



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាពន្ធដំណាច

THE ARBITRATION COUNCIL

Case number and name: 89/07 - Lotus

Date of Award: 3 October 2007

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: **VEN POV**
Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **Lotus Textile Garment (Cambodia) Company Limited**
Address: Russian Federation Blvd., Sangkat Touek Thla, Khan Russey Keo,
Phnom Penh
Telephone: 012 891 018 Fax: N/A
Representatives:

1. Mr. Jim Wang Director;
2. Mr. Yi Kim Administrative Manager;
3. Mr. Cheat Khemara GMAC Official.

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union (KYTU) at Lotus Company**
Address: Russian Federation Blvd., Sangkat Touek Thla, Khan Russey Keo,
Phnom Penh
Telephone: 016 686 144 Fax: N/A

Representatives:

1. Mr. Hing Bunthoeun Coordinator of KYFTU;
2. Mr. Sear Soly Coordinator of KYFTU;
3. Ms. Pok Im President of KYTU at Lotus Company;
4. Ms. Soth Savoeun Secretary of KYTU at Lotus Company;
5. Ms. Mom Samphas Treasurer of KYTU at Lotus Company.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demanded that the company provide a share of the profits to workers in accordance with their main wage at the end of each year. The employer party mentioned that this benefit is not stated in the Labour Law and the company cannot provide it.
2. The workers demanded that the company provide US\$1 for two hours overtime work, including meal allowance. The employer party claimed it follows the Labour Law and Notification No. 017 dated 18 July 2000.
3. The workers demanded that the company pay workers on the fifth day of each month. The employer party said it will try to pay workers before the tenth day of each month.
4. The workers demanded that the company increase the attendance bonus for workers by US\$5. The employer party said it follows the Labour Law and Notification No. 017 dated 18 July 2000.

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 which took place on 4 September 2007 was unsuccessful, and the non-conciliation report No. 930 was submitted to the Secretariat of the Arbitration Council on 4 September 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:

- **First Hearing: 10 September 2007 (from 2:00pm to 3:00pm)**
- **Second Hearing: 18 September 2007 (from 2:00pm to 5:00pm)**

Procedural issues:

On 19 July 2007 the Department of Labour Disputes received a complaint from the workers of the Lotus Garment Factory demanding the improvement of some working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate the dispute at the factory and the last conciliation session took place on 16 August 2007, which resulted in three out of seven issues being conciliated. The four remaining non-conciliated issues were forwarded to the Arbitration Council on 4 September 2007.

Having received the case, the Secretariat of the Arbitration Council summoned both disputing parties to a hearing to conciliate the four non-conciliated issues on 10 September 2007 at 2:00pm and on 18 September 2007 at 2:00pm. Both parties were present as summoned by the Arbitration Council.

On the hearing date, the Arbitration Council attempted to conciliate the four non-conciliated issues stated in the non-conciliation report of the Department of Labour Dispute, but was not able to resolve the issues. Thus in this case, the Arbitration Council will consider this dispute based on the evidence and findings of fact as follow:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council**Provided by the employer party:**

1. Request Letter for intervention and resolution of working conditions from Khmer Youth Free Trade Union;
2. Minutes of the collective labour dispute conciliation dated 16 August 2007;
3. Minutes of the labour dispute resolution at Lotus II Company dated 17 July 2007;
4. Request for discussion and mediation of the labour dispute of workers of Lotus Company from Khmer Youth Free Trade Union dated 4 July 2005;
5. Request Letter for visa for the Lotus Company's Internal Work Rules dated 28 July 2005;
6. Internal Work Rules of Lotus Company dated 28 July 2005;
7. Business License Registration of Lotus Company dated 13 December 2004;

8. Request Letter for garment production expansion in new location dated 11 July 2004.

Provided by the worker party:

1. Notification dated 7 July 2007 on the election to reshuffle the committee of Khmer Youth Trade Union at Lotus II Company;
2. Request Letter for intervention and resolution of labour dispute at Lotus Company dated 17 July 2007;
3. Request for discussion and mediation of the labour dispute of workers of Lotus Company from Khmer Youth Free Trade Union dated 4 July 2005;
4. Request Letter for intervention and resolution of working conditions from Khmer Youth Free Trade Union.

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

1. Letter No. 1278 of the Minister of Labour and Vocational Training on the request for labour dispute at Lotus Company dated 17 September 2007;
2. Letter No. 930 of the Director of the Department of Labour Disputes on the report of the collective labour dispute settlement at Lotus Company dated 4 September 2007;
3. Minutes of the collective labour dispute conciliation dated 16 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 393 to the worker party to attend the hearing dated 6 September 2007;
2. Invitation No. 392 to the employer party to attend the hearing dated 6 September 2007.

FACTS

- Having examined the documents submitted to the Arbitration Council;
- Having examined the collective labour dispute conciliation report;
- Having listened to the statements of the employer party and the worker party;

The Arbitration Council finds that:

- Lotus Factory has three branches – Lotus I Factory, Lotus II Factory, and Lotus III Factory. This dispute happened in Lotus II Factory, which employs around 3,826 workers. Lotus Factory was registered for a business license on 13 December 2004. According to the employer party, Lotus II Factory started its operation at the end of 2005;

- In this factory, there are three unions – the Khmer Youth Trade Union, the claimant, which has 199 members, the Independent and Democratic Trade Union, which has approximately 140 members, and the Khmer Democratic Worker Union, which has approximately 166 members;
- According to both parties, no union in this factory has most representative status;
- The Khmer Youth Trade Union, the claimant, said they made the claim for all workers in the factory not just for its members. The Arbitration Council requested the union to provide the list of all workers who made the claim in this case by 25 September 2007. However the Arbitration Council did not receive the documents from the worker party on this date.

Issue 1: The workers demanded that the company provide a share of the profits to workers in accordance with their main wage at the end of each year.

- The workers demanded that the company provide a share of the profits to workers in accordance with their main wage at the end of each year because production was going well, workers got paid regularly, and this claim was stated in Article 103 of the Labour Law. That means if the main wage is US\$50, the company shall provide a benefit of US\$50 per annum. If the main [wage] is US\$60, the company shall provide a benefit of US\$60 per annum;
- The company did not agree to provide the demanded benefits to workers arguing that it was not stated in the Labour Law and the current practice was already better than what the Labour Law provides – the company provides the main wage and bonuses to workers in the amount of US\$5 to US\$30, US\$40, and US\$50 based on their merits. The company thinks that what the company provides is consistent with Article 103 of the Labour Law and it cannot provide more than that;
- Ms. Pok Im, Union President; Soth Savoeun, Secretary; and Mom Samphas, Treasurer, said they received a bonus. Ms. Pok Im, Union President, said she received between US\$5 and US\$10. Ms. Soth Savoeun, Union Secretary, said she received between US\$5 and US\$20 and Ms. Mom Samphas, Union Treasurer, said she received US\$20.
- The worker party did not provide any evidence to support their claim. The Arbitration Council ordered the employer to provide the company's 2006 financial report to the Arbitration Council on 25 September 2007. The Arbitration Council did not receive the documents from the employer party on this date.

Issue 2: The workers demanded that the company pay US\$1 for two hours overtime work including a meal allowance

- The workers said that the employer already provides them with wages and meal allowances according to the law, but they demanded that the company pay them US\$1 for two hours overtime work, including a meal allowance because the workers always cooperated when asked to work overtime. That means US\$1 for two hours overtime work. If we divide the US\$50 minimum wage by 26 days and divide the result by 8 hours and multiply it by 2 hours of overtime work and plus 1,000 riels of meal allowance for two hours overtime work, the result is 2,923 riels (exchange rate is 4000 riels per dollar). This demand is for those whose total payment for two hours overtime work is less than US\$1.
- The employer disagreed, but claimed to apply the Labour Law. Overtime work is on voluntary basis and the company provides more benefits than the law provides – the company pays double time plus one for those who work overtime on a Sunday or a holiday and provides one paid holiday. Union leaders did not refute the company's claim.
- The worker party did not provide any evidence to support their claim. The Arbitration Council ordered the union to submit the list of workers who made the demand to the Arbitration Council on 25 September 2007.,The Arbitration Council did not receive the document from the worker party on this date.

Issue 3: The workers demanded that the company pay workers on fifth of each month

- The workers demanded that the company pay workers on the fifth of each month because the workers need money. The company disagreed requesting that the payment be made on the tenth of each month, arguing that the company has never paid workers late. The workers did not refute this claim.
- The company explained the monthly payment procedures as follows:
 1. On the fifth of each month, the company enters wages and bonus data;
 2. On the sixth of each month, the company calculates the wages and bonus data and prints it out;
 3. On the seventh of each month, the company produces pay slips;
 4. On the eighth of each month, the company closes its accounting and sends it to Taiwan for approval and the money is transferred to Cambodia;
 5. On the ninth of each month, the company put wages in packets for workers;
 6. On the tenth of each month, the company pays workers.
- The company said that it would try to pay workers no later than the tenth of each month, but it cannot promise to pay on the fifth.

- The worker party did not provide any evidence to support their claim. The Arbitration Council ordered the union to submit the list of workers who made the demand to the Arbitration Council on 25 September 2007. The Arbitration Council did not receive the document from the worker party on this date.

Issue 4: The workers demanded that the company increase the attendance bonus by US\$5 for workers

- The workers demanded that the company increase the attendance bonus by US\$5 for each worker because they think the current US\$5 attendance bonus is too low.
- The employer party disagreed because the company already provides benefits in accordance with the law. The company does not deduct the attendance bonus from workers who come to work 15 minutes late regardless of the number of times workers are late per month.
- The worker party did not provide any evidence to support their claim. The Arbitration Council ordered the union to submit the list of workers who made the demand to the Arbitration Council on 25 September 2007. The Arbitration Council did not receive the document from the worker party on this date.

REASONS FOR DECISION

Issue 1: The workers demanded that the company provide a share of the profits to workers in accordance with their main wage at the end of each year

In this issue, the workers demanded that the company provide a share of the profits to workers in accordance with their main wage at the end of each year because production is going well, workers get paid regularly, and this claim is stated in Article 103 of the Labour Law on wages especially Clause 5 – profit sharing.

Regarding this issue, the Arbitration Council finds that the law and regulations on the Labour Law determine only the main wage as well as benefits or bonuses that an employer has to provide its workers and through the facts, the employer party claimed that they already provide these benefits. The Arbitration Council considers that Article 103 of the Labour Law, which was mentioned by the worker party, sets out the definition and components of wages but does not oblige an employer to provide [a share of the] profits to workers at the end of each year.

The Arbitration Council also finds that no provision in the Labour Law or agreement between both parties requires the company to provide a share of the the profits to each worker in accordance with their main wage at the end of each year. Thus, the employer is not

entitled to provide profits to workers at the end of each year. Thus, the workers' demand is an interests demand because this demand is more than what the law provides. Generally, the Arbitration Council will consider an interests dispute only if the union that brought the dispute has most representative status in the factory.

Normally, the most representative status of the claiming union is very important for the Arbitration Council to determine whether it can consider or not consider the interests dispute brought by the union because based on Article 43 of Prakas No. 099 dated 21 April 2004 which stipulates that, "*Arbitral Award that resolves interest dispute will replace the collective bargaining agreement for a period of one year starting from the date that the Award come into effect unless parties negotiate to create a collective bargaining agreement to replace this Award.*"

Previously, the Arbitration Council found that if the Arbitration Council issues an Award on this issue, it will become a collective bargaining agreement that will apply to all workers in the company and will remove the right of other workers to strike in any interests dispute in the future. Thus, it creates unfairness for other workers. (See Arbitral Awards 57/04 – Evergreem, 60/04 – United Art, Issue 3; 08/07 – Xiao Kinh, Issue 3; 33/07 – Gold Fame, Issue 2; and 51/07 – Gold Fame, Issue 4)

Furthermore, the Arbitration Council previously concluded that a union that does not have most representative status has no right to bring an interests dispute before the Arbitration Council for settlement. (See Arbitral Awards 57/04 – Evergreen, 60/04 – United Art, Issue 3, and 08/07 – Xiao Kinh, Issue 3)

That means the union has legal standing to negotiate a collective bargaining agreement and it also means that the claimant has the legal right to bring an interests dispute before the Arbitration Council.

The Arbitration Council always considers that most representative status gives legal rights to a union to negotiate the collective bargaining agreement in a company and provides legal rights to bring an interests dispute before the Arbitration Council for settlement. In order to achieve most representative status, Article 277 of the Labour Law 1997 stipulates that a union must be registered and meet the other requirements in that Article.

Meanwhile in Issue 2 of case 70/07 – L.A, the Arbitration Council declined to consider the demand of workers that the company provide a share of the profits to workers at the end of each year, because the claiming union did not have most representative status leading to the rejection of the interest dispute brought to the Arbitration Council.

In this case, the Khmer Youth Trade Union is not the union that has most representative status in the Lotus factory. Thus, the union does not have the legal rights to create a collective bargaining agreement on behalf of all workers; it also means that this union has no legal rights to bring an interests dispute before the Arbitration Council for

settlement. Therefore, in order to be consistent with previous cases, the Arbitration Council considers that the union does not have legal standing to represent all workers in the factory to settle the collective interests dispute meaning all claims made by this union will not be considered.

Because the Khmer Youth Trade Union does not have most representative status, the Arbitration Council declines to consider the workers' claim which demanded the company provide a share of the profits to workers in accordance with their main wage at the end of each year.

Issue 2: The workers demanded that the company pay US\$1 for two hours overtime work including a meal allowance

In this case, the workers demanded that the company pay US\$1 for two hours overtime work, including a meal allowance because workers always cooperated to work overtime. That means US\$1 for two hours overtime work.

The Arbitration Council finds that no provision of the Labour Law or any agreement requires the company to pay US\$1 for two hours overtime work to workers.

Therefore, the Arbitration Council considers that the demand of workers is an interests demand because this demand is more than what the law provides. Generally, the Arbitration Council will consider an interests dispute only if the union that brought the dispute has most representative status.

In this case, the Khmer Youth Trade Union does not have most representative status. Thus, the Arbitration Council declines to consider the workers' demand for US\$1 for two hours overtime work including a meal allowance. (See reason for decision related to interests dispute in Issue 1)

Issue 3: The workers demanded that the company pay workers on the 5th of each month. The employer party said it will try to pay workers before the 10th of each month

Article 116 (2) of the Labour Law stipulates that, "*Employees' wages must be paid at least once per month.*"

Based on this Article, the Arbitration Council considers that workers' wages must be paid every month and the period for payment should not be longer than one month and this Article does not determine the pay day. It means the implementation at employer's consent because the employer has the right to manage the enterprise in accordance to Article 2 of the Labour Law.

In Issue 4 of Arbitral Award 81/05 – Supreme, the Arbitration Council explained that, "*Article 2 of the Labour Law provides right and power to employer to manage and direct the*

human resources in the enterprise as long as the management and the direction comply with the law. That means employer has the right to determine the pay day of the month as long as the determination complies with the law, which stipulates that at least once a month." In later cases, the Arbitration Council established its jurisprudence saying that, "*employer has the right to manage and direct his or her enterprise as long as the right to manage and direct comply with the law and reasonable.*" (See Arbitral Awards 14/07 – Supreme, Issue 1; 17/07 – Charm Textile, Issue 3; 18/07 – Trinungal, Issue 2; and 54/07 – Yung Hwa, Issue 9)

In this case, the company decided to pay wages on the 10th of each month and promised not to be late and the union also said in the hearing that the company pays wages regularly. However, in this case the workers demanded that the company pay wages on the fifth of each month because the workers need money. The Arbitration Council considers that the demand of the workers is not valid because the *employer has the right to determine the pay day as long as the determination is reasonable and complies with the law which stipulates that at least once a month* and the employer also reasonably determines the pay day to be no later than the tenth of each month. The payment procedures of the company require a set process and a lot of time to verify and transfer money from oversea and it complies with Article 116 of the Labour Law. Thus, the Arbitration Council decides to reject the workers' demand for payment on the fifth of each month.

Issue 4: The workers demanded that the company increase the attendance bonus for workers by US\$5

Clause 3 of Notification No. 745 dated 23 October 2006 states that, "*Other benefits that workers used to receive based on Notification No. 017 dated 18 July in point 3, 4, 5, and 6 shall remain the same.*"

Clause 3 of Notification No. 017 dated 18 July 2000 states that, "*Workers regularly work the days required in a month shall receive at least US\$5 per month.*"

In this case, both parties admitted that the employer provides US\$5 for the attendance bonus as determined by the Notification. Thus, the Arbitration Council considers that the employer has already complied with its obligation regarding the provision of an attendance bonus.

In this case, the worker party demanded that the company provide an additional US\$5 to the current US\$5. The worker party said in the hearing that the reason they demanded this was because the attendance bonus is too little, even though the company provides benefits as provided by the law and the company does not deduct this attendance bonus, when workers come to work 15 minutes late regardless of the number of times a

worker has been late per month. In this case, the Arbitration Council finds that no provision in the Labour Law or any agreement requires the company to increase the attendance bonus for workers by US\$5. Thus, the Arbitration Council considers that the workers' demand is an interests demand because this demand is more than what the law provides.

Generally, the Arbitration Council will consider an interests dispute only if the union that brought the dispute has most representative status in the factory. In this case, the Khmer Youth Trade Union does not have most representative status. Thus, the Arbitration Council declines to consider the workers' demand to increase the attendance bonus by US\$5 for each worker. (See reasons for decision related to interests dispute in issue 1 above)

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

DECISIONS AND ORDER

- Issue 1:** Decline to consider the workers' claim that the company provide a share of the profits to each worker in accordance with their main wage at the end of each year.
- Issue 2:** Decline to consider the workers' demand for US\$1 for two hours overtime work including a meal allowance.
- Issue 3:** Rejects the workers' demand for payment to be made on the fifth of each month.
- Issue 4:** Decline to consider the workers' demand for to increase the attendance bonus for each worker by US\$5.

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 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: **VEN POV**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: