can change the behavior of the parties to the dispute
- Easy to exchange unimportant points (hay points) in resolving it.

The Arbitration Council in case 13/08 finds that a dispute involving only one worker/employee without any other workers/employees or any local union is determined collective labour dispute.

B. Collective Labour Dispute

Article 302 of the Labour Law stipulate that “*A collective labor 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 recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness.*” According to this definition, the criteria can be determined as follows:

- **Parties to the dispute:** a collective labour dispute generally arises between one employer or more employers with some staff. So, the Labour Law does not specify clearly how many employers is called many employees. Many employers may refer to the professional organization of employers

(employer association). Regarding some staff, it may involve workers/employees more than one or may have support from a union.

- **Subject of the dispute:** A collective labour dispute involves working conditions, use of rights provided to a professional organization, recognition of professional organization in the enterprise and issue of relations between the employer and workers/employees in the enterprise. On the other hand, it is broad that the law stipulates that all issues related between the employer and workers/employees are all determined as the subject of a collective labour dispute.
- **Consequence of the dispute:** When a collective labour dispute arises, it makes the enterprise unable to process smoothly or affect the social peace. Participation in the demand of a group of workers/employees may disrupt the production of the enterprise. But how many workers/employees will affect the protection is not specified. It depends on the type of workers or type of enterprise.

Thus, to make a dispute become a collective labour dispute, the dispute has to fulfill the above conditions.

The Arbitration Council of Case 99/11 finds that a dispute that is called collective labour dispute must meet three conditions: parties to the dispute, subject of the dispute and consequence of the dispute. When the conditions on parties to the dispute and subject of the dispute have been met, the Arbitration Council will make a consideration on condition 3.

Regarding condition 3 (effect of the dispute), the Arbitration Council finds that although an enterprise can operate normally, this dispute point is supported by many workers/employees, especially members of the unions and workers/employees who are working in group I. In the group, there are 1050 workers out of 2700 workers in total. The issue of the dispute can affect the feeling of the workers and order in the workplace. Thus, the Arbitration Council finds that this dispute point is collective labour dispute.

2. Resolution of Individual Dispute

Generally parties to the dispute can file a complaint to the court to be resolved (currently Cambodia has not had a labour court yet but Article 389 of the Labour Law stipulates the court that has the authority, which refers to Municipal/Provincial Courts). But the Labour Law also gives an option for the parties to file a complaint to the labour inspector of their province/city to resolve it first.

Filing a complaint to the labour inspector to resolve a collective labour dispute is not an obligation but it is just voluntary for either party to seek resolution to save time and to spend less.

A. Information query

The query about the fact of the parties to the dispute must be made between the first week and the 3rd week after receiving the complaint. Although this is not any specific determination in the Labour Law for the procedures for inviting the parties to the dispute for query, Article 301, Paragraph 2 of the Labour Law specifies the length of time for conciliation which is at least 3 weeks after receiving the complaint. In this context, the query by the labour inspector will be made before the date of conciliation:

- must make a letter and send the letter all parties to the dispute by post or directly to come to provide information and submit documents as evidence related to the case so that the dispute can be conciliated properly.
- The query for information must be made separately. All the time of the query, the minutes must be made as a document with signature of the labour inspector and party that provides the information and a copy of the minutes must be given to the party.
- Three days at the latest, the complaint will be considered null and void and is not valid for further procedures in case the complaint or representative of the plaintiff fails to appear to provide information without a valid reason after being invited for query.
- Three days of working days at the latest, if the defendant or representative fails to appear without a valid reasons as scheduled, this dispute shall be considered unresolved and the defendant party shall be considered having a fault as accused by the plaintiff completely.

B. Conciliation:

After receiving all the information, the labour inspector must make an invitation letter to both parties to attend a conciliation meeting. The party to the dispute can have someone to accompany or representative who is authorized properly with an authorization letter.

- This conciliation must be made within 3 week at the latest after receiving the complaint. The conciliation must be made based on the law, CBA, regulation, employment contract, or apprenticeship contract.
- The complaint shall be considered null and void in case the plaintiff or representative fails to appear to resolve the dispute without a valid reason.
- It is considered that the defendant completely has a fault as accused by the plaintiff and is un-conciliated in case the defendant or representative is absent without a valid reason.
- The conciliator must take the minutes by stating clearly the agreement or disagreement of both parties. The minutes shall be signed by the labour inspector with signature of both parties and a copy of the minutes must be given to each party.
- The plaintiff can file a complaint to court further within 2 months after receiving the non-conciliation report.

3. Resolution of Collective Labour Dispute

Generally, the resolution of a collective labour dispute must go through two stages which is an obligation. First, the collective labour dispute must be conciliated by the labour inspector. If the dispute remains unresolved, the dispute will be resolved by the Arbitration Council.

A. Type of Collective Labour Dispute

A collective labour dispute is generally divided into two types:

1. **Dispute on rights:** This dispute is related to the interpretation and implementation of the legal rights stipulated in the law, CBA, internal regulation, or employment contract. It is related to the violation of rights provided by the law, agreement or employment contract such as rights to receive wages, overtime wage, day off etc. which is clearly stated in the law. A dispute on rights can be an individual dispute or collective labour dispute.

Ex: Sokha and 200 other workers led by a local union in the factory in Phnom Penh demand their employer build more toilets in addition to the current toilets appropriately in accordance with the Labour Law while the current toilets are not proportional to the number of workers as stipulated by the Ministry of Labour.

2. **Dispute on interests:** This dispute is related to the future interests that are not stipulated in the law or CBA or internal regulation or employment contract. A dispute on interests is about a demand for the future rights.

Ex: Dara is a worker in a footwear factory in Takeo province since 2012. Until January 2016, Dara and about 500 other workers demanded the employer provide a lunch allowance of 5000 riel per day which is not stipulated in any regulation.

B. Procedure for resolution

B.1. Conciliation by labour inspector

A collective labour dispute can be filed to the labour inspector by either party. If there is not any party filing a complaint or giving notice to the labour inspector about this dispute, the labour inspector must report to the Minister of Labour in order to appoint a conciliator within 48 hours. But for any collective labour dispute that affect or may affect the security and public order, the labour inspector after receiving the information about this dispute must report to the Minister of Labour in order to appoint a conciliator and take action to query and conciliate the dispute immediately at the place of the dispute.

B.1.1. Information query:

After being appointed, the conciliator must make a letter to invite both parties and send the letter to them by post or directly in order to come to provide information and documents as evidence to conciliate the dispute properly. To make the conciliation process smooth, the conciliator must ask the parties for more information which must be made separately for each party. The minutes must be taken for all the queries to be kept as documents with signature of the conciliator and the party who provides the information.

B.1.2. Conciliation:

After receiving enough information from all the parties, the conciliator:

- Must make another letter to relevant parties to invite them to a conciliation meeting within 15 days from the date of receiving the order from the Minister of Labour.
- However, this conciliation can also be held again at the request of the parties to the dispute.
- After receiving an invitation to a conciliation meeting, the parties to the dispute must attend the conciliation meeting and the parties can be accompanied by someone or representative who is authorized and all actions resulting from the dispute must be stopped during the conciliation. If any party fails to attend the conciliation meeting, the conciliator must make a report to the Ministry of Labour for legal action.

At all the meetings of conciliation, the conciliator must take the minutes by stating clearly the agreement or disagreement of the parties. The minutes must be certified by the conciliator as well as signature of relevant parties and must be copied to all parties. The agreement signed by the parties and certified by the conciliator has the same value and power as the CBA between the party and the person who has authorized the representative. If the party of the workers/employees is not a professional organization, this agreement can be made, meaning that if there is not a union representing the workers/employees, the workers/employees can still make an agreement through the worker representative or their representative.

In case this dispute remained unresolved, the conciliator must send the case on non-conciliation to the Minister of Labour within 48 hours at the latest after the conciliation. The case that is sent to the Minister of Labour must be accompanied by documents such as: conciliation report, minutes of conciliation and draft of the letter to the Arbitration Council. For the case of collective labour dispute that must be resolved as per the procedure of the Arbitration Council of the Labour Law, the Minister of Labour must refer it to the Arbitration Council within 3 days after receiving the non-conciliation report.

B.2 Resolution by the Arbitration Council

When the dispute cannot be conciliated, the dispute must be submitted for resolution as follows:

- Procedure as stipulated in the CBA on Arbitration Council, if any.
- Or other procedures with agreement from all parties to the dispute.
- Or according to the procedure on Arbitration Council as stipulated in the Labour Law.

****Detailed procedures for resolving a collective labour dispute at the Arbitration Council will be interpreted and explained in the next legal pointer.*

4. Role of Court in Resolving Labour Dispute

A. Individual Dispute

In case the dispute officer cannot conciliate the dispute, the plaintiff can file a complaint to court within 2 months. After this period, the parties cannot file a complaint to court.

There is not any regulation stating clearly about the procedures for resolving an individual labour dispute in court. However, the procedure for resolving the individual labour dispute should be implemented in accordance with the 2006 civil procedure code.

B. Collective Labour Dispute

After the procedures of the Arbitration Council have been completed and the dispute remains unresolved, the parties can file a complaint to court or enforce the industrial action (strike or lockout). Sending the case to court generally involves two cases:

1. Binding Award

If the other party to the dispute still refuses to implement the award that is effective, the other party can file a complaint to court to ask the court to help force that party to implement the award. The party who file a complaint to the court must submit a copy of the award to the court.

However, either party can refuse to implement and recognize the award and the binding in case the party files a complaint to court with evidence to prove that the award of the Arbitration Council is not correct due to:

- The party to the dispute could not properly participate in choosing the arbitrators or did not receive notice properly from the Arbitration Council or was prevented unfairly from interpreting the case in detail.
- Failure to implement the procedures stipulated in the Labour Law or Prakas on Arbitration Council related to the issuance of award.

- The Arbitration Council issues an award beyond its jurisdiction provided by the Labour Law and Prakas on Arbitration Council.

In this case, the court does not consider the factual narrative and legal narrative of that dispute point but the court just consider the incorrectness of the decision of the Arbitration Council related to the above three points.

2. Non-binding Award

The party can file a complaint to court and the court will consider the factual narrative and legal narrative of the dispute point.

The court will make consideration based on the legal principle and regulations for the dispute on rights which is related to the implementation of the law.

Summary of Precedent of Arbitration Council

1. A dispute involved with only one worker without other workers/employees or any local union in relation to the demand, the Arbitration Council determines that the dispute is not a collective labour dispute. (Award 13/08)
2. The enterprise still operates normally but this dispute point is supported by many workers/employees, especially members of a union. The matter of the dispute can affect the feeling of workers/employees and order in the workplace. Thus, the Arbitration Council finds that this dispute point is a collective labour dispute. (Award 99/11)

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