



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

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 29/08-Tairong**

**Date of Award: 13 March 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): **Run Saray**

#### **DISPUTING PARTIES**

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

Name: **Tairong (Cambodia) Knitting Co., Ltd.**

Address: Thleuk Village, Peuk Commune, Ang Snuol District, Kandal Province

Telephone: 024 399 975/012 522 266

Fax: N/A

Representative:

- |                      |                                   |
|----------------------|-----------------------------------|
| 1. Mr. Xuan Lasong   | General Manager                   |
| 2. Mrs. Shen Xiao Li | Assistant to Factory Director     |
| 3. Mrs. Ing Bao Qing | Interpreter                       |
| 4. Mr. Long Heang    | Dispute Resolution Officer (GMAC) |

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

Name: **Workers' Freedom Union Federation (WFUF) and the local union of WFUF at Tairong Company**

Address: #58, Sola Street, Trovang Lvea, Kakap, Dangkor, Phnom Penh

Telephone: 016 783 823

Fax: N/A

Representative:

- |                     |                           |
|---------------------|---------------------------|
| 1. Mr. Va Chankosal | Vice-president of WFUF    |
| 2. Mr. Cheun Thim   | General secretary of WFUF |

- |                         |   |
|-------------------------|---|
| 3. Mr. Lim Sinet        | Vice-general secretary of WFUF                          |
| 4. Mrs. Chea Sinat      | President of the local union of WFUF at Tairong Company |
| 5. Mr. An Saroeun       | Treasurer of the local union of WFUF at Tairong Company |
| 6. Mrs. Tuon Chanthoeun | Advisor of the local union of WFUF at Tairong Company   |

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the Company schedule the weekly day off on Sunday. The Company does not agree to the demand because this will affect the Company's production.
- 2- The workers demand that the Company dismiss Mr. Vong Mean Meng. The Company does not agree.

### **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.085/08 KB/KN, dated 18 February 2008 was submitted to the Secretariat of the Arbitration Council on 19 February 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:** 03 March 2008 (From 02:00 p.m. to 05:30 p.m.)

#### **Procedural issues:**

On 16 February 2008, the Department of Labour Dispute of Kandal Province assigned an officer to settle the dispute involving five issues. Two issues were conciliated and only two issues remained unconciliated (issue 4 and 5 are the same issue). The two non-conciliation points were referred to the Secretariat of the Arbitration Council on 19 February 2008.

After receiving the case, the Secretariat of the Arbitration Council invited the employer and the worker parties to the hearing and conciliation on the two non-conciliation issues on 03 March 2008 at 02:00 p.m.

Both parties were present as invited by the Arbitration Council. The Arbitration council tried to ask for further information related to this dispute and attempted to further the conciliation on the non-conciliation points but did not receive a conciliated result on any issue. Therefore, the Arbitration council will consider the two non-conciliation issues based on evidence and clarification provided 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. Letter No. 01/08 by the Company director, dated 19 February 2008 to authorize Mr. Long Heang to appear for the dispute resolution at the Arbitration Council;
2. Letter No. 036/07 KB/KN, dated 08 June 2007 regarding the weekly leave schedule of 800 workers in weaving section and 400 workers in sewing section.

#### **Provided by the worker party:**

1. Certificate of union registration of the Workers' Freedom Union Federation, No. 1251, dated 08 October 2007;
2. Certificate of union registration of the local union of WFUF at Tairong Factory, No. 1323, dated 18 January 2008;
3. Summary statement of the dispute, dated 28 February 2008;
4. Letter to make some demand over working conditions for workers in Tairong Company, dated 09 and 10 February 2008.

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

1. Report of collective labour dispute resolution at Tairong Company, No. 085/08 KB/KN, dated 18 February 2008 by the Department of Labour and Vocational Training of Kandal Province;
2. Minutes of collective labour dispute conciliation at Tairong Company, dated 16 February 2008.

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

1. Invitation letter No. 146 KB/AK/VK/LKA dated 25 February 2008 to invite the employer party to attend the hearing.
2. Invitation letter No. 147 KB/AK/VK/LKA dated 25 February 2008 to invite the employer party to attend the hearing.

## **FACTS**

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

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

- Tairong Company is a sock making company which employs approximately 1,000 workers and, among them, 650 workers are in the weaving and sewing sections. Among 650 workers, 194 of them printed their thumbprints for the local union of WFUF to make this demand.
- The local union of WFUF has around 200 members. There are two unions in the factory: the WFUF and Khmer Youth Trade Union. The local union of WFUF was registered on 08 October 2008 but it does not have most representative status.

### **Issue 1: The workers demand that the Company schedule the weekly day off for all workers on Sunday.**

- Both parties agreed on the point that the practice of having rotating weekly time off has been used for a long time, since at least mid-2006. Under this practice, workers worked for six days and took a day off each week on a rotating basis. This means that the weekly day off of each worker can be different, some people's day off falls on Sunday, others on Monday, or Tuesday and so on. The rotating shift off is to ensure the machinery of the factory runs for 24 hours per day and 7 days per week. The production line of the factory needs to operate all the time because stopping it will cause damage to the production of socks, especially in the weaving section. The Company's weekly time off schedule has been in place since it started its operation, and all workers in the weaving and sewing sections are aware of it and accepted the condition when they signed their employment contracts with the company.
- The workers raise the following reasons for their demand for all workers to have the weekly day off on Sunday: (1) based on the Labour Law Article 147, workers should take a day off on Sunday; (2) when they take a day off on Sunday, all workers can rest and enjoy it together and that they cannot do this if their day off is not on Sunday.
- The Company party states that it cannot agree to the workers' demand because the Company's production line requires that it be in operation 24 hours [daily] and the machinery of this factory is of a special nature that cannot be stopped on Sunday. This was the reason why the Company had to make a schedule for weekly time off in

order for the machinery to operate 24 hours per day and 7 days per week. However, workers still have one day off per week on a rotating basis.

- The employer party provided the Company's Internal Work Rules in which Clause 4(c) regarding weekly time off states that: "The worker is entitled to a full 24 hours per week and the time off is set in a rotating form".
- The employer party also provide employment contracts of six workers. A sentence in Clause 5 of the contract states, "The working hours is subject to change each month. You (worker) should work 6 days per week or equal to 48 hours a day depending on the assignment by the section supervisor (or depending on the rotation of the day off).
- The Company also provided a letter No. 036/07/KB/KN, dated 08 June 2007 by the Department of Labour and Vocational Training of Kandal Province who agreed with the request of the Company regarding the arrangement of the weekly day off of approximately 800 workers in the weaving section and 400 workers in the sewing section. Based on the above facts, there are only approximately 1,000 workers in the factory.

**Issue 2: The workers demand that the Company terminate Mr. Vong Mean Meng but the Company does not agree.**

- In the hearing the workers changed their demand to the demand for the Company only to make warning in writing to Mr. Vong Mean Meng.
- The workers mention that the head of administration named Vong Mean Meng used improper language and insulted workers. For example, Worker Ann Saroeun testified that on 09 January 2008, at 3:30 p.m. [Vong Mean Meng] insulted [Ann Saroeun], the treasurer of the local union of WFUF at Tairong Company, when Mr. Ann Saroeun went to meet [Vong Mean Meng] to make a request for payment of workers' wage on the 9th of that month, as the 10th of that month fell on Sunday (usually workers' wage is paid on the 10th of the next month). Mr. Ann Saroeun claims that Mr. Vong Mean Meng insulted him by saying that *"You are worthless crap. If you cannot understand, why don't you go to study Chinese and listen to it by yourself? Why should I take care of you as if you are my girlfriend?"* A worker named Chea Sina was present there too. In the hearing, Ann Saroeun says that he did not notify to the director of the Company about Mr. Vong Mean Meng's behaviour to him.
- Mr. Vong Mean Meng was not present in the hearing to respond to the claim of the union and Mr. Ann Saroeun. The representative of the Company said that Mr. Vong Mean Meng could not attend the hearing because he was busy trying to resolve a traffic accident problem. The representative added that he is not aware of this issue and no one had reported this to him. The Company director cannot assure that Mr.

Vong Mean Meng is a perfect person but he confirms the person has a good demeanor and has never had any dispute with workers.

- The union states that Mr. Vong Mean Meng insulted other workers but they cannot remember the names of those workers and the exact dates of the incidents because all of those workers have resigned from work. The union does not have any further evidence or detailed information regarding this claim.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the Company set weekly day off for all workers on Sunday.**

Article 147 of the Labour Law states,

*“Weekly time off shall last for a minimum of twenty-four consecutive hours. All workers shall be given in principle a day off on Sunday.”*

According to this Article, all workers should be allowed to take a weekly day off on Sunday. However, we should look at legal provision regarding exceptional case of weekly day off on Sunday.

Article 148 of the Labour Law states, *“When it is established that having all staff take Sunday off would...jeopardize the normal operation of the enterprise, the rest must be arranged as follows:*

...

*c) Rest by rotating all staff. Necessary authorization must be requested from the Ministry in charge of Labour.”*

The content of the above mentioned Article allows the company or factory whose production line could be jeopardized if it allows all the workers to take a day off on Sundays to make a rotating schedule of days off but it needs approval from the Ministry in charge of labour.

In this case, in the weaving and sewing sections of Tairong Company there is a special type of machine which requires the production line of the factory to operate 24 hours per day and 7 days per week otherwise it will damage or reduce the quality of the final product. For this reason, the Company made a rotating schedule of weekly day off to request for approval from the Department of Labour and Vocational Training of Kandal Province and the Department approved this schedule through a letter No. 036/07 KB/KN, dated 08 June 2008 with a requirement for the Company to make a monthly report to the Department regarding this issue. Therefore, the Company has fulfilled the conditions and obligation as stated in Article 148 of the Labour Law as mentioned above.

In addition, Article 149 of the Labour Law also supports the making of weekly day off as it states, *“It is permitted by law to give the weekly time off, by rotating the day off, to establishments belonging to the following categories:*

...

*11. Industries where any interruption of operations could cause the product being manufactured to spoil or deteriorate...”*

Moreover, it is also mentioned in the Company’s Internal Work Rules and the employment contract of each worker about the employer’s management prerogative that it can do this by providing a period of time off not less than 24 consecutive hours per week.

In the hearing, the worker party claims that the demand for all workers to take a day off on Sunday is for all workers to take a day off together. However, based on the above analysis, the Arbitration Council found that the workers’ demand for the employer to provide weekly time off to all workers on Sunday does not have sufficient legal ground.

Therefore, the Arbitration Council decides to reject the workers’ demand for all the workers to take a day off on Sunday.

## **Issue 2: The workers demand that the Company terminate Mr. Vong Mean Meng**

In the hearing, the workers changed their demand to request for the Company to give a warning to Mr. Vong Mean Meng. Thus, the Arbitration Council will consider this demand as follows:

Article 2 of the Labour Law states, *“... Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer...”*

In previous Arbitral Awards, the Arbitration Council interprets Article 2 of the Labour Law that the employer has the right to supervise and direct its enterprise as long as the supervision and direction is reasonable. (See Arbitral Awards 41/05-Violet, issue 8 and 37/07-JRB, issue 3).

Furthermore, in Arbitral Award 118/07-Jarding, issue 7, the Arbitration Council states that the right to take disciplinary action against a worker is the employer’s management prerogative. In this case, the Arbitration Council also considers that the right to take disciplinary action against a worker such as to give a warning to a worker is the employer’s management prerogative.

In this case the worker party changed their demand from the demand for termination of Mr. Vong Mean Meng to the demand for the Company to make a warning in writing to Mr. Vong Mean Meng. However, the Company party states that it cannot follow the workers’ demand to give a warning to Mr. Vong Mean Meng only by listening to the words of the union

or Mr. Ann Saroeun unless there is an evidence to prove that. The representative of the Company states that if the Company found that a worker commits misconduct (including the bad demeanor as stated by Mr. Ann Saroeun) the Company will have to take a disciplinary action against the worker.

The Arbitration Council considers that the trading of insults or using of improper language is an inappropriate behaviour which can cause bad feeling in workplace. Thus, the Company should take an appropriate measure to stop all of these actions and create a peaceful environment in workplace.

Therefore, the Arbitration Council considers that the workers' demand does not have any legal ground. Thus, the Arbitration Council decides to reject the demand.

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

**DECISION**

**Issue 1:** Reject the demand for all the workers to take a day off on Sunday together.

**Issue 2:** Reject the demand for the Company to give a warning to Mr. Vong Mean Meng.

**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 with 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: **Run Saray**

Signature: .....