

Case number: 05/03  
Date of award: 26 June 2003

**ARBITRAL AWARD**  
Issued under Article 313 of the Labor Law

**TOP ONE Factory**

(Employer party)

**And**

**Workers who are members of Solidarity Worker Union of Top One factory**

(Employee party)

**Details of employer party:**

Address: National road #5, Kilometer N.9 commune, Reusey Keo district, Phnom Penh

Telephone: 023 369 800 Fax: 023 369 006

Representative: Lim Vanna and Assistant

Address: # 116E, Norodom Bvd. Phnom Penh

Telephone: 023 212 318 Fax: 023 212 319

**Details of employee party:**

Address: # 339F, National road #5, Svaypak commune, Reuseykeo district, Phnom Penh

Telephone: 011 712 195 Fax: N/A E-mail: N/A

Representative: Meas Morokat

Address: # 339F, National road #5, Svaypak commune, Reuseykeo district, Phnom Penh

Telephone: 011 712 195 Fax: N/A E-mail: N/A

**ISSUES IN DISPUTE**

- 1- Request the Company to withhold union fee for Union from the salary of workers who are union member.
- 2- Dividing of breast feeding time

**Jurisdiction of the Arbitration Council:**

The Arbitration Council derives its power to make this Award from Section II B of chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was unsuccessful

and non-conciliation report dated 30 May 2003 was submitted to the Secretariat of the Arbitration Council on 03 June 2003.

### **Composition of Arbitration Panel:**

- Arbitrator chosen by the employer party: Ouk Ry
- Arbitrator chosen by the employee party: Vong Vanna
- Chair arbitrator (chosen by the two arbitrators): Kong Phallak

### **Decision and Award**

**Issue 1:** The Arbitration Council makes the following decisions and orders:

- a. Union shall submit a list of workers who agree to deduct union fee from their salary to the employer at least 15 days prior to the pay day. To prevent any problem from this deduction the union shall ask union members who agree to deduct the fee from their salary to fill in a fee deduction form which the union will then submit to the employer at the same time as the above list. In case that any members object to the deduction of union fees from their salary, the union shall submit the list of those workers to employer at least 15 days prior the pay day too.
- b. The factory shall deduct the union fee from the salaries of workers who are union members from the month that workers complete requirements stated in point (a) and transfer those collected fees to the union between the 10th and 12th of the following month. Furthermore, the employer shall also provide to the Ministry of Labor a certification of all employees who have made a request for withholding of union fees in accordance to Article 5 of Prakas #305.

**Issue 2:** Referring to an agreement of both parties during the hearing:

- a. The employer shall provide workers whose house is far from the workplace with the breast-feeding time: 30 minutes in the morning (from 7:00 a.m. to 7:30 a.m.) and other 30 minutes at the lunchtime (from 12:30p.m. to 13:00 p.m.).
- b. The employer shall provide workers whose house is near to the workplace with the breast feeding time: 30 minutes in the morning and other 30m minutes in the afternoon and this breast feeding can be taken in the factory any time but it is only 30 minutes for the morning and 30 minutes in the afternoon.

### **Hearing and Evidence:**

Date and Place of the hearing: June 20, 2003 at 8h10 at the Secretariat of Arbitration Council, Phnom Penh Center, Building A, Sothearos Bld., Sangkat Tonle Basak, Phnom Penh.

#### **Evidence:**

- Application form of union fee deduction
- List of 559 workers who are union members
- Invitation to the pre-hearing on June 17, 2003 at 3h00p.m.
- Oral testimony of lawyer Lim Vanna, and his associate, representing employer; and oral testimony of Mrs. Mean Marakat and her assistant representing employee on June 20, 2003.

**Case Summary:**

The employee party made the following requests to the employer:

- 1- To request the employer to withhold union fees from the salary of workers who are union members.
- 2- To request the employer to organize day care center and room for breast feeding.

The employer refused to withhold the union fee because he was afraid that the act of deduction is illegal and contrary to Article 281 of labor law in 1997 and he agreed on child care center and nursery room but there is disagreement on the allocation of breast feeding time.

Therefore, the two non-conciliation issues were sent to the Arbitration Council on June 10, 2003. After receiving this case on June 17, 2003 the parties were invited by the Arbitration Council to get more information and to conciliate prior the hearing which was held on June 20, 2003. However, as the conciliation was not successful the Arbitration Panel let the parties go home and asked them reconsider the issues. On June 20, 2003 at 8h00 a.m. the Arbitration Council commenced the official hearing at the Secretariat of the Arbitration Council with the presence of both parties.

**Findings of Fact:**

The Arbitration Council collected findings of fact as follow:

- 1- The numbers of workers who are union member in the factory is 559 with their thumbprint and copy of membership card.
- 2- A union's request dated on March 21, 2003 to the employer in union fee deduction and the employer did not withhold union fee as requested.
- 3- The employer allowed workers to nurse their baby half an hour in the morning and half an hour in the afternoon in the premises of factory without any clear time or without distinguishing between workers whose house is near to the factory and those whose house is far from the factory.

**Reasons for making decision:**

**Issue 1:** For the union fee deduction, paragraph two of Article 129 of labor law 1997 provides that "... employee may authorize employer to withhold from his/her salary fees for union membership. This permission is made in writing and can be withdrawn at anytime". In addition to this Article, Article 5 of Prakas 305 of MSALVY states that employees who are members of union can make written request within 15 days prior to their payday in order to let the employer withhold union fee from their salary for union in which they are member in accordance to Article 129 of Labor Law". And Article 112 also requires employer to give clear notice to employee during each payment and employee can refuse at that time if the deduction is not at their will.<sup>2</sup> Referring to the law and this Prakas, the employer is required to deduct union fees when employees who are union member make request.<sup>3</sup>

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<sup>2</sup> Article 112 states that employer shall take measures to inform the workers in a precise and easily comprehensible fashion of their wage for every pay period when there is a change to the wage.

<sup>3</sup> See also the Arbitral Award of Tonga (Case #/03) case issued on June 11, 2003

Although Article 281<sup>4</sup> prohibits employer from deducting union fees from workers' salary and from paying union fee for workers, the decision of Arbitration Council is not contrary to the law because the intention of Article 281 is to protect the employee's right and prohibit employer from doing any acts of interference to keep union under his/her influence as stated in article 280.<sup>5</sup>

**Issue 2:** The decision of the Arbitration Council refers to Article 184 of Cambodian Labor Law (1997) and an agreement between employer and employee at the hearing day.

**Signatures of Members of the Arbitration Panel**

Arbitrator chosen by the employer party:

**Name:** OUK Ry

**Signature:**.....

Arbitrator chosen by the employee party:

**Name:** VONG Vanna

**Signature:** .....

Chair of Arbitrators Panel:

**Name:** KONG Phallak

**Signature:** .....

*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.*

*If either party submits a valid opposition to this award either party can then make a complaint to the court or conduct strike or lock out in order to resolve this dispute.*

*This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*

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<sup>4</sup> Article 281 states that all employers are forbidden to deduct union from the wage of their workers and to pay the dues for them.

<sup>5</sup> Article 280 states that Acts of interference are forbidden. Within this meaning of the present article, acts of interference are primarily measures tending to provoke the creation of worker organization dominated by an employer or an employer's organization or the support of worker organization by financial or other means on the purpose to place these organizations under the control of an employer or an employer's organization.