



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាពន្ធដារ

THE ARBITRATION COUNCIL

Case number and name: 86/07 - Target Shoes

Date of Award: 19 September 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **LY TAYSENG**
Arbitrator chosen by the worker party: **LIV SOVANNA**
Chair Arbitrator (chosen by the two Arbitrators): **KOY NEAM**

DISPUTING PARTIES

Employer party:

Name: **Target Shoes Industry Inc.**
Address: **Damnak Thom Village, Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh**
Telephone: **012 280 283**
Representatives:

1. Mr. Chhun Vinita The Company's Lawyer;
2. Mr. Kuon Seng The Company's Administrator.

Worker party:

Name: **Khmer Youth Trade Union (KYTU) at Target Shoes Industry Inc.**
Address: **Damnak Thom Village, Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh**
Telephone: **012 940 548, 092 464 462**
Representatives:

1. Mr. Sear Sorn Coordinator of KYFTU;

2. Mr. Ly Kim Ann Coordinator of KYFTU;
3. Mr. Phireak Boramey President of KYTU at Target Shoes Factory;
4. Mr. Sao Kosal Vice-President of KYTU at Target Shoes Factory;
5. Mr. Khan Chansy Secretary of KYTU at Target Shoes Factory.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company deduct 1,000 riels from the wages of the workers who are members of Khmer Youth Free Trade Union at Target Shoes Factory.
2. The workers demanded that the company reimburse the 10,100 riels medical check fee to workers and arrange a medical check for those who have not yet undergone the medical check.

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 hearing which took place on 20 August 2007 was unsuccessful, and the non-conciliation report No. 894 was submitted to the Secretariat of the Arbitration Council on 28 August 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: 4 September 2007 (from 14:30 to 17:00)

Procedural issues:

On 20 June 2007 the Department of Labour Disputes received a complaint from the Khmer Youth Free Trade Union Federation demanding that the Target Shoes Factory improve eight working conditions. Having received this complaint, the Department of Labour Disputes designated its relevant official to conciliate this labour dispute on 27 June 2007; as a result six out of eight issues were conciliated and the two remaining issues were forwarded to the Arbitration Council on 28 August 2007 for further resolution.

The Secretariat of the Arbitration Council invited both parties to a hearing on 4 September 2007. Both parties were present as summoned by the Arbitration Council.

On 4 September 2007 at 2:30pm, the Arbitration Council started the arbitral hearing to resolve the two non-conciliated issues. The Arbitration Council encouraged both parties to continue negotiation and attempted to conciliate the dispute, but the parties did not agree. Thus, the Arbitration Council will consider this dispute based on the evidence and fact finding as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Minutes of the collective labour dispute conciliation dated 1 August 2007;
2. Invitation No. 419 of the Department of Labour Dispute dated 11 July 2007;
3. Request for conciliation postponement from the company dated 24 July 2007;
4. Request for conciliation postponement from the workers dated 13 July 2007;
5. Authorization Letter dated 4 September 2007.

Provided by the worker party:

1. Union license registration certificate dated 13 July 2007;
2. Minutes of the collective labour dispute conciliation dated 22 June 2007;
3. Workers' application for union contribution fee deduction.

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

1. Non-Conciliation Report No. 894 dated 27 August 2007;
2. Minutes of collective labour dispute conciliation dated 1 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 379 to the employer party to attend the hearing dated 30 August 2007;
2. Invitation No. 380 to the worker party to attend the hearing dated 30 August 2007;
3. Name list of the workers and the employer who are attending the hearing.

FACTS

- Having examined the minutes of the collective labour dispute conciliation;

- Having listened to the statements and seen the evidence of the employer party and the worker party as mentioned above and in the hearing minutes;
- Having examined other documents and evidences as mentioned above;

The Arbitration Council finds that:

Target Shoes Industry Inc. employs 1,200 workers and there is only one union, Khmer Youth Trade Union at Target Shoes Factory.

Issue 1:

- Among the 1,200 workers in the Target Shoes Factory, some have joined as members of the Khmer Youth Trade Union and 660 workers have applied to the company to deduct 1,000 riels per month from their wages to the Khmer Youth Trade Union as the [union] contribution fee.
- Representatives from the Khmer Youth Trade Union mentioned that the union would list all names of all members who had completed a union fee deduction application and submit it to the company so that the company could deduct the 1,000 riels from its members each month for the union. **For those who left the union, they could inform the company not to deduct their wages.**
- The company argued that it could not deduct the contribution fee for the union claiming that Article 129 and 281 of the Labour Law prohibits the employer from deducting wages for union contribution fee. Furthermore, if the company deducts workers' wages, it would affect the company's policy and cause difficulties for management and [jeopardise] stability because workers would not work or protest.

Issue 2:

- Target Shoes Company started hiring workers from 25 November 2006.
- after workers pass the interview, the company asks them to undergo a medical check at their own expense and submit the invoice to the company. The company will collect the medical check result.
- There are still some workers who have started working but have not yet undergone the medical check.
- At the hearing, the worker party demanded that the company reimburse the medical check fee immediately and arrange a medical check for the workers who have not yet undergone the check. **The Employer party agreed to reimburse the medical check fee on 1 June 2008 and the company will arrange a medical check for those who have not yet undergone the medical check when requested.**

- The worker party still demanded for the reimbursement of medical check fee sooner.

REASONS FOR DECISION

Issue 1:

The worker party demanded that the company deduct 1,000 riels per month from workers for the Khmer Youth Trade Union. The company disagreed by referring to Article 129 and 281 of the Labour Law.

Article 129 of the Labour Law stipulates that, *“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 this article, each worker who is member of a union can authorize wage deductions in writing and pay to union that he or she belongs to. A worker can also request the company to stop deductions of his or her wage for union contributions. Furthermore, Article 5 of Prakas No. 305 dated 22 November 2001 of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation stipulates that, ***“When workers decides to use their right provided by Article 129 of the Labour, employer has the obligation to deduct the union fee.”***

Thus, based on Article 129 of the Labour Law and Article 5 of Prakas No. 305, the Arbitration Council considers that the employer has an obligation to deduct union contribution fees from workers' wages following the written request of workers who are members of the union (See Arbitral Awards 03/03 – Tonga Garment, Issue 9, 05/03 – Top One, Issue 1, and 19/06 – Xing Hong, Issue 4). In this case the company has to deduct the union fee from workers who are members of Khmer Youth Union as requested in the written letter and give that fee to the Khmer Youth Trade Union every month.

Regarding the argument of the company's lawyer which is based on article 281 of the Labour Law, the Arbitration Council considers that this article prohibits an employer deducting union fees or paying union fees for workers without their consent. Thus, this article cannot be used to release the obligation of employer from deducting union fee (See Arbitral Award 62/05 – Jing Tai, Issue 1). However, in previous decisions the Arbitration Council decided that [the purpose of] Article 281 was to protect workers' rights and prevent the employer from interfering in union activities and influencing the union as stated in Article 280 (See Arbitral Awards 05/03 – Top One, Issue 1, 62/05 – Jing Tai, and 74/07 – Global Apparel, Issue 2).

In conclusion, the company received the request letter from the Khmer Youth Trade Union, which had attached the list of members and written requests from each union

member, who agreed that the company deduct 1,000 riels from his or her wages for union contribution fees; but according to the union some members had left [the union] so the union has to resubmit the written agreement of those union members who want the company to deduct the union contribution fee from their wages. Once the company receives a written request, the company has an obligation to deduct the [contribution fee from the worker's] monthly wages and give it to the Khmer Youth Trade Union until there is a request from the workers not to deduct their wages.

Issue 2:

In this case, the worker party and the employer party agreed that the medical check fee is an obligation of the employer in accordance to Article 247 of the Labour Law, which stipulates that the employer has an obligation to pay for medical expenses when recruiting workers (see Arbitral Award 44/06 – Gold Fame, Issue 4).

Article 2 (D) of Joint Prakas No. 1191/06 dated 21 November 2006 of the Ministry of Labour and Vocational Training stipulates that, "*For medical check fee that the employer will pay are determined as follow:*

- *12,000 riels for each Cambodian worker."*

In this case, the employer agreed to reimburse the medical check fee to the workers, but the workers demanded that the company reimburse them sooner; but the employer promised to reimburse on 1 March 2008.

The Arbitration Council will consider when the employer should reimburse the medical check fee to the workers.

The Arbitration Council has issued several awards ordering an employer to reimburse the medical check to workers after the award came into effect or within a certain period – one month after the award came into effect (See Arbitral Awards 19/06 – Xing Hong, Issue 1, and 44/06 – Gold Fame, Issue 4)

In this case, the Arbitration Council agrees with the previous awards ordering the employer to reimburse the medical check fee to workers [after the award came into effect]. Therefore, the employer shall reimburse the medical check fee to the workers after this award comes into effect and pay them on the pay day for October 2007.

Regarding the claim for the arrangement for the medical check for workers who have not yet undergone the medical check, the Arbitration Council considers Article 247 of the Labour Law and Article 2 (D) of Joint Prakas No. 1191/06 dated 21 November 2006 of the Ministry of Labour and Vocational Training which requires the employer to arrange for a medical check in an appropriate time and the expenses are borne by the employer.

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

DECISION AND ORDER

Issue 1: The Company shall deduct a 1,000 riel union contribution fee from the wages of the workers, who are members of Khmer Youth Trade Union and who have requested this deduction in a written letter, on the pay day of each month and give it to Khmer Youth Trade Union.

Issue 2: Order the employer to reimburse the 12,000 riel medical check fee to those workers who have already undergone the medical check. The employer shall reimburse this to the workers after the Award comes into effect and on the pay day of October 2007. The employer shall arrange for a medical check for the workers who have not yet undergone the medical check in an appropriate time and the expenses shall be borne by the employer.

Type of Award: Non-Binding Award

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 the employer party:

Name: **LY TAYSENG**

Signature:

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KOY NEAM**

Signature: