



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព

THE ARBITRATION COUNCIL

Case number and name: 06/07- Atax

Date of Award: 16 February 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Hem H. Naryth**

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

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **Atax Garment Company**

Address: Building 20, Canadia Industrial Park, Khann Dangkor, Phnom Penh

Telephone: 023 985 621 Fax: N/A

Representative:

- | | |
|-----------------|--------------------------|
| 1. Soun Vanthea | Accountant |
| 2. Vi Thara | Secretary to the Manager |
| 3. Tido Suyseng | Interpreter |

Worker party:

Name: **Local Cambodian Union at Atax factory**

Address: Building 20, Canadia Industrial Park, Khann Dangkor, Phnom Penh

Telephone: 011 768 791 Fax: N/A

Representative:

- | | |
|---------------|----------------|
| 1. Mom Thon | Officer of CUF |
| 2. Chea Sopha | Officer of CUF |

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KHMER ORIGINAL.**

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The union requests that the company deduct union contribution fees from union members of the local Cambodian Union at Atax Company. The company does not agree to deduct workers' wages on behalf of the union because it allows the local union to collect [the fee] itself.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour 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. 099 dated 11 May 2006 (Fourth 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. 1916 K.K.B.V./A.K/V.K dated 25 December 2006 was submitted to the Secretariat of the Arbitration Council on 25 January 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: 8 February 2007 at 2:30 p.m.

Procedural issues:

On 27 November 2006, the Department of Labour Disputes received a complaint from the Cambodian Union demanding that the company improve working conditions in accordance with the Labour Law in respect of 10 issues. Upon receipt of the complaint, the Department of Labour Disputes assigned an officer to handle this labour dispute. The last conciliation was held on 19 December 2006 resulting in nine of the 10 issues being resolved through conciliation. The one non-conciliated issue was referred to the Arbitration Council on 25 January 2007.

After receiving this case, the Secretariat of the Arbitration Council summoned the employer party and representatives of the Cambodian Union at the factory to a hearing and conciliation on the one non-conciliated issue on 8 February 2007 at 2:30 p.m.

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On the hearing day, the Arbitration Council attempted a further conciliation with respect to the one non-conciliated point but the issue remained unresolved. Therefore, in this Award, the Arbitration Council will consider this issue based on the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Certificate of commercial registration of Atax company, No. 454 PN.NTK, dated 24 March 2004
- Statute of Atax company
- Internal Work Rules of Atax company, registration No. 044 SKBYAK, dated 10 June 2004
- Minute and thumbprints of the Head of Group who represented the workers during the disagreement about allowing the company to deduct union contribution fees from workers on behalf of the union, dated 3 February 2007
- Letter of resignation from work from Bou Sothea, President of the local Cambodian Union at Atax Factory, dated 6 February 2007
- Letter rejecting [the demand] to allow the factory to deduct workers' union contribution fees on behalf of the Cambodian Union, dated 6 February 2007
- Letter of resignation from work from Ros Bony, dated 29 January 2007
- Letter of resignation from work from Phoeun Sokna, dated 21 December 2006
- Sample of workers' employment contracts
- Minute of collective labour dispute conciliation, dated 19 December 2006

Provided by the worker party:

- Certificate of registration of the Cambodian Union, dated 16 January 2006
- Statute of the local Cambodian Union at Atax Factory Garment
- Union contribution slip, union membership card, and signatures of workers requesting the union's help

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

- Report of the collective labour dispute resolution at Atax company, No. 1916/06 K.K.B.V/AK/V.K from the head of the Department of Labour and Vocational Training, dated 25 December 2006
- Minute of the collective labour dispute conciliation, dated 19 December 2006

Provided by the Secretariat of the Arbitration Council:

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1. Invitation letter No. 037 K.K.B.V/AK/VK/LKA dated 5 February 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 038 K.K.B.V/AK/VK/LKA dated 5 February 2007 to invite the employer party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- The company is located in Building 20, Canadia Industrial Park, Khann Dangkor, Phnom Penh and employs 213 workers. The company has only one union, the local Cambodian Union at Atax factory. According to the workers' claim, this union has more than 200 [members] but it has not received most representative status yet.
- The President, Vice President and Secretary of the union have all resigned.
- Based on the evidence provided by the company, Mr. Bou Sothea, President of the local Cambodian Union at Atax Factory, resigned from work on 6 February 2007 and provided a rejection letter not allowing the company to deduct union contribution fees for the Cambodian Union Federation, dated 6 February 2007. A representative of the Cambodian Union Federation stated that they did not know that Mr. Bou Sothea had resigned from work or that he had provided a rejection letter not allowing the factory to deduct union contribution fees from workers; they only stated that they could not find Mr. Bou Sothea to come to the hearing. Representatives of the Cambodian Union Federation added that Mr. Bou Sothea did not delegate rights [of representation] to the Cambodian Union Federation to attend the hearing on behalf of the [local union].
- Based on evidence provided by the Company, Mr. Ros Bony Vice President of the union resigned from work on 29 January 2007. Representatives of the Cambodian Union Federation agreed that Mr. Ros Bony did resign from work.
- Based on evidence provided by the Company, Phoeun Sokna who is the union Secretary, resigned from work on 21 December 2006. Representatives of the Cambodian Union Federation agreed that Phoeun Sokna did resign from work.
- Representatives of the Cambodian Union Federation stated that they have a letter and the thumbprints of union members who request a deduction of their wages for union contribution fees but they had not made any request in writing to the company

to deduct these union contribution fees on their behalf because they asked the company verbally but the company refused to handle this matter.

- Representatives of the company stated that the company allowed two hours per month for five to six union representatives to collect union contribution fees. They [asserted that] the problem is not with the company, but rather because the workers themselves do not give the money over. The Federation representative stated that the local union faces difficulties in respect of collecting the union contribution fees and that is why it requests that the company help to do the collection. The company stated that many workers do not agree to allow them to deduct their salary. The representatives of the federation stated that there are workers who volunteer to have a deduction made from their wages for union contribution fees, but all the documents are with Mr. Bou Sothea. After the hearing day, the Cambodian Union provided the workers' deduction slips, but these were not letters to request the company to deduct the union contribution fees.

REASONS FOR DECISION

Article 129 of the Labour Law states, “... ***the worker can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time.***” According to the spirit of Article 129, each worker who is a member of the union can make a request in writing to request the company to deduct their wages in order to pay for the union contribution fees to the union to which they belong. They can revoke this by requesting that the company not deduct their wages in order to pay for union contribution fees.

Article 5 of Prakas 305 issued on 22 November 2001 by the Ministry of Social Affairs Labour Vocational Training and Youth Rehabilitation states, “***When workers decide to use their rights in compliance with article 129 of labour law, the employer is obliged to make union due deductions***”.

In previous cases (see Arbitral Awards 03/03-Tonga Garment, Reasons for Decision issue 9; 05/03-Top One, Reasons for Decision Issue 1; 16/05-New Point, Reasons for Decision Issue 1; and 70/05-Goldframe, Reasons for Decision Issue 3), the Arbitration Council has considered that the meaning of Article 129 of the Labour Law and Article 5 of the above mentioned Prakas 305, requires the employer to deduct union contribution fees in accordance with the union's request, via a request letter made in writing from workers who are members of the union who assert that they volunteer to have union contribution fees deducted [from their wages].

In this case, the Arbitration Council concurs with the interpretation of the Arbitration Council in previous cases, which means that if there is a request for union contribution fee deductions from a union via a request letter made in writing by workers who are members of

the union, where they volunteer to have their union contribution fee deducted, the employer is obliged to make the deduction on behalf of the union.

However, in this case, the union did not make such a request in writing to the employer requesting that the employer deduct the union contribution fees. In addition, there is no written request letter from workers who are members of the union in which they state that they volunteer to have the union contribution fee deducted. In addition, the President of the union himself made a rejection letter to not allow the employer to deduct the union contribution fees and he did not attend the hearing [to support the claim] nor did he provide a letter to delegate the right [of representation] to the union federation.

Therefore, the Arbitration Council considers that the union has not complied with the conditions required by law in order to oblige the employer to deduct union contribution fees from union members' [wages] on behalf of the union.

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

DECISION

- 1. Reject the demand of the local Cambodian Union at Atax Factory.

Type of Award: Non binding awards

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: **Hem H. Naryth**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: