



**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាគណ្តារ**

**THE ARBITRATION COUNCIL**

**Case number and name: 13/08-Terratex Knitting**

**Date of Award: 27 February 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Suong Sophal**

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

#### **DISPUTING PARTIES**

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

Name: **Terratex Knitting & Garment Int'l Factory, Ltd.**

Address: National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 012 229 877

Fax: N/A

Representative:

- |                    |                       |
|--------------------|-----------------------|
| 1. Mrs. Thai Kanha | Assistant to director |
| 2. Mrs. Mak Kanika | Administration staff  |

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

Name: **Coalition of Cambodian Apparel Worker Democratic Union (C.CAWDU) and the local Union of C.CAWDU**

Address: National Road 2, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 012 396 069

Fax: N/A

Representative:

- |                      |                     |
|----------------------|---------------------|
| 1. Mr. Ek Sopheakdey | Secretary C.CAWDU   |
| 2. Mr. Mol Lythou    | Activist of C.CAWDU |
| 3. Mr. Pin Phira     | Activist of C.CAWDU |
| 4. Mr. Mith Vanna    | Activist of C.CAWDU |
| 5. Mr. Kit Soksat    | Activist of C.CAWDU |

## **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The members of the local union of C.CAWDU demand that the Company provide them with 1,000 riels per hour as a meal allowance for overtime work. The Company is not able to provide this, asserting that it follows Notification 017 dated 18 July 2000.
- 2- Members of the local union of C.CAWDU demand that the Company consider a labour dispute between Mr. Mol Lytho and the Company as a collective dispute because he is a union activist. In this case, the local union also demands that the Company reinstate Mr. Mol Lytho, and maintain his wages and perquisites until he comes back to work. The Company states that the case of Mr. Mol Lytho is an individual dispute, so the Company asks to have it settled according to the individual dispute procedure.
- 3- The members of the local union of C.CAWDU demand that the Company issue the piece rate one week before the company gives the product to workers to work on. The Company, on the other hand, follows the agreement dated 25 April 2006.
- 4- The members of the local union of C.CAWDU demand that the Company provide payment in lieu of annual leave. This payment is the average total wages [earned] during the last 12 months. The company states that it follows Article 166 of the Labour Law.
- 5- The members of the local union of C.CAWDU demand that the Company provide them with 90 days maternity leave, excluding Public Holidays and Sundays. The Company states that it follows article 182 of the Labour Law.
- 6- Members of the local union of CCAWDU demand that the Company provide them with full wages when the Company does not have work for workers to do and they have to go back home. The Company states that it follows the agreement dated 10 January 2005.
- 7- Members of the local union of C.CAWDU demand that the Company deduct union contribution fees from the wages of its members who have given their consent to do so. The Company states that if the union is properly registered and follows legal procedures, it will deduct.

### **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 hearing was unsuccessful, and the non-conciliation report No. 109 K.B/AK/VK, dated 18 January 2008 was submitted to the Secretariat of the Arbitration Council on 24 January 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:**

- First hearing: 04 February 2008 (from 2:00 p.m. to 3:30 p.m.) (The worker party requested to postpone the hearing because there was no union leader attending the hearing)
- Second hearing: 14 February 2008 (from 2:00 p.m. to 4:00 p.m.)

**Procedural issues:**

On 25 December 2007, the Department of Labour Disputes received a complaint by C.CAWDU No. 060.07/S.B.K.K, dated 24 December 2007, regarding a request for the Company to improve working conditions. After receiving the complaint, the Department designated its officer to conciliate this dispute and the last conciliation was held on 14 January 2007 with the result that 1 out of 8 issues was conciliated.

The Department of Labour Disputes, on behalf of the Ministry of Labour and Vocational Training, referred the collective labour dispute at Terratex Knitting Company, No. 109 K.B./AK/VK, dated 18 January 2008 with 7 non-conciliation issues to the Secretariat of the Arbitration Council on 24 January 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party at the factory to the hearing and conciliation on the 7 non-conciliation points on 04 February 2008 at 2:00 p.m. Both parties were present as invited by the Arbitration Council. However, on the hearing day C.CAWDU requested the Arbitration Council to postpone the hearing time for the reason that there were no union leaders and workers to attend the hearing. The Arbitration Council agreed to the request of C.CAWDU who requested more time to look for union leaders and workers to attend the second hearing on 14 February 2008 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

In the second hearing on 14 February 2008, the Arbitration Council received information that union leaders had resigned from work and gone back to their home provinces. On the hearing day, the employer party asked C.CAWDU to produce an

authorization letter from workers because the 7 non-conciliation issues involved working conditions. [The employer alleged that], C.CAWDU did not have the right to represent workers to settle this dispute. The representative of C.CAWDU, in responding to the employer's claim, withdrew 6 issues regarding working conditions including issues 1, 3, 4, 5, 6, and 7; and requested the Arbitration Council to conduct a hearing only on issue 2 regarding the demand for reinstatement of Mr. Mol Lytho because the person attended the hearing in person. The employer party agreed to the request of C.CAWDU and agreed that the Arbitration Council should proceed with the hearing process.

In the hearing, the Arbitration Council attempted to further the conciliation on issue 2 but was not able to resolve the matter and the employer party raised in the hearing that this is an individual dispute so that the Arbitration Council did not have jurisdiction over the issue. Thus, in this case, the Arbitration Council will consider issue 2 based on the evidence and clarification by the parties in the hearing 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 Mrs. Thai Kagna to represent the company to settle the dispute, dated 04 January 2008;
2. Arbitral Award No. 102/07-Terratex Company, dated 24 October 2007;
3. Letter No. 076/-7 S.B.K.K regarding notification about result of the election of local union of C.CAWDU at Terratex Factory, dated 25 July 2007;
4. Minutes of the collective labour dispute conciliation at Terratex company, dated 25 April 2006;
5. Chapter 6 of the Labour Law;
6. Minutes of the collective labour dispute conciliation at Terratex company, dated 10 January 2005;
7. An apprenticeship probation contract of Mol Tho, dated 12 March 1999;
8. Resignation letter of Suon Chanthoeurn, dated 02 February 2008;
9. Minutes of the collective labour dispute conciliation at Terratex company, dated 14 January 2008
10. Minutes regarding the establishment of the local union of C.CAWDU at Terratex Factory, dated 28 April 2007;
11. Residential book of Mr. Mol Tho, dated 2 April 1999;

12. Cambodian Labour book of Mr. Mol Tho, dated 20 November 2000;
13. Letter of resident of Mr. Mol Tho, No. 330, dated 05 February 2001;
14. Medical check certificate of Mr. Mol Tho, No 6691 PK.PB;
15. Marriage certificate of Mr. Mol Lytho, No. 31/05 PrKBJ, dated 29 October 2005;
16. Application for certificate to certify marital status of Mr. Mol Lytho, dated 13 October 2005;
17. Application for certificate to certify marital status of Hoeurn Sina, dated 19 October 2005;
18. Letter of termination of Mr. Mol Tho, dated 08 December 2007;
19. Job application No. A 068 of Mr. Mol Tho, dated 12 March 1999;
20. Agreement dated 30 April 2005;
21. Resignation letter of Mr. Lon Pov, dated 04 February 2008.

Provided by the worker party:

1. Summary statement regarding the demands of the local union of C.CAWDU at Terratex factory No. 003/008, dated 18 February 2008;
2. Certification letter by the chief of Morn Heu Village, Hanchey Commune, Kampong Siem District, Kampong Cham Province, dated 15 February 2008;
3. Application for registration of the local union of C.CAWDU at Terratex factory, dated 28 April 2007;
4. Notification regarding the result of election of the local union of C.CAWDU at Terratex factory No. 031/07 SBKK, dated 30 April 2007;
5. Notification regarding the result of election of the local union of C.CAWDU at Terratex factory No. 076/07 SBKK, dated 25 July 2007;
6. Letter number 628 KB/AK/VK, dated 3 July 2007 regarding request for registration of the local union of C.CAWDU at Terratex factory;
7. Letter No. 822 KB/AK/VK, dated 14 September 2007 regarding request for registration of the local union of C.CAWDU at Terratex factory;
8. ID card of Cambodian citizenship of Mr. Mol Lytho, dated 24 April 2001;
9. ID card of union leadership of Mr. Mol Lytho, dated 09 June 2007.

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

1. Report of the collective labour dispute conciliation at Terratex Company No. 109 KB/AK/VK, dated 18 January 2008;
2. Minutes of collective labour dispute conciliation at Terratex Company, dated 14 January 2008.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the company party to attend the hearing, No. 077 KB/AK/VK/LKA, dated 30 January 2008;

2. Letter of invitation to the employee party to attend the hearing, No. 078  
KB/AK/VK/LKA, dated 30 January 2008.

### **Facts**

- Having reviewed the report of the collective labour dispute conciliation;
- Having examined the documents the parties submitted to the Arbitration Council;
- Having listened to statements by representatives of the worker party and the employer party.

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

- Terratex Knitting Company employs approximately 500 workers.
- According to the claim by the representative of C.CAWDU in the hearing and the document the Arbitration Council received, the Arbitration Council finds as follows:
- On 28 April 2007, C.CAWDU held an election to establish a local union of C.CAWDU at Terratex factory.
- On 30 April 2007, C.CAWDU notified the Company regarding the result of the election to establish a local union of C.CAWDU at Terratex Company; in which three leaders were elected: Mr. Lon Pov was elected as the president, Mr. Suon Chanthoeurn was elected as vice-president and Mr. Hang Hel was elected as secretary of the union.
- On 21 June 2007, the Department of Labour Dispute received a document from the local union of C.CAWDU at Terratex factory regarding the request for registration of the local union of C.CAWDU at Terratex Company, dated 28 April 2007.
- On 3 July 2007, the Department of Labour Disputes sent a letter to Mr. Lon Pov to reject the registration of the local union of C.CAWDU at Terratex Company because there was an objection from the company for the reason that the name of Hang Hel, the elected union secretary was not in the company's list. The Department of Labour Disputes advised the union to make a correction.
- On 14 August 2007, the Department of Labour Disputes sent a letter to Mr. Lon Pov to reject the registration of the local union of C.CAWDU at Terratex Company because there was an objection from the Company for the reason that the name of Mr. Lon Pov who was elected union president was written as Sok Pov in his marriage certificate and Lon Pov in his letter of residence. The Department of Labour Disputes advised the union to make a correction.
- Up to the hearing day, the union had not made the correction as advised by the Department of Labour Disputes. Thus, the local union of C.CAWDU at Terratex Company is not registered yet.

- On the day of the second hearing, the Arbitration Council received a resignation letter dated 4 February 2008 by Mr. Lon Pov, president of the union and resignation letter dated 2 February 2008 by Mr. Suon Chanthoeun, vice-president of the union. Mr. Hang Hel who was the elected secretary of the union was not present at the hearing.
- On the second hearing day, the Company requested that C.CAWDU have an authorization letter from workers because the leaders of the local union had resigned and the local union of C.CAWDU at Terratex Company was not yet registered. Moreover, the demands are all related to working conditions.
- In response to the company's claim and as it was difficult of look for workers to make an authorization letter, C.CAWDU agreed to withdraw 6 issues related to working conditions including issues 1, 3, 4, 5, 6 and 7 and requested the Arbitration Council to proceed with the hearing only on issue 2 which was related to the demand for the reinstatement of Mr. Mol Lytho because he attended the hearing in person. The employer party agreed to the request by C.CAWDU and agreed that the Arbitration Council should continue its proceeding.

**Issue 2: C.CAWDU demands that the Company reinstate Mr. Mol Lytho**

- Mr. Mol Tho or Mol Lytho, commenced work at the factory in 1999. The Company terminated him on 08 December 2007 for the reason that he forged a document when he made his employment contract, which is considered serious misconduct pursuant to Article 83B(2) of the Labour Law. Mr. Mol Tho or Mol Lytho has not yet received his termination payment.
- C.CAWDU demands that the company reinstate Mr. Mol Lytho for the reason that the company terminated him while he was a union activist. Mr. Mol Lytho became a union member on 9 June 2007.
- In the hearing the Company party claimed that Mr. Mol Lytho's case is an individual dispute and requested to settle this dispute according to the individual dispute procedure.
- In the hearing the Arbitration Council advised the company to provide its arguments to why this was an individual dispute. The Company party explained that this was an individual dispute for three reasons:
  - 1) This dispute occurred between Mr. Mol Lytho and the Company alone, i.e., it did not involve other workers.
  - 2) This dispute is relevant to forgery of documents at the time of making an employment contract, which is considered serious misconduct pursuant to Article 83B(2) of the Labour Law.
  - 3) This dispute is not relevant to the working conditions of general workers in the factory but only to Mr. Mol Tho.

- The Arbitration Council asked the company to clarify the second reason regarding the forgery of a document at the time of making his employment contract which the Company considered serious misconduct. The Company explained that Mr. Mol Lytho had many different names that [led] the Company to consider that he had an intention to forge documents such as:
  - In the residence book, his name is Mol Tho, born in 1979, attended school to 7<sup>th</sup> grade.
  - In the Cambodian labour book, his name is Mol Thou, born on 04 April 1978.
  - In the letter of residence, his name is Moul Tho, born in 1979.
  - In the medical check certificate, his name is Mol Tho, born in 1978.
  - In the certificate to certify his marital status and marriage announcement, his name is Mol Lytho, born on 16 June 1979.
  - In his application for employment with the Company, he is Mol Tho, born on 04 January 1978.
- The Company claimed that it used to make an announcement to workers who have wrong names to come to make a correction but Mr. Mol Tho or Mol Lytho did not turn up to correct [his name]. A worker named Pin Phira who was present at the hearing confirmed that the company had made an announcement and he had changed his name from Tuy Mai (his name when he commenced his work) to Pin Phira (current name).
- The Arbitration Council found that Mr. Mol Tho is called Mol Lytho, born on 16 March 1979 in his citizen ID card No. 100133359, dated 24 April 2001 and Mol Lytho in his ID card of union leadership dated 09 June 2007.
- The Arbitration Council advised C.CAWDU to respond to the company's claim that this is an individual dispute. C.CAWDU made the following statement:
  - 1) C.CAWDU agrees that this dispute occurs between Mr. Mol Lytho and the Company alone, i.e., it did not involve other workers.
  - 2) The representative of C.CAWDU stated in defending Mr. Mol Lytho that he did not have an intention to forge the documents. The fact that he had many different names was the fault of public servant officers who did not perform their job correctly. Moreover, the use of many names [by Mr. Mol Lytho] has not caused any damage to the Company. Mr. Mol Tho or Mol Lytho states that he did not have an intention to forge documents and now he is using the name in his citizen ID card, that is, Mol Lytho. At the company his name is Mol Tho because he has used this name since he commenced his work in 1999.
  - 3) C.CAWDU agrees that this dispute is not relevant to the working conditions of general workers in the factory but it is relevant to Mr. Mol Lytho who is a union

activist. Mr. Mol Lytho started working for the company in 1999 but the company only terminated him on 08 December 2007. Based on Article 26 of the Labour Law, the Company has lost the right to terminate him. Thus, C.CAWDU considers that this dispute regarding Mr. Mol Tho is a collective dispute.

- The company stated that it just stated reviewing workers' documents to make corrections. This was why the Company found out and the company often made announcements for workers to come to make corrections. Some workers came to make corrections as announced by the company, Pin Phira was an example. The Company still considered that this was an individual dispute.
- The Arbitration Council asked both parties to confirm if the company has operated normally from 08 December 2007 to the hearing day. Both parties agreed that the factory had operated normally.
- The Arbitration Council advised Mr. Mol Tho or Mol Lytho to make a letter to clarify his identification whether he chooses to identify himself as Mol Tho or Mol Lytho and he should provide this document to the Arbitration Council by 18 February 2008 at the latest. However, Mr. Mol Lytho provided the document to the Arbitration Council on 19 February 2008.
- The Arbitration Council advised the employer party to provide a document regarding the employment contract of Mr. Mol Lytho to the Arbitration Council by 18 February 2008 at the latest. The employer party provided the document by the deadline.

## **REASONS FOR DECISION**

### **Issue 2: C.CAWDU demands that the Company reinstate Mr. Mol Lytho**

Before considering this issue, the Arbitration Council will consider whether it has jurisdiction over this case.

In accordance with Chapter 12, Section 2 of the Labour Law, the Arbitration Council does not have jurisdiction over this case.

In previous cases, the Arbitration Council explained that, in principle the Labour Inspector and the Ministry of Labour and Vocational Training have a duty to determine if a dispute is an individual dispute or collective dispute before forwarding it to the Arbitration Council. Thus, normally the Arbitration Council will respect the decision of the Labour Inspector and the Minister of Labour and Vocational Training if there is no explicit reason to object (see *Arbitral Awards 10/03-Jaqushintex, issue 4; 113/04-Chou Star, issue 1; 07/05-Coca Cola, issue 1; 41/04-Micasa, issue 1, 02/04-Cambodiana Hotel, issue 1 and 24/07-Island Glory, issue 1*).

In this case, the Arbitration Council agrees with the explanation of the Arbitration Council in previous cases that the Arbitration Council will respect the decision of the Labour Inspector and the Minister of Labour and Vocational Training if there is no explicit reason to object to this. However, in this case the employer party alleged that the Arbitration Council does not have jurisdiction over this case because it is an individual dispute; thus the Arbitration Council will consider this objection [by the employer] and determine whether this is an individual or collective dispute.

In case 45/07-Wilson, the Arbitration Council assumed that all demands in the non-conciliation report of the Ministry of Labour were collective disputes. **Because the employer party objected to this assumption, the employer party has a burden to prove its claim** (see Arbitral Award 45/07-Wilson, issue 4).

In this case, the Arbitration Council agrees with the explanation of the Arbitration Council in case 45/07-Wilson that **the employer has the burden of proof** if the employer claims that the dispute mentioned in the non-conciliation report of the Ministry of Labour is an individual dispute.

In this case, the employer alleges that the dispute occurs between Mr. Mol Lytho and the Company alone, i.e., it is not related to the working conditions of general workers since the factory continued to operate normally following the termination of Mr Mol Tho. The worker party, on the other hand, states that this is a collective labour dispute because Mr. Lytho is a union activist. Regarding the arguments by both parties, the Arbitration Council makes the following explanation:

Article 302 of the Labour Law states, “*A collective labour dispute is any dispute that arises between one or more employers, and a certain number of their employees, over working conditions, the exercise of the recognized rights of unions, the recognition of professional organizations within the business, and questions regarding relations between employers and workers, when this dispute could jeopardise the effective operation of the enterprise or social peace.*”

Based on Article 302 of the Labour Law, in order for a dispute to become a collective labour dispute it has to fulfill three conditions as stated in Article 302. The three conditions are:

- a. It is a dispute between a certain number of workers and one or more employer
- b. The dispute is related to working conditions, the exercise of the recognized rights of unions, the recognition of professional organizations within the business, and questions regarding relations between employers and worker
- c. The dispute could jeopardise the effective operation of the enterprise or social peace.

In this case, the Arbitration Council considers that condition (a) is not fulfilled because this dispute occurs only between Mr. Lytho [and the company] as no other workers involved in this dispute support the reinstatement of Mr. Mol Lytho. In the hearing the representative of C.CAWDU also acknowledged the fact that the dispute occurred only between Mr. Mol Lytho and the Company. In addition, in this case the local union of C.CAWDU at Terratex Company is not registered and the union leaders have resigned from work.

Condition (b) is fulfilled because this dispute arises over working relations between an employer and worker (in this case it is between Mr. Mol Lytho and the company).

Condition (c) is not fulfilled because this dispute does not cause interruption to the operations of the enterprise or to social peace because in the hearing both parties recognized that the factory has operated normally and there are no other workers who support this dispute. Based on the above interpretation, the Arbitration Council considers that this dispute is not a collective labour dispute. Thus, the Arbitration Council considers that this dispute is relevant only to Mol Tho or Mol Lytho and it is not within the jurisdiction of the Arbitration Council to consider the workers' demand.

In conclusion, the Arbitration Council declines to consider the demand of C.CAWDU for the Company to reinstate Mr. Mol Tho or Mol Lytho.

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

**DECISION**

Decline to consider the demand of C.CAWDU for the Company to reinstate Mr. Mol Tho or Mol Lytho.

**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: **Mar Samborana**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Suong Sophal**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....