



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

**ក្រុមប្រឹក្សាអន្តរាគ្នា**  
**THE ARBITRATION COUNCIL**

**Case number and name: 112/08-Zheng Yong**

**Date of Award: 22 September 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Kao Thach**

Arbitrator chosen by the worker party: **An Nan**

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

#### **DISPUTING PARTIES**

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

Name: **Zheng Yong Garment Factory Co., Ltd.**

Address: No. 4, National Road 5, Sangkat Toul Sangker, Khan Russey Keo, Phnom Penh

Telephone: 012 357 168 or 023 430 657      Fax: 023 430 739

Representative:

- |                   |                                   |
|-------------------|-----------------------------------|
| 1. Mr. Guo Dai Fu | Supervisor                        |
| 2. Mr. Yas Li Yon | Assistant to the company director |
| 3. Mr. Heang Tech | Chief of administration           |

##### **Worker party:**

Name: **Free Trade Union of Worker of Kingdom of Cambodia (FTUWKC) at Zheng Yong Company**

Address: No.4, National Road 5, Sangkat Toul Sangker, Khan Russey Keo, Phnom Penh

Telephone: 012 482 284 or 017 957 853      Fax: N/A

Representative:

- |                     |  |
|---------------------|--|
| 1. Mr. Ou Sophat    | Officer of FTUWKC  |
| 2. Mr. Ly Bunchhuoy | President of local union of FTUWKC at Zheng Yong factory |

3. Mr. Thy Chenda	Vice-president of local union of FTUWKC at Zheng Yong factory
4. Mr. Seng Socheat	Secretary of local union of FTUWKC at Zheng Yong factory
5. Mr. Pheng Sophat	1 <sup>st</sup> Vice-secretary of FTUWKC
6. Ms. Bo Sokda	2 <sup>nd</sup> Vice-secretary of FTUWKC
7. Mr. Som Sophorn	Committee member of FTUWKC
8. Ms. Van Sokly	Committee member of FTUWKC

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- Leaders of local union of FTUWKC in the factory demand that Zheng Yong Company should not use the company's name as Protexile to import or export its product. The company party states that it uses the name Zheng Yong, and all workers are the workers of Zheng Yong whose benefits are all maintained.

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

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor 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 the non-conciliation report No.938 KB/AK/VK was submitted to the Secretariat of the Arbitration Council on 2 September 2008.*

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

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:** 9 September 2008 from 8:00 a.m. to 11:00 a.m.

**Procedural issues:**

On 14 August 2008 the Department of Labour Disputes received a notification letter from the local union of FTUWKC at Zheng Yong company, dated 22 August 2008, regarding the demand for the company to improve some working conditions. The Department of Labour Disputes then an assigned expert officer to settle this dispute on 22 August 2008 resulting in one remaining non-conciliation issue among three issues. The one non-conciliation issue

was referred to the Arbitration Council on 2 September 2008 through the non-conciliation report of collective labour dispute resolution No. 938 KB/AK/VK, dated 28 August 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 9 September 2008 at 8:00 a.m.

Both parties were present at the arbitral hearing. The Arbitration Council attempted to ask for information relevant to this dispute and attempted to further the conciliation on the one non-conciliation issue but did not receive a conciliation result. Thus, the Arbitration Council will consider and settle this dispute based on the evidence and findings of fact as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

### **Documents, Exhibits and other evidence considered by the Arbitration Council**

#### **Provided by the employer party:**

1. Power of attorney to Mr. Guo Dai Fu, supervisor, to participate in and resolve case 112/08 at the Arbitration Council, dated 9 September 2008.
2. Certificate of commercial registration of Zheng Yong company, dated 11 April 1997.
3. Internal Work Rules of Zheng Yong company, dated 18 March 1999.
4. Statute and memorandum of Zheng Yong company, dated 25 December 1996.
5. Letter by the company to the Chief of the Department of Labour Inspection regarding request for registration on the Collective Bargaining Agreement between representative of Cambodian Independent Trade Union who had the most representative status in the factory, dated 22 November 2004.

**Provided by the worker party:** N/A

#### **Provided by the Ministry of Labour and Vocational Training [MoLVT]:**

1. Report of collective labour dispute resolution at Zheng Yong company No. 938 KB/AK/VK, dated 28 August 2008.
2. Minutes of collective labour dispute resolution at Zheng Yong company, dated 22 August 2008.

#### **Provided by the Secretariat of the Arbitration Council:**

1. Letter of invitation to invite the worker party to attend the hearing No. 552 KB/AK/VK/LKA, dated 3 September 2008.

2. Letter of invitation to invite the worker party to attend the hearing No. 551 KB/AK/VK/LKA, dated 3 September 2008.

### **FACTS**

- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by the worker party and the employer party
- Having examined additional documents

### **The Arbitration Council finds that:**

- Zheng Yong company employs a total of 1,800 workers.
- There are three unions in the factory: (1) Cambodia Independent Trade Union, (2) Cambodian Union and (3) Free Trade Union of Workers of Kingdom of Cambodia.
- Local union of FTUWKC at Zheng Yong Company is the claimant in this case. This union has 730 members.

### **Issue in dispute: The workers demand that the company should use the company's name as Zheng Yong to export or import its products and that the company should not use the name Protexile**

- Zheng Yong company has been in operation since 1996. The Director of the company is Taiwanese with a Cambodian wife who leases the location for the company's operations and his wife has a plot of land inside Zheng Yong company's compound. In 2008, the wife of the Director built additional 7 story building in the company and named it as Protexile. His wife is the director of this company because it is her property and it is separate from Zheng Yong company. The company moved workers to work in the 7 story building and changed their ID card to Protexile but the company maintains all their benefits.
- The workers claimed that up to now no worker has lost his or her seniority or benefits but the workers insist that the company should use the name of Zheng Yong when it exports or imports its product and should not use the name of Protexile because the workers are working for Zheng Yong. The workers are concerned that Zheng Yong might be closed [in the future] and thus only Protexile will remain and that they might lose their seniority.
- The company claims that Protexile does not have a right to export or import products because the company just submitted the request forms to the relevant Ministries and Departments in June and July 2008 and has not received official permission. Thus, although the company calls itself Protexile in order to export and import products, it has not been able to export or import products because it has not obtained

permission yet. However, the workers submitted import documents in which the company used the name Protexile to the Arbitration Council.

### **REASONS FOR DECISION**

**Issue in dispute: The workers demand that the company should use the company's name as Zheng Yong to export or import its products and that the company should not use the name Protexile**

In this case, the workers demand that the company use the name Zheng Yong to export or import products and that the company should not use the name Protexile. The workers' demand is based on their concern that in the future the Zheng Yong company will be closed and only Protexile will remain that will cause them to lose to their seniority.

In relation to the workers' worry regarding the loss of their seniority, the workers claim that so far no worker has lost their seniority or benefits. The workers' concern is for future losses of seniority if Zheng Yong is closed or if Zheng Yong does not exist anymore. Thus, the Arbitration Council considers that this demand is not about something which has already happened but it is a demand about the future.

In previous cases, the Arbitration Council decided that "The Arbitration Council was established to in order to resolve existing labor disputes and not in order to resolve disputes which have not yet occurred." (See *Arbitral Awards 10/03-Jacqsintex, issue 2; 47/04-South Bay, issue 3; 122/07-Genuine, issue 4; 77/08-Xing Tai, issue 2*).

In Arbitral Award 14/06-Zheng Yong, issue 2, the Arbitration Council rejected the workers' demand that the company should not transfer workers from the warehouse section to another section because that was a demand for future, which is not definite as to when the problem will happen and what the actual facts of the case will be.

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases as mentioned above because a demand for the future is indefinite to when the workers' concern regarding the loss of seniority will happen and what may be the facts in the case.

Therefore, the Arbitration Council cannot resolve a dispute which has not occurred yet.

In relation to the documents the workers submitted to the Arbitration Council to prove that Zheng Yong Company has used the name of Protexile Company to export or import products, the Arbitration Council considers that a company cannot export or import products if the company does not have legal permission. In this case, the company submitted its request to the relevant authoritative Ministries and Departments in June and July 2008 and has not received official permission. Thus, the Arbitration Council considers that when the

company used the name of Protexile to export and import products, the company should not have conducted the exportation and importation because it did not have permission.

In addition, the Arbitration Council determines that it cannot consider the [import] documents submitted by the workers because the Arbitration Council does not have jurisdiction to determine whether to use of name of Protexile to export or import products is legal or illegal. The Arbitration Council considers that if the workers think that Zheng Young company has an irregularity, and can provide supporting facts, documents and evidence to prove that Zheng Young really exports or imports products illegally by using the name of Protexile Company when it has not obtained permission yet, the workers should bring their concerns to any authorized Ministries, department and agency that regulate exportation and importation.

Thus, based on the above reasons, the Arbitration Council decides to decline to consider the demand of the workers.

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

**DECISION**

**Issue in dispute:**

- Decline to consider the demand that the company should use the name Zheng Yong to export or import its products and that the company should not use the name Protexile.

**Type of Award: Non-binding award**

This Award will become binding after 8 days of 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: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....