



KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 94/08 – Sharp Casual

Date of Award: 12 August 2008

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: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTING PARTIES

Employer party:

Name: **Sharp Casual Co., Ltd**

Address: Trapang Kol Village, Kantok Commune, Angsnol District, Kandal Province

Telephone: 012 676 056

Fax: N/A

Representative:

1. Mr. Mean Dara

Representative of the company

Worker party:

Name: **Cambodian Labour Union Federation (CLUF) and local union of Cambodian Labour Union (CLU) at Sharp Casual Factory**

Address: Trapang Kol Village, Kantok Commune, Angsnol District, Kandal Province

Telephone: 015 529 404

Fax: N/A

Representative:

1. Mr. Chay Sophea

Vice-General Secretary of CLUF

2. Mr. Chon Sambath

President of CLU at Sharp Casual Factory

3. Mr. Khut Vannak

Secretary of CLU at Sharp Casual Factory

4. Mr. Sun Bun Heang

Treasurer of CLU at Sharp Casual Factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company deduct the union contribution fee from the wages of 595 workers. The company requests one week to discuss this with the boss.

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 was unsuccessful, and the non-conciliation report No. 359/08 KB/KN, dated 21 July 2008, was submitted to the Secretariat of the Arbitration Council on 22 July 2008.

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: 29 July 2008 (From 8:00 a.m. to 10:30 a.m.)

Procedural issues:

On 05 June 2008, the Department of Labour and Vocational Training of Kandal province received a grievance from CLUF. On 25 June 2008, a labour dispute resolution officer of the Department of Labour and Vocational Training of Kandal province conducted a conciliation session of the collective labour dispute on 5 issues. As a result, four of five issues were conciliated. The one non-conciliation issue was referred to the Arbitration Council to take further action according to legal procedure.

On 22 July 2008, the non-conciliation report on the one non-conciliation issue was submitted to the Secretariat of the Arbitration Council and both parties came to select their arbitrators according to the Law. The Secretariat of the Arbitration Council invited both parties to the hearing on 29 July 2008 at 9 a.m. at the Arbitration Council in order to pursue the arbitration process concerning the non-conciliation issue. The Arbitration Council encouraged the parties to continue negotiating both at the hearing and at the enterprise level in order to find a solution through conciliation. However, both parties still could not reach a common understanding; thus no result was achieved through conciliation.

EVIDENCE

Witnesses and experts: *names*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Authorization letter to Mr. Mean Dara, dated 29 July 2008.
2. Letter of request regarding modification on the Internal Work Rules of Sharp Casual Company, dated 25 May 2002.
3. Internal Work Rules of Sharp Casual Co., Ltd, registration No. 049 SKBY, dated 10 June 2002.
4. Patent of Sharp Casual Co., Ltd, No. 13-2008 SPD KN, dated 04 February 2008.
5. Certificate of commercial registration of Sharp Casual Co., Ltd, No. 2301 PN. Ch BP, dated 28 May 2008.
6. Certificate of registration in General System of Preference of Sharp Casual Co., Ltd, dated 13 November 2007.
7. Certificate of registration for Value Added Tax of Sharp Casual Co., Ltd, dated 13 June 2007.

Provided by the worker party:

1. Letter to notify the election to establish the local union of CLU at Sharp Casual factory No. 2006 SSKK, dated 21 March 2008.
2. Request for deduction of wages and list of names of workers who request that the company make deduction of 1,000 riels from the wages of the union members, dated 27 May 2008.

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

1. Report No. 359/08 KB/KN, dated 21 July 2008 on the collective labour dispute settlement at Sharp Casual Company.
2. Minutes of the collective labour dispute resolution at Sharp Casual Company, dated 22 July 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 465 KB/AK/VK/LKA dated 23 July 2008 to invite the employer party to attend the hearing.
2. Invitation No. 466 KB/AK/VK/LKA dated 23 July 2008 to invite the worker party to attend the hearing.

FACTS

- Having reviewed the report of collective labour dispute conciliation

- Having listened to the arguments by the worker party and the employer party
- Having examined additional documents

The Arbitration Council finds that:

- Local union of CLU at Sharp Casual factory demands that the company deduct 1000 riels from the wages of each union member who has agreed to allow the company to deduct the union contribution fee, because the union has been registered at the Ministry of Labor and Vocational Training, registration No. 2006 SSKK, dated 21 March 2008.
- In the hearing, the union claimed that CLU at Sharp Casual Factory requested in writing for the company to make this deduction, but the company refused
- By the 4 August 2008 deadline, the local union of CLU at Sharp Casual factory had provided to the Arbitration Council and to the company a list of names of workers who are members of the union who had agreed for the company to deduct their wages in order to pay for union contribution fee. The Arbitration Council allowed until 7 August 2008 for the company to review and object to the document, as well as to carry on further negotiation at the factory level. The company party did not object to the document.
- In the hearing the employer claimed that it could not make this deduction because it has never done this in the past.

REASONS FOR DECISION

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”*.

However the article 129(2) of the Labour Law stated that *“... However the worker can authorize deductions of his wage for due to the trade union to which he belongs. This authorization must be in writing and can be revoked at anytime”*.

In addition, Clause 5 of Prakas 305, 2001, of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states, *“All workers who are members of a union may request in writing to the employer at least 15 days in advance to deduct their wages to pay for union dues in compliance with Article 129 of the Labour Law”*.

In the previous Arbitral Awards, the Arbitration Council decided that the intention of Article 281 is to protect the workers’ right and prohibit employer from doing any acts of interference to keep union under his/her influence as stated in article 280 of the Labour Law. (See Arbitral Awards 05/03-Top One, issue 1; 62/04-Y Sin, issue 8; 94/04-Enternity Apparel, issue 4; 99/06-AIA, issue 12 and 16/05-New Point World Trade Cambodia, issue 11).

However, the Arbitration Council also considers that the Labour Law does not prohibit the employer from deducting contribution fees from worker’s wages to pay for union

contribution fee, as long as they offer written authorization that the employer does so. In such circumstances, the employer is obliged to make a deduction from workers' wage in order to pay for union contribution fees.

In previous Arbitral Awards, the Arbitration Council has consistently ordered the employer, to make the deduction upon receipt of a written request from union members who have agreed to have their wages deducted (See Arbitral Awards 03/03-Tonga, issue 9; 60/07-Suit Way, issue 7; 65/07-Jia Fung, issue 2; 61/08-Focus Footwear, issue 2).

In this case, the Arbitration Council agrees with the previous Arbitral Awards as mentioned above.

Therefore, the Arbitration Council decides to order the company to deduct 1,000 riels from the wages of workers who are members of CLU at Sharp Casual Factory who had agreed for the company to make the deduction to pay for union contribution fee.

DECISION AND ORDER

Order the company to deduct 1,000 riels from wages of workers who are members of CLU at Sharp Casual Factory who had agreed for the company to make the deduction to pay for union contribution fee.

TYPE OF AWARD: BINDING AWARD

This Award is immediately binding upon the parties after the award is issued because the parties agreed to be bound by the award on 29 July 2008.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: