

## **THEMIS Summer School in Law**

Freie Universität Berlin  
Sept 14 until Sept 26, 2009

### **ICC case**

#### Facts of the Case

Mr Thomas Reed is a British citizen who has been hired by Hip Fashion Company (HFC) as a Senior Manager responsible for Corporate Compliance and Responsibility. HFC produces clothes in Asia and trades them all over the world, but is headquartered in Chicago, Illinois.

Mr Reed signed a “standard” employment contract provided by HFC. This contract provides that he will receive compensation of USD 650.000 yearly and has a five year term in his job. The contract further provides that if he “does not complete a full term, for any reason, he will be entitled to receive one full year of severance pay or liquidated damages”. He is to be removed only for “just cause” or “violations of his professional work responsibilities”.

Mr Reed’s tasks are to implement company policies and handle press relations in ensuring compliance for corporate, business ethics, labour and environmental issues, which includes compliance with local laws in all countries HFC is doing business in, as well as implementing the terms of several Codes of Conduct HFC has signed on to. These include the UN Global Compact, the OECD Guidelines for Multi-National Enterprises and the EU Council and European Economic and Social Committee document “Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Responsibility”.

In the third year of his employment, Mr Reed visits a HFC clothes plant in an Asian country. On inspection of this plant he discovers that local rules on minimum wages are violated. Furthermore safety rules for health protection of staff are not observed, and surplus chemicals are illegally disposed of in a river. In addition Mr Reed stumbles upon a few instances of bribes being paid to local authorities.

Having returned to Chicago Mr Reed reports these facts to the President of HFC, citing the company’s explicit and specific policies. However the President suggests that he “take it slow and do some more investigation quietly, so as not to raise any undue public attention, which might affect stock prices”. After six more months in which Mr Reed finds the situation in the plant he visited unchanged the President continues to advise him to take little action as the Financial Crisis in his opinion presents already enough of a problem. For the same reason the President refuses to have a meeting of Mr Reed with the Board of Directors.

After the President denied him a meeting with the Board Mr Reed calls a press conference in which he describes what HFC has been doing in the Asian plant. The next day he receives notice of his immediate dismissal for “failing to meet company professional responsibilities, including confidentiality, protection of company trade secrets and intellectual property, and compliance with our Code of Ethics”.

Mr Reed now files a request for arbitration with the ICC, seeking reinstatement and damages. He does this by referring to the following clause in his employment contract: “Any and all disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, by one or more arbitrators appointed in accordance with the Rules. The seat of any such arbitration will be London. The applicable law shall be the law of this contract as effectuated in the place of its performance.”

HFC denies the claim for lack of ICC jurisdiction as well as material grounds and in case of the ICC assuming its jurisdiction presents a counterclaim for damages for loss of business and reputation in an amount of no less than USD 1.000.000.

#### Some legal facts

Requirements for ICC cases are to be found in the ICC Rules. Furthermore it may be useful to know that the UK laws (as most European laws) restrict the possible evidence as compared to the US legal system and that the ICC rules don't prescribe any specific rules so that if no agreement is found the court has to decide, that the UK considers employment issues as to be treated through the employment tribunal system and not through arbitration unless most of the work of a British citizen is done outside the UK, that EU data protection makes it more difficult to “report” someone publicly than the US (UK Public Interest Disclosure Act, 1998 as opposed to US Sarbanes-Oxley Act, 2002), that the arbitrators are not nominated as “amicable compositeurs” (who may find a creative solution in their final award which then is binding for the parties).

## Group Tasks

There will be four sets of Student Groups altogether, as there are two different parts of the litigation and for each part representatives of Mr Reed and HFC respectively are needed.

### First set of Groups: Procedural matters

The first part of the litigation is dedicated to procedure, which is quite essential in arbitration. This includes the questions of jurisdiction, admissible evidence, the law that is applicable to the contract etc, according to ICC rules.

### Second set of Groups: Material dispute

The second part is dedicated to the material question whether the claim and/or the counter-claim of HFC is founded.