



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព

THE ARBITRATION COUNCIL

Case number and name: 17/08- Winner Knitting

Date of Award: 20 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: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Sok Mathoeung**

DISPUTING PARTIES

Employer party:

Name: **Winner Knitting Factory Ltd.**

Address: National Road 21, Village 4, Svay Rolum Commune, Sa-ang District, Kandal

Telephone: 016 951 188

Fax: N/A

Representative:

- | | |
|-----------------------|--------------------------|
| 1- Mr. Chea Ly Chhay | Company's Administrator |
| 2- Mr. Seng Chamroeun | Administrative Assistant |
| 3- Mr. Long Heang | GMAC Representative |

Worker party:

Name: **Coalition of Cambodian Apparel W.D.U. (C.CAWDU)**

Address: National Road 21, Village 4, Svay Rolum Commune, Sa-ang District, Kandal

Telephone: 012 988 623

Fax: N/A

Representative:

- | | |
|--------------------|--------------------|
| 1- Mrs. Meas Vanny | C.CAWDU's official |
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ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1- Demand the company to implement the agreement providing US\$ 500 to those workers who resigned from work, as it had done in the past. The company party disagreed and will apply the Labour Law.

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. 012/08 dated 16 January 2008 was submitted to the Secretariat of the Arbitration Council on 30 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: 13 February 2008 (from 2:30pm to 4:00pm)

Procedural issues:

On 11 January 2008, the Kandal Department of Labour and Vocational Training attempted to conciliate the two issues in dispute. One of the issues was conciliated and the remaining issue was submitted to the Arbitration Council on 30 January 2008.

After receiving the case, the Arbitration Council summoned the employer party, C.CAWDU, and relevant workers to a hearing to conciliate the remaining issue on 13 February 2008 at 2:30pm. Both parties were present at the hearing summoned by the Arbitration Council. On the hearing day, the Arbitration Council tried to conciliate the issue but the parties were unable to reach agreement on the issue. Therefore, in this Award the Arbitration Council will consider the non-conciliated issue 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- Summarised thesis on the activities of Winner Knitting Factory dated 11 February 2008.
- 2- Minutes of the collective labour dispute conciliation at Winner Knitting dated 5 May 2007.
- 3- Business registration license No. 1050 of Winner Knitting Company dated April 1997.
- 4- Internal Work Rules No. 042 of Winner Knitting Company dated 15 October 2001.
- 5- Memorandum and statute of Winner Knitting Company dated 28 November 2000.
- 6- Authorisation letter of the Director of Winner Knitting Company dated 12 February 2008.

Provided by the worker party:

- Minute of the negotiation between the company and Khmer Youth Free Trade Union dated 8 May 2007.

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

- 1- Report No. 012 on the collective labour dispute settlement at Winner Knitting Company dated 16 January 2006.
- 2- Minute of the collective labour dispute conciliation at Winner Knitting Company dated 11 January 2008.

Provided by the Secretariat of the Arbitration Council:

- 1- Invitation letter No. 095 dated 4 February 2008 to the company party to attend the hearing.
- 2- Invitation letter No. 096 dated 4 February 2008 to the worker party to attend the hearing.

The Arbitration Council finds that:

Issue 1: [The workers] demand that the company implement the agreement providing \$500 to those workers who resign from work, as it had done in the past

- The local C.CAWDU did not attend the hearing; the C.CAWDU official said that the local union leader took leave [and returned] to his hometown. In the hearing, only one official from C.CAWDU represented workers in the hearing. The local C.CAWDU has some 700 members among a total of 4,067 workers. C.CAWDU does not have most representative status.
- There are five unions in the company, which included: FTU, KYFTU, CLUF, LFULK, and C.CAWDU.
- There were two minutes related to the agreement (conciliation) on the provision of US\$ 500 to male workers, who have worked for more than five years and wished to resign. The agreement was made between the company and KYFTU on 8 May 2007

at 11:30am with the signature of both parties. Another conciliation minute was made at 12:00pm at the Labour Inspection Department, but only the employer signed the agreement and the worker party walked out.

- The company said it entered into this agreement in order to stop all strikes, but [at the time] there were only a small number of workers who wanted to resign. The agreement had not been implemented as no worker had resigned [to date]. Currently none of the workers had resigned.
- The C.CAWDU official said that some of workers wanted to resign and asked the company whether or not they would receive US\$ 500 as stated in the [conciliation] minute. However, the company stated that the above agreement had been terminated because the worker party named in the agreement did not implement it; thus, the company had terminated the agreement. Therefore, the company would not provide US\$ 500 to those who wished to resign and would follow the Labour Law.
- The C.CAWDU official claimed that currently none of the workers wanted to resign and they do not demand US\$ 500. This demand was made for those [workers] who wished to resign in the future.

REASONS FOR DECISION

Issue 1: [The workers] demand that the company implement the agreement providing US \$500 to those workers who resign from work as, it had done in the past.

In order to consider this demand the Arbitration Council needs to consider the specific evidence related to the workers [making the demand] including the names of the workers, types of contract, length of employment in the company, male or female, etc... In this case, the union federation official did not provide any specific evidence and information related to those workers who had resigned and demanded US\$ 500. The union federation official only made the demand for US\$ 500 for the workers who [wish to] resign in the future. That means the dispute related to the demand for US\$ 500 has not yet occurred. The Arbitration Council considers it a future dispute.

The Arbitration Council will not consider future disputes for the following reasons:

In relation to future disputes, in case 10/03 – Jacqsintex, the Arbitration Council held that, “*The Arbitration Council was established to resolve labour dispute, not to resolve a dispute that has yet happened.*”

In this case, the Arbitration Council agrees with the above interpretation because nobody can predict what will happen in the future, whether or not the issue will arise, and where, when and how many workers will be affected? In this case, the Arbitration Council could not

predict how many people will resign from the company and the Arbitration Council cannot determine whether the workers who want to resign are entitled to the US\$ 500 without exact facts about whether these workers meet the criteria under the agreement or not.

In conclusion, the Arbitration Council declines to consider the demand of workers in this issue.

Based on the findings of fact, legal principles, and reasons above, the Arbitration Council decides the following:

DECISION

- Decline to consider the demand of C.CAWDU that the company implement the agreement providing US\$ 500 to [workers] who resign from work.

Type of Award: Non binding

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: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Sok Mathoeung**

Signature: