



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 147/08-Zheng Yong

Date of Award: 18 December 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: Building 4, National Road 5, Sangkat Tuol Sangke, Khan Russey Keo, Phnom Penh

Telephone: 012 357 168 or 023 430 657

Fax: 023 430 739

Representatives:

- | | |
|---------------------|-------------------------|
| 1. Mr. Guo Jing Yu | Director of the company |
| 2. Mr. Kuch Kimlong | Company's lawyer |
| 3. Mr. Heang Tech | Head of administration |
| 4. Mr. Guo Dai Fu | Supervisor |
| 5. Ms. Yu Li Yun | Supervisor |

Worker party:

Name: **Cambodian Union Federation (CUF) and local union of Cambodian Union (CU) at Zheng Yong factory**

Address: Temporary office in the factory, Sangkat Tuol Sanke, Khan Russey Keo, Phnom Penh

Telephone: 017 571 993

Fax: N/A

Representatives:

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| 1. Mr. Chuon Momthol | President of CUF |
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|-----------------------|---|
| 2. Mr. Ouch Saroeurn | President of local union of CU in Zheng Yong factory |
| 3. Mr. Po Kea | Vice-President of local union of CU in Zheng Yong factory |
| 4. Mr. Ban Seyha | Secretary of local union of CU |
| 5. Mr. Teng La | Worker (union member) |
| 6. Mr. Oun Phanny | Worker (union member) |
| 7. Mr. Phy Sopheap | Worker (union member) |
| 8. Mr. Ly Rosa | Worker (union member) |
| 9. Mr. In No | Worker (union member) |
| 10. Mr. Suos Narin | Worker (union member) |
| 11. Ms. Chan Srey Mom | Worker (union member) |

Name: **Cambodia Federation of Independent Trade Union (CFITU) and local union of Cambodia of Independent Trade Union (CITU) at Zheng Yong factory**

Address: Temporary office in the factory, Sangkat Tuol Sanke, Khan Russey Keo, Phnom Penh

Telephone: 012 858 020 Fax: N/A

Representatives:

- | | |
|-----------------------|---|
| 1. Ms. Tep Kimvannary | Vice-President of CFITU |
| 2. Mr. Kuch Long | Officer of CFITU |
| 3. Mr. Cheng Nol | President of local union of CITU in the factory |
| 4. Mr. Van Savuth | Secretary of local union of CITU in the factory |
| 5. Mr. Keo Veasna | Worker (union member) |
| 6. Mr. Rath Sienghai | Worker (union member) |
| 7. Ms. Horn Navy | Worker (union member) |
| 8. Mr. Chok Sopheang | Worker (union member) |
| 9. Mr. Nhoung Mach | Worker (union member) |
| 10. Ms. Srey Nak | Worker (union member) |
| 11. Mr. Ly Huota | Worker (union member) |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company explain the company's notification letter dated 3 November 2008, regarding closure of Protexile Company. The company party keeps explaining this is according to the agreement provided in case 129/08 dated 14 October 2008.

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. 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. 1285 KB/AK/VK, dated 26 November 2008 was submitted to the Secretariat of the Arbitration Council on 26 November 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: 5 December 2008 from 2:00 p.m. to 5:30 p.m.

Procedural issues:

On 14 November 2008 the Department of Labour Disputes received a complaint from local union of CITU at Zheng Yong Company and workers in all sections, dated 14 November 2008, regarding a demand for the company to improve some working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve this labour dispute and the last conciliation session was held on 20 November 2008 resulting in the non-conciliation [] of one out of five issues. The [] single non-conciliation issue was referred to the Secretariat of the Arbitration Council on 26 November 2008 through the non-conciliation report No. 1285 KB/AK/VK, dated 26 November 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the company party and the worker party to the hearing and conciliation on the one non-conciliation issue on 5 December 2008 at 2:00 p.m.

Both parties were present on the date of the arbitral hearing. The Arbitration Council sought information relevant to this dispute and attempted further conciliation but there was no conciliated outcome. Therefore, the Arbitration Council will consider 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

A. Provided by the employer party:

1. Letter to authorise Mr. Kuch Kimlong as the legal representative of the company to protect the employer's legal benefits in this labour dispute at the Arbitration Council, dated 5 December 2008.
2. Certificate of commercial registration of Protexile Company, dated 24 April 2008.
3. Notification letter by Zheng Yong Company to notify all workers who work in the new building of Zheng Yong Company to continue working normally from the notification date, dated 3 November 2008.
4. Letter by the Director of Protexile Company to the H.E. Minister of Prime Minister's Delegates and the General Secretary of the Council for the Development of Cambodia regarding a request to remove the name of Protexile Company from the investment list in Cambodia, dated 23 October 2008.
5. Letter by the Director of Protexile Company to the Senior Minister and Minister of Commerce regarding a request to remove the name of Protexile Company from the investment list in Cambodia, dated 23 October 2008.
6. Letter by the Council for the Development of Cambodia to the Director of Protexile Garment Company regarding a request for removal of the investment project of Protexile Garment Co., Ltd from the investment list, dated 27 November 2008.
7. Patent of Protexile Company for 2008, dated 9 May 2008.
8. Agreement between the employer party and local union of CU regarding the resolution of collective labour dispute of Zheng Yong Company in case 129/08, dated 14 October 2008.
9. Letter by Protexile Company to the H.E. First Secretary of State of the Ministry of Economy and Finance and the Vice-President of the Council for the Development of Cambodia regarding a request to transfer assets and raw materials imported to Zheng Yong Garment Company, dated 2 December 2008.
10. Memorandum regarding the result of the extraordinary meeting of the Board of Directors regarding the dissolution of Protexile Garment Co., Ltd, dated 2 December 2008.
11. Quarterly report regarding the duty-free import of machinery and raw materials through letter No. 1910/08, dated 8 August 2008 by the Council for the Development of Cambodia from 8 August 2008 to 8 August 2009, dated 2 December 2008.
12. Letter of custom permission No. 42811 KRTP for Zheng Yong Company, dated 2 October 2008.
13. Custom receipt.
14. Letter of custom permission No. 42814 KRTP for Zheng Yong Company, dated 2 October 2008.

15. Letter of custom permission No. 47481 KRTP for Zheng Yong Company, dated 3 November 2008.
16. Letter of custom permission No. 47172 KRTP for Zheng Yong Company, dated 30 October 2008.
17. Minutes of inspection on exported textile products, dated 14 November 2008.
18. Minutes of inspection on exported textile products, dated 7 November 2008.
19. Minutes of inspection on exported textile products, dated 15 October 2008.
20. Minutes of inspection on exported textile products, dated 3 October 2008.

B. Provided by the worker party:

1. Certificate of union registration of local union of CU in Zheng Yong factory, dated 30 July 2007.
2. Certificate of registration of local union of CITU in Zheng Yong factory, dated 27 March 1998.
3. Letter of complaint by unions and workers in all sections of Zheng Yong factory, dated 14 August 2008.
4. Agreement between the employer party and local union of CU regarding the resolution of collective labour dispute of Zheng Yong Company in case 129/08, dated 14 October 2008.

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

1. Report of collective labour dispute resolution at Zheng Yong Company No. 1285 KB/AK/VK, dated 26 November 2008.
2. Minutes of the collective labour dispute resolution at Zheng Yong Company, dated 20 November 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing No. 723 KB/AK/VK/LKA, dated 28 November 2008.
2. Letter of invitation to the employer party to attend the hearing No. 722 KB/AK/VK/LKA, dated 28 November 2008.

FACTS

- Having reviewed the report of 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 number of approximately 1,700 workers, with 800 of the workers in the sewing section in the building of the Protextile Company. However, the 800 workers signed employment contracts with Zheng Yong Company, receive their monthly wages from Zheng Yong Company and follow the working hours of Zheng Yong Company.
- The 800 workers who work in the sewing section in the building of Protextile Company [] are the claimants in this case.
- Zheng Yong Company commenced its operations in 1996 on a plot of land rented by the owner. However, the wife of the owner of Zheng Yong Company owns a piece of land inside the compound of Zheng Yong Company. In 2008 the company built an additional building of seven storeys and named it Protextile Company; his wife is the director of the company separately from Zheng Yong Company.
- 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.
- Cambodia Independent Trade Union and Cambodian Union are the claimants in this case.

Issue in dispute: The workers demand that the company explain the company's notification letter dated November 03, 2008, regarding the closure of Protextile Company

- The workers demand that the company explain the company's notification letter dated November 03, 2008, regarding the closure of Protextile Company because [] the workers assert the company violated the agreement between the worker party and the employer party in case 129/08-Zheng Yong regarding the closure of Protextile Company, dated 14 October 2008.
- **The company's notification states that** *"... The company decides that all workers who are working in the new building of Zheng Yong Company shall continue to work in the same building from the date of this notification. In addition, any workers who are working in the new building of Zheng Yong Company who do not agree to come to work in the new building will be considered as having abandoned their job and the company will not compensate them the compensation as mentioned in the law..."*
- **The agreement dated 14 October 2008 states,**
 - "1. The company agrees to remove the name of Protextile from 6 October 2008 to 6 November 2008 onwards.*
 - 2. The company will write letters regarding closure of Protextile Company to relevant institutions within 30 days upon closure of Protextile Company.*

3. *The workers will not be considered to be going on strike if they do not work on the remaining goods of Protexile Company that are left over after 30 days.*

4. [] *If the workers find that the company continues to use the name of Protexile after the closure of the company, the company will lay-off all workers and follow the Labour Law.*

5. *The company agrees to maintain benefits the workers used to receive.”*

- The worker party claimed in the hearing that the company violated point 1 of the agreement dated 14 October 2008 that states, *“The company agrees to remove the name of Protexile from 6 October 2008 to 6 November 2008 onwards”* for the reason that up to now the company has not shown any documents or evidence to prove that Protexile Company has been closed officially. [] It follows, the company needs to be responsible for the lay-off of all workers by following the Labour Law as mentioned in point 4 of the above agreement.
- The company mentions in the hearing that it has not violated the agreement dated 14 October 2008 because it has removed the name of Protexile Company and wrote letters to formally close Protexile Company to relevant institutions on the following dates:
 - * On 23 October 2008, the company sent a letter to the H.E. Minister of Prime Minister's Delegates and General Secretary of the Council for the Development of Cambodia regarding a request to remove the name of Protexile Company from the investment list in Cambodia.
 - * On 23 October 2008, the company sent a letter to the Senior Minister and Minister of Commerce regarding a request to remove the name of Protexile Company from the investment list in Cambodia.
 - * On 27 November 2008, the Council for the Development of Cambodia sent a letter to respond to the company that the Council for the Development of Cambodia had received a request to remove the company's investment policy. The Department of Legislation will consider this case, according to the law relating to the removal from the investment list. The company party considers that the letter by the Council for the Development of Cambodia does not certify the removal of Protexile Company officially.
 - * On 2 December 2008, Protexile Company held an extraordinary meeting of the Board of Directors regarding the dissolution of the company.
 - * On 2 December 2008, the company sent a letter to the H.E. First Secretary of State of the Ministry of Economy and Finance and the Vice-President of the Council for the Development of Cambodia regarding a request to

transfer the assets and raw materials legally owned and imported by Protexile Company to Zheng Yong Company.

- * The company and the workers agree that the company collected all Protexile ID cards from the workers and changed them to Zheng Yong ID cards, but they do not remember the date of collection.
- The company adds that it has removed the sign board of Protexile Company and all goods and products for import and export are under the name of Zheng Yong Company alone. The workers do not object to the claim by the company. The company continues to state that it will lay-off all workers by following the Labour Law if the workers find that the company continues to use the name Protexile as mentioned in point 4 of the agreement dated 14 October 2008. However, the company has not received any document from the workers to prove that Protexile Company is still operating.

REASONS FOR DECISION

Issue in dispute: The workers demand that the company explain its notification letter dated November 03, 2008, regarding the closure of Protexile Company

In the hearing of non-conciliation issues by the Ministry of Labour and Vocational Training, the workers' demand was for the company to explain its notification letter dated 3 November 2008; this notification violated the agreement dated 14 October 2008 relating to the closure of Protexile Company. The workers' claim that the company violated the agreement is not mentioned in the non-conciliation report; in the hearing the workers and the company agree that the reason that the workers demanded the company to explain the above notification was because they consider that the notification violated the agreement and requested that the Arbitration Council consider and resolve this issue.

Therefore, the Arbitration Council will consider whether the company violated the agreement dated 14 October 2008.

In this case, the workers claim that the company does not follow the agreement dated 14 October 2008 relating to the closure of Protexile Company. The company objects to this claim and reasons that Protexile is no longer in operation and the company has submitted letters [] to relevant institutions to request the closure of Protexile Company. The workers state that the fact that the company has only submitted letters to request for closure of the company is not sufficient to under the agreement. The workers demand an official letter of response from authorised institutions regarding the closure of Protexile Company; [] stating that without such official notification the company has violated the agreement dated 14 October 2008.

Point 1 of the agreement dated 14 October 2008 states *“The company agrees to remove the name of Protexile from 6 October 2008 to 6 November 2008 onwards.”* According to the contents of point 1 of this agreement, the Arbitration Council does not find any point of the agreement that requires an official response regarding the closure of Protexile Company but it only states that the company needs to decide to close Protexile Company. Based on findings of fact, the employer has removed the sign board of Protexile Company and there are no more documents of importing and exporting that use the name of Protexile Company. The company also collected ID cards of workers who used to have the name of Protexile Company and changed them with ID cards that use the name of Zheng Yong Company but some workers did not agree to hand over their ID cards with the name of Protexile to the company. Moreover, all workers have employment contracts with Zheng Yong Company and the workers acknowledge that Protexile Company is not operating anymore.

Therefore, the Arbitration Council considers that the company party did not violate point 1 of the agreement dated 14 October 2008 as claimed by the worker party.

In relation to point 2 of the agreement dated 14 October 2008, it states *“The company will write letters regarding closure of to relevant institutions within 30 days upon closure of Protexile Company.”* According to the contents of point 2 of this agreement, the Arbitration Council considers that the company has submitted letters to request for closure of Protexile Company to relevant institutions by the deadline on 6 December 2008. The evidence provided by the company party proves the submission of letters to relevant institutions, such as on 23 October 2008 the company sent a request letter to the H.E. Minister of Prime Minister’s Delegates and the General Secretary of the Council for the Development of Cambodia regarding a request to remove the name of Protexile Company from the investment list in Cambodia. On the same day the company sent a letter to the Senior Minister and the Minister of Commerce regarding a request to remove the name of Protexile Company from the investments in Cambodia.

The Arbitration Council considers that the company has taken reasonable measures to close Protexile Company. It is now at the stage for the authorities to make a decision regarding the official closure of Protexile Company.

Letter by the Council for the Development of Cambodia, dated 27 November 2008, proves that the Council has received a request for the removal of the investment policy of Protexile Company. In this case, the Director of the Department of Legislation will consider the documents the company needs submit to remove [] Protexile from the investment list in accordance to the legal procedure and provisions in effect in the Kingdom of Cambodia.

The Arbitration Council considers that the company has implemented the agreement dated 14 October 2008 because it has sent letters to the relevant institutions [] to effect the

closure of Protexile Company. In addition, the workers do not provide any evidence to prove that the Protexile Company is still operating. Therefore, the Arbitration Council considers that the company has not violated the agreement dated 14 October 2008.

Therefore, the Arbitration Council decides to reject the demand that the company has violated the agreement dated 14 October 2008.

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

DECISION AND ORDER

Reject the claim that the company has violated the agreement dated 14 October 2008.

Type of Award: Binding award

This Award is immediately binding upon the parties after the notification of the award because the two parties agreed to choose this type of award on 5 December 2008.

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: