



KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 47/08- Grandtex

Date of Award: 22 April 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

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

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **Grandtex International**

Address: Vatanak Garden, Building A, Chomchao Street, Dangkor, Phnom Penh

Telephone: 012 288 158

Fax: N/A

Representative: Mr. Phuo Sun

Chief of Administration

Worker party:

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

Address: Vatanak Garden, Building A, Chomchao Street, Dangkor, Phnom Penh

Telephone: 012 282 653

Fax: N/A

Representative:

1. Mr. Oum Visal

Deputy Secretary General of C.CAWDU

2. Mr. Heng Phally

Vice President of C.CAWDU Union at Factory

3. Ms. Teom Sarom

Secretary of C.CAWDU Union at Factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Members of C.CAWDU demand that the company provide a room with a table, chair, fan, and mail box and allow union and worker representatives to conduct meeting on

issues related to workers in the factory for 2 hours per week every Saturday. The company party states that it follows the Labour Law, i.e., it allows this only for the worker representatives in the factory.

- 2- Members of C.CAWDU demand that the company build a back door for workers to leave the factory to have lunch and that the company provide security to workers coming in and out. The company party states that it can not make a door at the back of the factory because it has suffered loss of assets in the past.
- 3- Members of C.CAWDU demand that the company issue the piece rate within 4 days of providing work for them to do. The company party states that, at the latest, it issues the piece rate within 6 days of providing work for them to do.
- 4- Members of C.CAWDU demand that workers who are sick and need to go to the infirmary in the factory seek approval only from the Cambodian group leader. The company party states that the workers need to seek permission from the administration department.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B Article 309 to 317 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 was made; however, it was unsuccessful, and the non-conciliation report No. 410 K.B./AK/V.K dated 25 March 2008 was submitted to the Secretariat of the Arbitration Council on 27 March 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: 04 April 2008 (from 2:00pm to 5:30pm)

Procedural issues:

On 29 February 2008 the Department of Labor Disputes received a claim from the Coalition of Cambodian Apparel W.D.U (C.CAWDU) no. 056-0208 S.B.K.K dated 28 February 2008 demanding the company improve the work conditions in the workplace. Following this, the Department of Labour Disputes assigned an expert officer to settle the collective dispute and the last conciliation was held on 18 March 2008 which resulted in [the

resolution of] 10 of the 14 issues. The four issues, which were not conciliated, were submitted to the Secretariat of the Arbitration Council on 27 March 2008.

After receiving the case, the Secretariat of the Arbitration Council invited the employer and workers to a hearing on 4 April 2008 at 2.00pm to try and conciliate the four unresolved issues.

Both parties attended the hearing. The Arbitration Council tried to collect more information and facts about the case and to conciliate the last four unresolved issues with the result that three issues [were resolved] ; issue 1, issue 3 and issue 4. The last unresolved issue was issue 2. The Arbitration Council will decide this case based on the evidence and answers of the parties in the hearing as follow:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Commercial registration certificate of Grandtex International no. 0060 BN.BAB dated 17 January 2007
2. Internal Regulation of Grandtex International no. 017 SKB.AKB dated 25 March 1998
3. Delegation letter to Mr. Phuo Sun Chief of Administration from the company to attend the collective dispute settlement process at the Arbitration Council dated 04 April 2008
4. Declaration no. 02 PK.Prakor dated 06 January 1997
5. Grandtex Patent no. LTU 012565.2007 Dated 14 February 2007
6. Grandtex announcement dated 11 January 2007 regarding the theft committed by Seang Kosal of company property
7. Grandtex announcement dated 11 January 2007 regarding the theft committed by Teb Sambath of company property
8. Grandtex announcement dated 11 January 2007 regarding the theft committed by Hin Sopheab of company property
9. Grandtex announcement dated 05 January 2007 on the dismissal Mr. Seng Kosal

Provided by the worker party:

1. Case brief on collective labour dispute at Grandtex no. 002/08 S.B.K.K dated 08 April 2008

2. Union registration certificate of Grandtex Coalition of Cambodian Apparel W.D.U (C.CAWDU) dated 08 October 2007

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

- 1- Collective Labor dispute conciliation report at Grandtex International no. 410 K.B./AK/V.K dated 25 March 2008
- 2- Collective Labor dispute conciliation record at Grandtex International dated 18 March 2008

Provided by the Secretariat of the Arbitration Council:

- 1- Invitation Letter to the Employer no. 236 KB/AK/VK/LKA dated 31 March 2008
- 2- Invitation Letter to the Workers no. 237 KB/AK/VK/LKA dated 31 March 2008

FACTS

- Having examined the documents submitted to the Arbitration Council
- Having reviewed the collective labour dispute conciliation report
- Having listened to the representatives of the workers and employer
- Having reviewed the supplementary documents

The Arbitration Council finds that:

- Grandtex employs 1,100 workers
- The Coalition of Cambodian Apparel W.D.U (C.CAWDU) Union is the claimant in this case. This union is registered, but does not have Most Representative Status.

Issue 2: Workers demand that the company build a back door for workers to leave the factory to have lunch and the company provide security to workers in coming in and out.

- The company used to allow workers to use the back door when taking their lunch break and when leaving the workplace to go home. However in the last 5 to 6 months the company has closed the back door and does not allow the workers to use the door.
- The company explains in the hearing that the reason that the company closed the back door and does not allow the workers to use it was because there were some workers who stole the company property when leaving through this back door (the company provides the names of the five workers who stole the company property). The workers agree to the company's explanation.

- The workers clarify in the hearing that the company used to allow the workers to use the back door, which was convenient to workers. If the company closes the back door and does not allow the workers to use it and makes the workers use the front door, the workers have to travel further and spend a long time when traveling home; this might cause insecurity and danger to the workers when they work overtime at night.
- The workers further clarify that there were was a robbery that affected the safety of the workers and it's dangerous for workers to go home; therefore the company shall take it into consideration [ways] to secure the safety of the workers to prevent future robberies. Even though, during the last 5 or 6 months no problems concerning the security of the workers have occurred when the company requires that the workers use only the front door.
- The company further explains at the hearing that when the company asked the workers to use only the front door, no accidents occurred. If an accident occurs, the workers will report these to the company because the company is responsible for workers who suffer work related accidents..

REASONS FOR DECISION

Issue 2: Workers demand that the company build a back door for the workers to leave the factory to have lunch and the company provide security to workers when they come in and out.

Related to this demand the Arbitration Council finds that previously the company opened the back door for the workers. However, in the last 5 or 6 months the company has closed the door and does not allow the workers to use [it] as there were some workers who stole company property when using this back door. The workers claim that if the company closes the back door and does not allow the workers to use [it], the workers [have to] use the front door, which is further away, and the workers have to spend significant time traveling and it might be unsafe and dangerous for the workers.

Thus, the Arbitrators will consider whether closing the back door and not allowing workers to use [it] is harmful for the safety of the workers and whether closing the back door is unlawful.

Article 2 of Labour law states “...*The enterprise can consist of several establishments, each comprised of a group of persons working together in a defined place (factory, shop, yard, etc.) under the direct management of the employer.*”

In the previous cases the Arbitration Council held that Article 2 of Labour Law means the employer has a right to organize and manage the company in accordance with the law and [what is] reasonable (see Arbitral Awards 17/03 & 18/03-Ho Hing, issue 5; 28/04-Raffles

Grand D'Angkor, issue 2; 20/06-New Star, issue 5; 17/07-Charm Textile, issue 3; and 116/07-Grace Sun, issue 2).

In the previous Awards, the Arbitration Council held that the employer's [right to] organise and manage [the company] include:

- 1- Transferring workers from one location to another without any change to the wage, position or seniority of the workers. (*Arbitral Awards 17/03&18/03-Ho Hing, issue 5; 108/06-Trinunggal Komara, issue 1; and 33/07-Gold Fame, issue 3).*
- 2- Determining the [method of] payment for workers, by salary or by piece rate, provided it is in accordance with the law and is reasonable (*Arbitral Award 39/07-San San, issue 2).*
- 3- Managing and directing the human resources in the company provided this management and direction is in accordance with the law. (*Arbitral Award 28/04- Raffles Grand D'Angkor, issue 2)*
- 4- Determining the workers' schedule (*Arbitral Award 62/06-Quick Sew, issue 5).*
- 5- Organizing and managing the production process and managing human resources in the factory including determining the leave procedures for the workers provided the leave procedures comply with the law and are reasonable (*Arbitral Award 54/07-Yung Wah I, issue 9).*

In this case the Arbitration Council finds that the employer's right to manage and organise the company includes the right to determine the entrance and exit of the factory if it is reasonable and complies with the law. In this case the Arbitration Council finds that opening the back door for the workers to use might cause loss of company property as occurred previously. Therefore, closing the back door is within the right of the employer to manage and organise [the factory] in accordance with Article 2 of Labour Law. Moreover, the Arbitration Council could not find that closing the back door affects the workers ie causes the workers to return to the workplace late after lunch, causes the workers to have accidents, or affects the safety of the workers. At the hearing the workers did not show any reasons or provide evidence about how closing the back door affected their work safety.

Thus, the Arbitration Council decides to reject the workers' demand that the company open the back door for the workers to use when they leave for lunch and ensure the security of the workers when they enter and exit the factory.

Based on the evidence, facts, legal grounds, and reasons above the Arbitration Council decides as follow:

DECISION

Issue 2: Reject the workers' demand that the company open the back door for the workers to use when leaving for lunch and ensure the security of the workers when they enter and exit the factory.

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: