



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 49/07-Genuine

Date of Award: 03 July 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by employer party: **KAO THACH**

Arbitrator chosen by the worker party: **TUON SIPHANN**

Chair Arbitrator (chosen by the two Arbitrators): **PEN BUNCHHEA**

DISPUTING PARTIES

Employer party:

Name: **Genuine Garment (Cambodia) Co. Ltd.**

Address: Phum Koul, Khum Kan Touk, Srok Ang Snoul, Kandal Province

Telephone: 011 918 629

Fax: N/A

Representative:

- Ms. Horng Hou

General Management Section

Worker party:

Name: **Khmer Youth Trade Union Federation (KYFTU)**

Address: Phum Koul, Khum Kan Touk, Srok Ang Snoul, Kandal Province

Telephone: 012 684 758/012 258 422

Fax: N/A

Representative:

- Mr. Our Pheourn

Officer of KYFTU

- Mr. Pich Sokunthear

Officer of KYFTU

- Ms. Sam Phearv

President of KYFTU at Genuine Garment

- Mr. Touch Vannak

Vice-President of KYFTU at Genuine Garment

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Workers demand that when they take leave more than 3 days the company can deduct the attendance bonus; but the company does not agree and says that practices of the company are in line with the Labour Law and the Notification from the Ministry, however, if workers come to work 5 to 30 minutes late the company will keep the attendance bonus for them if there is a clear reason and the workers inform the company that same morning.
2. The Company does not agree to deduct wages from workers for union contribution fee.

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 099; and the Prakas on the Appointment of Arbitrators No. 076/07 KKBV 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. 092/07 KBV dated 07 June 2007 was sent to the Secretariat of the Arbitration Council on 08 June 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: 21 June 2007 (8:00am to 12:00am)

Procedural issues:

On 01 June 2007 the Department of Labour Disputes in Kandal Province conducted a conciliation of a collective labour dispute regarding 2 issues, issue 1 and issue 11, which were remaining from the negotiation at the enterprise. But the conciliation was unsuccessful. Those 2 non-conciliated points were sent to the Arbitration Council on 08 June 2007 by Non-Conciliation Report No. 092/07 KBV dated 07 June 2007.

Upon receipt of this complaint, both parties were invited to the hearing on 21 June 2007 at 8:00 a.m.

Both parties were present as requested. The Arbitration Council tried to find additional information related to the issues and also attempted to conciliate the non-

conciliation points but the results were unsuccessful. Therefore, in this Award, the Arbitration Council will arbitrate only on the first issue based on the witnesses, testimony and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by employer party:

- Authorized letter of Genuine dated 20 June 2007 delegated power to Ms. Hornng Hour.
- Internal Work Rules of company dated 20 February 2002.
- Certificate on Company Registration dated 22 July 2001.
- Memorandum and Statute dated 18 May 2001.
- Declaration Notice dated 29 January 2007.

Provided by the worker party:

- Receipt applied for Union Registration of KYFTU at Genuin dated 05 June 2007.
- Letter No. 171 dated 13 February 2007 of KYFTU to Company's Director regarding Union Committee Election at Genuine.
- Letter No. 243 dated 06 March 2007 of KYFTU directed to the Head of Provincial Department of Labour Disputes in Kandal suggesting the President of KYFTU to deal with the labour dispute at Genuine.
- Letter No. 234 dated 02 March 2007 directed to Director of Genuine requesting a meeting and discussion concerning labour dispute of workers in Genuine.
- Letter No. 234 dated 16 February 2007 directed to Director of Genuine requesting a meeting and discussion concerning labour dispute of workers in Genuine.
- Petition dated 13 February 2007 of workers (with thumbprints) who work at the Genuine directed to President of KYFTU to help resolve some labour conditions.

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

- Collective Labour Dispute Report No. 092/07 KBV dated 07 June 2007.
- Minute of the collective labour dispute conciliation dated 01 June 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation to the hearing for the workers, No. 220 KB dated 13 June 2007.
- Invitation to the hearing for employers, No. 221 KB dated 13 June 2007.

FACTS

- Having examined Non-Conciliation Report of the collective labour dispute.

- Having listened to statements made by the representatives of the worker party and employer party.
- Having reviewed additional documents submitted by the parties.

The Arbitration Council finds that:

- KYFTU at Genuine received a receipt of application for union registration from the Ministry of Labour and Vocational Training dated 05 June 2007. Nonetheless, at the time of the hearing the union had not obtained their union registration yet.

Issue 1:

- The Arbitration Council directed KYFTU which is not yet registered to provide evidence to indicate how many workers demand the issues related to leave with permission and attendance bonus. The Arbitration Council announced the expiration date for evidence submission would be on Monday 25 June 2007. But by the due date, the Arbitration Council had not received any proof from the worker party.
- Workers demand company to retain the attendance bonus when workers ask for leave with permission from 3 days up, which means the company must not cut their attendance bonus for any leave that is less than 3 days.
- According to the current practice of the company, any workers who take half day leave with permission the company will not retain their attendance bonus. However, if the workers are sick and they take leave with permission accompanied by a medical certificate the company will not cut the attendance bonus. Ms. Horng Hour whose position it is to generally manage the company and is delegated by the company as representative in resolving this case said at the hearing that she has been working for this company for only a short time so she does not really know about the past practice of the company, whether it retains the attendance bonus or not for workers who are on sick leave certified by a doctor; but if there is [such a policy] company will implement it.
- Long ago, the company cut the attendance bonus for any workers who come to work late but these days company allows the workers to come to work 5 to 30 minutes late per day with an appropriate reason such as their motorbike's flat tire or a traffic jam, etc. In such cases, the company will not deduct the attendance bonus.
- In the past, company used to provide attendance bonus US\$ 5.00 per month but since July/August 2006 the company provides US\$ 6.00 per month.
- The company party alleged in the hearing that even for a worker who takes a half day leave with permission, company deducts the attendance bonus; and there are still 50 to 60 workers who take leave each day and there also are 10 workers who take leave

without permission. The company worries that if it allows workers to take more than 3 days leave without deducting the attendance bonus, many more workers would take leave and this may affect the company's production chain. The worker party objected to this.

- The worker party argued at the hearing that each month workers work very hard and dare not to take leave, and for any month that a worker needs to take necessary leave they will take only one or two days but the company deducts their whole attendance bonus.

Issue 2:

- The worker party demands the company to deduct monthly union contribution fees for KYFTU of 1,000 riels from each worker-member who authorises this deduction.
- The union raised in the hearing that among the 1,000 workers in total, 700 workers are members of the local KYFTU at the company.
- On 03 February 2007 at Phum Veal, Khum Kan Tork, Srok Ang Snoul, Kandal Province, KYFTU conducted a committee election for the local KYFTU at the company. The election result is as follows: Ms. Sam Pheavy - President, Mr. Touch Vannak – Vice-President, and Ms. Tang Ra - Secretary.
- On 13 February 2007, KYFTU notified the company regarding the results of the election. The representative of the company testified that the company had received the notification letter by KYFTU.
- On 27 April 2007, KYFTU requested the company to deduct 1,000 riels for a saving box from any worker-member who agrees with this deduction. Money in this saving box is to help workers who are married, deliver babies or whose parents pass away, etc. In the past, any workers who face the mentioned problem will receive a cash amount of 20,000 to 40,000 riels per worker.
- The company indicated that it can help deduct the union contribution fee of 1,000 riels from worker-members but the company requires worker representative to collect money for the saving box from workers who agree with the deduction for the saving box.

REASONS FOR DECISION

Issue 1: Workers demand company to deduct attendance bonus when there is more than 3 days leave.

In the hearing, the worker party testified that in each month they try to work very hard and never dare to take leave. For any workers who ask permission for leave because of

sickness accompanied by a medical certificate, the company will not deduct the attendance bonus.

In this issue, the Arbitration Council declines to consider the demand of the worker party because the union had not received their legal union registration yet and there is no evidence regarding which workers have asked the union to represent them before the Arbitration Council.

Article 268 of Labour Law states that *'In order for professional organizations to enjoy the rights and benefits recognized by this law, the founders of those professional organizations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of Labour for registration....*

If the Ministry in charge of Labour does not reply within two months after receipt of the registration form, the professional organization is considered to be already registered. ...'

The Arbitration Council finds that Article 267 above means that the professional organization will be granted all rights and benefits recognized at law when those professional organizations receive union registration from the Ministry of Labour.

In this case KYFTU received a receipt of union registration application from the Ministry of Labour and Vocational Training dated 05 June 2007. But up to this present time, the Arbitration Council has not yet received any such union registration of the Ministry of Labour and Vocational Training. Therefore, in reference made to above Article 268 the union has not yet been granted rights and benefits pursuant to the Labour Law.

The Arbitration Council also understands that these rights and benefits include a union's right to represent its members to resolve disputes before the Arbitration Council, read arbitral award 62/06-Quick Sew, issue 2. That is, in this case KYFTU does not have the legal right to bring the dispute on behalf of their members before the Arbitration Council.

Nonetheless, Clause 19 of Prakas 099 KSBY dated 21 April 2004 on the Arbitration Council allows persons who are not parties to the dispute but who receive written permission from the disputants to represent them before the Arbitration Council. This Clause means that though KYFTU has not yet registered, this union can represent the disputants before the Arbitration Council so long as this union receives a written delegation letter from those workers who bring up the complaint.

The Arbitration Council required the worker party to submit evidence to support their demand by 05 June 2007. The worker party agreed to submit evidence or documents such as a name list of worker-members (with signature or thumbprints) who have asked KYFTU to help them [] regarding [their demand about] leave with permission with no deduction of the attendance bonus, as well as other related documents or evidence to the Arbitration Council as a basis for a decision. But the worker party did not provide the specified evidence by the due date so the Arbitration Council finds that if the Arbitration Council receives different facts,

detailed evidence or other relevant documents concerning this issue the Arbitration Council could consider it differently.

Issue 2: Worker party demands company to deduct 1,000 riels monthly for each worker who agrees with the union contribution fee deduction

1. According to the Labour Law and related Prakas, does the employer have to deduct from wages of worker-members of the union?

Article 129 paragraph 2 of Labour Law states that *'...the workers 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.'*

However, Article 281 of Labour Law states that *'all employers are forbidden to deduct union dues from the wage of their workers and to pay the dues for them.'*

The Arbitration Council notes that Articles 129 and 281 of the Labour Law may appear to contradict one another. Nonetheless, in past arbitral awards the Arbitration Council interpreted the purpose of Article 281 of the Labour Law is to protect workers' rights and to prohibit the employer from interfering with a union [or putting a union] under its influence as stipulated in Article 280 of Labour Law, read arbitral award 05/03-Top One, issue 1; 62/04-Y Sin, issue 8; 94/04-Eternity Apparel, issue 4; 99/06-AIA, issue 12 and 16/05-New Point, issue 11. The Arbitration Council considers that the Labour Law does not prohibit an employer from deducting workers' union fees from a worker's wages in case the worker has provided written notice to the employer. In such a case, the employer has an obligation to deduct union dues from the worker's wage.

In addition, Clause 5 of Prakas 305 in year 2001 of the Ministry of Social Affairs, Labour, Vocational Training and Youth provides that *'All workers who are members to the union can request in writing at least 15 days in advance for the employer to deduct their wage for union contribution fees.'*

Therefore, according to the meaning of the laws as mentioned above the employer has an obligation to deduct wages from workers who are members of the union and agree to the deduction of wages for union contribution fees by written request 15 days in advance.

2. According to the Labour Law, does KYFTU have a legal right to ask the company to deduct 1,000 riels from each worker-member or not?

Article 268 of Labour Law states that *'In order for professional organizations to enjoy the rights and benefits recognized by this law, the founders of those professional organizations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of Labour for registration....'*

If the Ministry in charge of Labour does not reply within two months after receipt of the registration form, the professional organization is considered to be already registered. ...'

The Arbitration Council finds the rights of professional organizations as provided by Article 268 of Labour Law also include the right to require employers to deduct union contribution fees from workers' wages of those worker-members who agree to the deduction.

The Arbitration Council finds that KYFTU has conducted an election for the committee of its local KYFTU at the Genuine company in Phum Veal, Khum Kan Tork, Srok Ang Snoul, Kandal Province. KYFTU's election was held on 03 February 2007. As a result, Ms. Sam Pheavy was elected as President, Mr. Touch Vannak as Vice President and Ms. Tang Ra as Secretary. After this result, the local KYFTU in Genuine company received a receipt of union registration application from the Ministry of Labour and Vocational Training dated 05 June 2007.

The Arbitration Council considers that counting from the day that union received receipt of union registration application dated 06 June 2007 to this hearing day dated 21 June 2007, it is only 16 days. This means that the receipt of the union registration application is only 16 days old, which is not yet the 2 months needed to grant legal rights pursuant to Article 268 paragraph 1 of the Labour Law. The Arbitration Council finds that KYFTU does not yet have the full rights granted by the Labour Law during this waiting period for union registration, read the reasoning of issue 1 above regarding rights of a union which has not yet registered. So the union does not have full rights to demand the company to deduct 1,000 riels from workers who have provided authorisation regarding the union contribution fees.

Moreover, the Arbitration Council also understands that to decide on the demand made by workers party for the company to deduct the union contribution fee of 1000 riels from the wages from worker-members, this can be done only if the union has provided evidence or documents such as a name list of worker-members or a name list of worker-members who agree to the deduction of union contribution fees from wages; the union made a promise to submit such documentary evidence to the Arbitration Council by the 25 June 2007 so that the Arbitration Council would have a basis for the decision. But the union has not provided this document to the Arbitration Council.

In conclusion, the Arbitration Council decides in this transitional period that the local KYFTU at the Genuine company does not have the legal right to demand the company to deduct from wages of worker-members 1,000 riels for union contribution fees.

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

DECISION

Issue 1

- Decline to consider demand of workers on this issue.

Issue 2

- Reject the demand of KYFTU for the company to deduct the union contribution fee of 1000 riels from wages of workers who are members of the union within this transitional period in which the union has not yet registered.

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 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 employer party:

Name: **KAO THACH**

Signature:

Arbitrator chosen by the worker party:

Name: **TUON SIPHANN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature:

ANNEX

Dissenting Opinion of Arbitrator Kao Thach

According to Clause 37 [] to the Prakas on the Arbitration Council, *'The Arbitration Council shall record its decision in an Award signed by the three arbitrators. If one of the arbitrators does not agree with the decision of the majority, the dissenting arbitrator may record his/her dissent as an annex to that Award.'* Arbitrator Kao Thach have a different opinion from the other two Arbitrators and his opinion shall be in the annex of the Arbitral Award of case 49/07-Genuine.

Reason for Dissenting Opinion:

I **Kao Thach**, am an arbitrator on the Employer-list, and in the panel of the Arbitration Council which has been authorized to arbitrate case 48/07-Genuine. I have a differing opinion to the other two Arbitrators regarding issue 2 in which the workers demand the company to deduct the 1,000 riels union contribution fee. In principle I agree with the order and reasons for decision concerning this issue 2. However, I do not agree with the sentence used in the decision of this issue which states. *'Reject the demand of KYFTU for the company to deduct the union contribution fee of 1000 riels from wages of workers who are members of the union **within this transitional period in which the union has not yet registered.***' I consider that phrase *'within this transitional period in which the union has not yet registered'* is not what is demanded by the workers. I find that this sentence is a reason given for the decision, which should not be mentioned in the **Decision and Order** section of this Arbitral Award as this would be a formatting mistake of the Arbitral Award in general. Besides, in principal an Arbitral Award is effective for general use and if parties select a Binding Award then the above sentence can cause vagueness in the scope of application of this issue as only being for the transitional period of waiting for union registration.

Nonetheless, I support the decision which states *'Reject demand of KYFTU for the company to deduct the union contribution fee of 1000 riels from wages of workers who are members of the union.'*

SIGNATURE OF MEMBER OF THE ARBITRATION PANEL:

Arbitrator chosen by employer party:

Name: **KAO THACH**

Signature: