



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

**ក្រុមប្រឹក្សាសវនករជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 16/07-Lotus**

**Date of Award: 28 March 2007**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

#### **DISPUTING PARTIES**

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

Name: **Lotus Textile Garment (Cambodia)**

Address: National Road 4, Kantok Village, Ang Snuol District, Kandal Province

Telephone: 024 392 836 Fax: N/A

Representative:

- |                     |                        |
|---------------------|------------------------|
| 1. Mr. Sie Mingling | Head of Administration |
| 2. Mr. Seng Tekhuot | Head of Human Resource |
| 3. Mr. Chiet Khemra | GMAC Officer           |

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

Name: **Khmer Youth Federation Trade Union**

Address: 34, Street 265, Village 13, Sangkat Toeuk Laak 3, Khann Tuol Kork, Phnom Penh

Telephone: 012 0 951 533

**Representative: (Absent)**

## ISSUES IN DISPUTE

1. The workers request that the company play music for workers to listen to during working hours. The company does not agree to play music for workers who are working at the cutting table until work at that section is of good quality (and does not have wrong cuts).
2. The workers demand that the company retain the bonus when workers are absent with permission for three days per month. The company does not agree (the company applies the Labour Law).
3. The workers demand that the company make one-year contracts. The company does not agree but requests to follow the old policy of three-month contracts and when terminating or renewing the contract, the company applies the Labour Law.
4. The workers demand that the company retain the skills and incentive bonuses when a worker is absent. The company does not agree as it deducts the skills and incentive bonuses when a worker is absent.
5. The workers request that the company forgive [the worker in question] when the equipment that the company has distributed to workers for using is lost or damaged and the workers report this to the company. The company does not agree because it considers that when the company's property is lost, workers need to provide compensation (even when the property is lost during working hours).
6. The workers demand that the company provide US\$1 when workers work two hours of overtime per day. The company does not agree but follows the Labour Law.
7. The workers request that the company to allow them to only punch their cards two times per day (when they work 8 hours per day). The company party does not agree because this is the buyers' requirement.
8. The workers request that the company deduct 1,000 riels from members of Khmer Youth Trade Union for their union contribution fee. The company party agrees to deduct the contribution fee if:
  - There is union registration certificate
  - There are agreements from workers who are members and there are clear thumbprints
  - There is a proper list of names of members.

## 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. 513 dated 19 April 2005 (Third 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. 027/07 KBV/KN, dated 12 February 2007 was submitted to the Secretariat of the Arbitration Council on 14 February 2007.*

#### **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:**

- 24 February 2007 (From 8:00 a.m. to 9:00 a.m.)
- 17 March 2007 (From 8:00 a.m. to 9:30 a.m.)

**Procedural issues:**

On 23 January 2007, the Department of Labour and Vocational Training of Kandal Province conducted a conciliation of a labour dispute in respect of 11 issues with the result that three issues were successfully conciliated. The eight remaining non-conciliated issues were referred to the Arbitration Council on 14 February 2007.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party at the factory to a hearing and conciliation in respect of the [remaining] eight non-conciliated issues on 24 February 2007 at 8:00 a.m. and on 17 March 2007 at 8:00 a.m. On both occasions, the employer party was present as invited by the Arbitration Council. However, the worker party who is the complainant [in this matter] was absent both times.

Therefore, in this award, the Arbitration Council will consider based on evidence and finding of facts as follows:

#### **EVIDENCE**

**Witnesses and experts:** N/A

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

**Provided by the employer party:**

1. Announcement No. 090 LTGC, dated 10 January 2007, regarding the conditions for asking for permission for sick leave and when the company retains the regular attendance bonus of US\$ 5 per month.

2. Statute of Lotus Company.
3. Internal Work Rules of the company, registration No. 020/06 K.B.V./KN, dated 07 December 2006
4. Minute of the collective labour dispute conciliation, dated 23 January 2007
5. Letter No. 1937 PN.NTK, dated 13 December 2004, by the Ministry of Commerce to confirm the registration in the commercial list and to recognize it as a fully legal person.
6. Certificate of registration in the commercial, registration No. Inv. 892/04 E, dated 8 December 2004
7. Application and employment contract of Phorn Sona, a female worker.

Provided by the worker party: N/A

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

- Report No. 027/07 KBV/KN, regarding collective labour dispute resolution at Lotus Company, dated 12 February 2007, by the head of the Department of Labour and Vocational Training of Kandal Province.
- Minute of the collective labour dispute conciliation of Charm Textile Company, dated 23 January 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 065 K.K.B.V/AK/VK/LKA dated 9 February 2007 to invite the worker party to attend the hearing.
- Invitation letter No. 064 K.K.B.V/AK/VK/LKA dated 9 February 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 101 K.K.B.V/AK/VK/LKA dated 13 March 2007 to invite the worker party to attend the hearing.
- Invitation letter No. 100 K.K.B.V/AK/VK/LKA dated 13 March 2007 to invite the employer party to attend the hearing.

#### **FACTS**

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

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

- The Arbitration Council scheduled a hearing for this case on 24 February 2007 at 8:00 a.m.

- Before the hearing day, the Secretariat of the Arbitration Council invited the worker party and the employer party by written letter (see in part D: Document provided by the Secretariat of the Arbitration Council). Both parties received the invitation to attend the hearing on 24 February 2007 at 8:00 a.m.
- On the hearing day, the employer party attended the hearing but the worker party did not. The Arbitration Council requested to the employer party that the hearing day be rescheduled in order to allow the worker party to come to attend the hearing. The employer party agreed with the request by the Arbitration Council.
- The Secretariat of the Arbitration Council tried to contact the worker party and the employer party to reschedule the new hearing date and to postpone the award due date. Both parties agreed on the rescheduling of the new hearing date to 17 March 2007 at 8:00 a.m. and [to reschedule] the award due date to 2 April 2007.
- Before the hearing, the Secretariat of the Arbitration Council invited the worker party and the employer party through written letter (see in part D: Document provided by the Secretariat of the Arbitration Council).
- An official from the federation who represent the worker party came to take the invitation letter from the Secretariat of the Arbitration Council by hand. For the employer party, the Secretariat of the Arbitration Council sent that letter through fax and then called by phone to confirm if the invitation letter to attend the hearing was received. The employer party replied that the letter was received.
- On the hearing day, the employer party arrived at the hearing on time. However, the worker party did not show up on time even though the Secretariat of the Arbitration Council had called them before the hearing time.
- The Arbitration Council waited for the worker party for one hour (from 8:00 a.m. to 9:00 a.m.). At 9:00 a.m. the worker party had still not shown up. Thus the Arbitration Council started the hearing without the presence of the worker party.
- During the hearing, the employer mentioned that it had tried to bring the worker party to the hearing but all the worker representatives took leave and that therefore it could not bring them to the hearing together.
- During the hearing, the Arbitration Council asked how the employer party wanted to continue the dispute [resolution] procedure. The employer party requested that the Arbitration Council close the case.

### **REASONS FOR DECISION**

According to Article 21 of Prakas No. 099 regarding the Arbitration Council, dated 21 April 2004, *“In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.”*

In addition, rule 4.7 of the Arbitration Council Procedural Rules in the annex of Prakas No. 099 regarding the Arbitration Council, dated 21 April 2004, states that *“If a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”*

Based on Article 21 and rule 4.7 mentioned above, in the Arbitral Award of 30/05 – Maurea, the Arbitration Council found that there are three requirements which should be fulfilled before the Arbitration Council can terminate the Arbitral process by means of an award. The first condition, that the party is properly notified. The second condition is that the party does not appear at the hearing and the third condition is that the party does not provide reasons for this lack of appearance.

In this case, the Arbitration Council will consider if the three conditions are fulfilled.

### **1. Condition 1: Party is properly notified**

As mentioned in rule 4.7 above, the Arbitration Council can continue its process in the absence of the party or can end the arbitration process by means of an award if a party does not show up or does not have a representative attend the arbitration process in cases where the party is properly notified about date, time and venue of the arbitration process.

In this case, the Arbitration Council finds that the Secretariat of the Arbitration Council made official invitations to both parties. These invitation letters were made in accordance with the regular procedures of the Secretariat of the Arbitration Council. The Secretariat contacted both parties regarding the date, time and venue of the hearing through written letters and through phone calls. Therefore, the Arbitration Council considers that the first condition has been fulfilled.

### **2. Condition 2: Party does not appear at the hearing**

Clause 19 of the Prakas regarding the Arbitration Council No. 099, dated 21 April 2004 states, *“A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.”*

In addition, clause 20 of the Prakas regarding the Arbitration Council No. 099, dated 21 April 2004 also states, *“During the arbitration process,...the parties must attend all meetings to which the arbitration panel calls them.”*

In this case, the worker party did not attend the hearing and did not assign a representative (for example, the union federation or lawyer) to represent them in the hearing. Therefore, the Arbitration Council considers that the second condition is also fulfilled.

### **3. Condition 3**

As mentioned in clause 21 of the above mentioned Prakas, the Arbitration Council can continue its process in the absence of the party or terminate the arbitration process by

means of an award in cases where a party is invited properly but fails to appear before the Arbitration Council without providing proper reasons.

In this case, the Arbitration Council finds that the worker party did not provide a proper reason to the Secretariat of the Arbitration Council regarding its failure to attend the hearing. Thus, the Arbitration Council considers that the third condition is also fulfilled.

In this case, the Arbitration Council finds that the three conditions are fulfilled because the worker party was properly invited but it failed to appear at the hearing or send its representative to attend the hearing and it did not provide proper reasons for the failure to appear. Therefore, the Arbitration Council ends the arbitration process in respect of this matter based on rule 4.7, clauses 19, 20 and 21 of the Prakas regarding the Arbitration Council No. 099, dated 21 April 2004.

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

**DECISION**

Close case 16/07-Lotus.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphon**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....