



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 13/09-June Textile

Date of Award: 23 February 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Ann Vireak**

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

DISPUTING PARTIES

Employer party:

Name: **June Textile Co., Ltd.**

Address: Russian Confederation Blvd., Sangkat Toeuk Thla, Khan Russey Keo, Phnom Penh

Telephone: 012 541 851

Fax: N/A

Representative:

- | | |
|-----------------|----------------------------|
| 1. Albert Tev | Director of Administration |
| 2. Mr. Meng Kry | Head of Administration |

Worker party:

A. Name: Local Union of Free Trade Union of Workers of Kingdom of Cambodia (Local union of FTUWKC) at June Textile Factory

Address: #28B, St. 222, Sangkat Boeung Rang, Khan Dangkor, Phnom Penh

Telephone: 012 880 039

Fax: N/A

Representative:

- | | |
|----------------------|---|
| 1. Ms. Yang Sophorn | Officer of FTUWKC |
| 2. Mr. Yin Saroeun | President of local union of FTUWKC |
| 3. Mr. Chea Vanneath | Vice-president of local union of FTUWKC |
| 4. Ms. Pheng Chou | Secretary of local union of FTUWKC |

- | | |
|---------------------|---|
| 5. Mr. Chuob Nit | Vice-secretary of local union of FTUWKC |
| 6. Mr. Tuos Sophorn | Treasurer of local union of FTUWKC |
| 7. Mr. Pok Sam Art | Union activist |

B. Name: Khmer Youth Federation Trade Union (KYFTU) and Local Union of Khmer Youth Trade Union (KYTU) at June Textile Factory

Address: Russian Confederation Blvd, Sangkat Toeuk Thla, Khan Russey Keo, Phnom Penh

Telephone: 092 649 471 Fax: N/A

Representative:

- | | |
|---------------------|----------------------------------|
| 1. Mr. Soum Chantha | Coordination Officer of KYFTU |
| 2. Mr. Mom Saroeun | President of local union of KYTU |
| 3. Mr. Phan Chhim | Secretary of local union of KYTU |
| 4. Mr. Seng Sam Oun | Treasurer of local union of KYTU |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Khmer Youth Trade Union and Free Trade Union of Workers of Kingdom of Cambodia in June Textile factory demand for union contribution fees already deducted by the company during the period the two unions were having disputes about their members. The company states that it will not release the contribution fee to the two unions as it wishes to allow time for the unions to negotiate, thus the money will be withheld temporarily.

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 was unsuccessful, and the non-conciliation report No. 063 KB/AK/VK, dated 2 February 2009 was submitted to the Secretariat of the Arbitration Council on 2 February 2009.

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: 11 February 2009 (at 2:00 p.m.)

Procedural issues:

On 30 January 2009 the Department of Labour Dispute received a complaint by the company, dated 30 January 2009, regarding workers' union contribution fee. After receiving the claim, the Department of Labour Dispute assigned its expert officer to resolve this labour dispute on that same date of 30 January 2009 but did not receive a conciliation result on one issue. The one non-conciliation issue was referred to the Secretariat of the Arbitration Council on 2 February 2009. Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 11 February 2009 (at 2:00 p.m.). Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the one non-conciliation issue but did not reach a conciliated result. Therefore, in this case the Arbitration Council will consider the issue in dispute based on evidence and reasoning as follows:

EVIDENCE**Witnesses and experts: N/A****Documents, Exhibits and other evidence considered by the Arbitration Council****A. Provided by the employer party:**

1. Statement on the labour dispute by June Textile Company, dated 10 February 2009.
2. Notification letter by Yin Saroeun regarding thumbprints of workers to inform the company about names of members of local union of FTUWKC, dated 11 August 2008.
3. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Soth Srey, dated 12 December 2008.
4. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Moeung Sin, dated 1 December 2008.
5. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named San Vy, dated 13 December 2008.
6. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Chhoeun Saren, dated 21 November 2008.
7. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Huon Dany, dated 1 November 2008.
8. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Chhum Dim, dated 17 October 2008.

9. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Mot Saman, dated 1 November 2008.
10. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Pheang Sa.
11. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Mao Channoeun, dated 16 October 2008.
12. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Chhit Sophon, dated 19 December 2008.
13. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Pang Samnang, dated 19 December 2008.
14. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Khim Seap, dated 21 October 2008.
15. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Mae Khim, dated 21 October 2008.
16. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Prak Khoma, dated 15 November 2008.
17. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Vorn Sorphea, dated 24 October 2008.
18. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Nong Channy, dated 11 November 2008.
19. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Som Thida, dated 15 November 2008.
20. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Theng Chanheng, dated 4 November 2008.
21. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Chheng Muy Dem, dated 22 December 2008.
22. Statute of June Textile Company, registration No. 594/04 PN.NTK.BK, dated 4 June 2004.
23. Certificate of commercial registration of June Textile Company No. 3823 PN.JBP, dated 16 July 2008.
24. Internal Work Rules of June Textile Company, registration No. 027 SKA.AK, dated 13 May 1998.
25. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Sok Chanthou, dated 15 December 2008.

26. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Hai Chhorda, dated 24 November 2008.
27. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker Khem Sot, dated 18 December 2008.
28. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Pak Sokly, dated 18 December 2008.
29. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Nin Norn, dated 18 December 2008.
30. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Prak Oeurn, dated 18 December 2008.
31. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Im Leakna, dated 22 January 2008.
32. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Rom Sarith, dated 23 January 2008.
33. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Ol Vanny, dated 16 January 2008.
34. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Ney Chenda, dated 23 January 2008.
35. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Nong Chanthy, dated 17 January 2008.
36. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Ouk Lina, dated 19 January 2008.
37. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Soeun Len, dated 6 March 2008.
38. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Chhorn Ren, dated 2 February 2008.
39. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Rom Sarith, dated 31 January 2008.
40. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Chan Sophorn, dated 1 February 2008.
41. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Ol Samphorst, dated 6 March 2008.
42. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Nget Tum, dated 10 March 2008.

B. Provided by the worker party:

Free Trade Union of Workers of Kingdom of Cambodia

1. Letter of resignation from union membership and request for revoking the deduction for union contribution fee by worker named Im Srey Neang, dated 2 February 2009.
2. Statute of Local union of FTUWKC at June Factory, registration No. 133 SKBY.AK, dated 6 November 2000.
3. Certificate of union translation of local union of FTUWKC at June Textile Factory, dated 6 November 2000.
4. Letter by the head of the Department of Labour Dispute to the president of local union of FTUWKC at June Factory, No. 875 KKBV/AK/VK, dated 14 August 2008.

Khmer Youth Trade Union

1. Letter by the head of the Department of Labour Dispute to the president of local union of KYTU at June Factory, No. 620 KKBV/AK/VK, dated 6 June 2008.

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

1. Report dated 2 February 2009 on the collective labour dispute settlement at June Textile Company, No. 063 KB/AK/VK.
2. Minutes of the collective labour dispute conciliation at June Textile Company, dated 30 January 2009.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 060 KB/AK/VK/LKA dated 3 February 2009 to invite the employer party to attend the hearing;
2. Invitation No. 061 KB/AK/VK/LKA dated 3 February 2009 to invite local union of FTUWKC party to attend the hearing;
3. Invitation No. 062 KB/AK/VK/LKA dated 3 February 2009 to invite local union of KYTU party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- June Textile Factory employs approximately 4,800 workers.
- The company is the claimant in this case related to union contribution fees.
- There are two unions in the factory: local union of FTUWKC, established in 2000 with 2508 members and local union of KYTU, established in 2003 with 1228 members.
- In the hearing the company states that it demands the right to decide whether or not to deduct workers' wages to pay for union contribution fees when it receives letters

from workers to request revocation of the deduction of their monthly wages in a way that can avoid problem with both the local union of FTUWKC and KYTU.

- Local union of FTUWKC is the defendant and the party in dispute with the company, while the local union of KYTU [considers it does not have a dispute with the company]. In the hearing the local union of KYTU states that 19 workers who resigned from membership of the local union of FTUWKC only asked them for help to submit their **letters of resignation from union membership and to request revocation of the deduction of union contribution fees** for the local union of FTUWKC at the administration office of the company; the workers did not ask them for any other help and they appeared at the hearing only to follow-up on the case. The local union of KYTU adds that the 19 workers are not members of the local union of KYTU. The union is not sure if they will join as members of the local union of KYTU.
- In the hearing the company states that it deducts workers' wage per their request to pay for union contribution fees for the two unions since the time of their establishment in 2000 for the local union of FTUWKC and in 2003 for the local union of KYTU.
- However, for December 2008 and January 2009 the company deducted the wages of 19 workers who are members of local union of FTUWKC and kept it with the company although the company received **letters of union membership resignation and requests for revocation of the deduction for union contribution fees** from the 19 workers who had resigned from membership of the local union of FTUWKC.
- In the hearing the company states that, among the 19 workers, the company received **letters of union membership resignation and requests for revocation of the deduction for union contribution fees** both from the workers themselves and from the local union of KYTU.
- The local union of FTUWKC claims that the **letters of union membership resignation and requests for revocation of the deduction for union contribution fees** of the 19 workers are not valid because there is no stamp or signature of the president of the local union of FTUWKC. The union states that, as in the past, [**letters of resignation and requests for revocation**] should have the signature of the president of the local union of FTUWKC. However, from 11 August 2008 the local union started to implement a new policy which requires the stamp and signature of the president of the local union of FTUWKC on the letter of resignation from membership of the local union of FTUWKC. The union claims that based on Clause 17 of the union's statute, workers who resign from membership of the union

need to submit resignation letters to the president of the union. In practice, workers who wish to resign go to tell the president of the local union by themselves and the president will sign the [**letter of resignation and the request for revocation**], but does not submit the [letter of resignation or request for revocation] to the other union or to the company. For this reason, the company cannot stop deducting wages of members of the local union of FTUWKC to pay for union contribution fee if it receives a letter of resignation from union membership and request to revoke the deduction of their wages to pay for union contribution which does not bear the stamp and signature of the president of the local union of FTUWKC.

- The company claims that sometimes it receives a document without a stamp and signature on the **letter of union membership resignation and the request for revocation of the deduction for union contribution fees**. The Arbitration Council ordered the company to provide this document to the Arbitration Council by 13 February 2009. The company states that when it receives a [**letter of resignation and a request for revocation**], it always stop deducting the workers' wages to pay for union contribution fee. However, in this case the company continued to deduct the workers' wages after it received their [**letter of resignation and request for revocation**] because it was concerned with possible problems it may have with the local union of FTUWKC. However, the company kept the money to itself without giving it out to the local union of FTUWKC as it has a concern about possible problem it may have with the local union of KYTU.
- The Arbitration Council received the **letters of union membership resignation and requests for revocation of the deduction for union contribution fee** from the company party related to the 19 workers from whom the company deducted wages in December 2008 and January 2009 and which was kept by the company. Among the documents, a worker named Mao Chanthoern, ID 1237, submitted [**letter of resignation and request for revocation**] as of 16 October 2007. See the list below:

No.	Name	Date of letter of resignation from union membership and request for revoking the deduction for union contribution fee
1	Mao Chanthoern	16-10-2007
2	Moeung Sin	01-12-2008
3	San Vy	13-12-2008
4	Chhoeung Saren	21-11-2008
5	Huon Dany	01-11-2008
6	Chhum Dim	17-10-2008
7	Mot Saman	01-11-2008

8	Sang Phea	19-12-2008
9	Chhit Sophon	19-12-2008
10	Soth Srey	22 -12-2008
11	Pat Samnang	19-12-2008
12	Khim Seap	21-10-2008
13	Mai Khim	21-10-2008
14	Prak Khema	15-11-2008
15	Vorn Sophea	24-10-2008
16	Norng Channy	11-10-2008
17	Som Thida	15-11-2008
18	Theng Chanheng	04-11-2008
19	Chheng Muoynim	22-12-2008

REASONS FOR DECISION

In this case the company demand the right to decide whether to deduct or not deduct wages of workers to pay for union contribution fees when it receive a request letter from the workers, so that problems can be avoided with the local union of FTUWKC and the local union of KYTU. The company requests that the Arbitration Council make a decision in this case. The Arbitration Council will consider this case as follows:

Article 129(2) 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.*”

Based on the contents of Article 129(2) above, the Arbitration Council considers that this Article does not apply to unions, as legal persons, to make a request for deduction of workers' wage; rather it applies to [individual] workers [to make requests to] the company regarding deduction of wages to pay for union contribution fees. This Article requires the employer deduct wages from workers to pay for union contribution fees when there is a written request directly from the workers who are members of a union. However, this Article also allows workers who are members of a union to revoke this at any time in case the workers wish the company to stop deducting their wages to pay for union contribution fees.

The Arbitration Council in case 60/05-Evergreen states, “*the purpose of the requirement for a request in writing for the deduction for union contribution fee was to protect workers from any deduction against their will and to prevent any mistake. This was to guarantee that the application was legal and reflected workers' wishes.*”

Based on the Arbitral Award above, in order to prevent any deduction against the workers' will, all document related to request for deduction of wages must be valid and clear. Thus, the Arbitration Council considers that to the extent the workers are not willing to allow

the employer to deduct their wages to pay for union contribution fees, the workers need to express this clearly and genuinely and this can be made in writing or any other reliable means.

In addition, based on the interpretation of Article 129 of the Labour Law above, the right to request deduction of wages or not to deduct the wage to pay for union contribution fee is at the discretion of the workers through a written letter. Therefore, if the employer has received request letters from the workers which clearly express their intention that the workers no longer wish the employer deduct their wages to pay for union contribution fees, the employer should not deduct the workers' wages or retain the amount deducted.

In this case, the company continues to deduct workers' wages although it received letters in writings from workers to request revocation of the deduction of their wages to pay for union contribution fees. In addition, the company retained the union contribution fee of the 19 workers and did not give it back to the workers. Based on the interpretation above, the Arbitration Council considers that in this case the company did not use its authority properly which means that it deducted and retained union contribution fees of the 19 workers and did not reimburse the workers although it received the **letter of union membership resignation and requests for revocation of the deduction for union contribution fees** from the 19 workers.

Therefore, the company should pay the amounts back to the workers and should not keep the union contribution fee of the 19 workers.

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

DECISION AND ORDER

Order the company to stop deducting workers' monthly wages to pay for union contribution fees when it receives the revocation request letters from workers, and to reimburse the workers the amount of wages deducted from their wages based on the date of the letter of resignation from union membership.

Type of Award: binding award

This Award is immediately binding upon the parties after the notification of the award because the two parties agreed to choose this binding Arbitral Award on 11 February 2009.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: