



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 61/08- Focus Footwear

Date of Award: 28 May 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: Ouk Ry

Arbitrator chosen by the worker party: Ven Pov

Chair Arbitrator (chosen by the two Arbitrators): Pen Bunchhea

DISPUTING PARTIES

Employer party:

Name: Focus Footwear Company (Cambodia)

Address:

Telephone: 011 886 100

Fax: N/A

Representative:

1- Ms. Van Kunthea

Chief of Administration

2- Mr. Theng Tonglip

Assistant of Administration

Worker party:

Name: Khmer Youth Federation Trade Union (KYFTU) for Focus Footwear

Address:

Telephone: 017 556 662/011 885 553

Fax: N/A

Representative:

1- Mr. Hing Buntheourn

Facilitating officer at KYFTU

2- Mr. Yun Vanna

Facilitating officer at KYFTU

3- Mr. Cher Retrey

Facilitating officer at KYFTU

4- Ms. Mov Sovanna

President of KYFTU at Focus Footwear

5- Ms. Thy Ny

Vice-President of KYFTU at Focus Footwear

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Leaders of the local union of KYTU in the factory demand that the Company stop the acts of union discrimination as it does not allow Mrs. Mov Sovanna, Mrs. Thy Ny and Mrs. Vorn Sophorn to do overtime work. The Company states that it does not allow the three union leaders to do overtime work because they are very busy with union activities.

- 2- Leaders of the local union of KYTU in the factory demand that the Company help to deduct 1,000 riel union contribution fees. The Company does not agree to the demand because it is difficult to change the computer system (the payroll system is already set).

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.485 KB/RK/VK dated 24 April 2008 was submitted to the Secretariat of the Arbitration Council on 29 April 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: 12 May 2008 (2:00pm - 5:00pm)

Procedural issues:

On 22 January 2008 the Department of Labour and Vocational Training received a complaint from KYFTU of Focus Footwear Company demanding an improvement in the working conditions. After receiving the complaint, the Department of Labour and Vocational Training assigned an officer to conduct conciliation on the two issues and the last conciliation was held on 19 March 2008 but the issues were not able to be resolved. The two non-

conciliation issues were referred to the Secretariat of the Arbitration Council on 25 April 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to the hearing and conciliation on the two non-conciliation issues on 12 May 2008 at 14:00pm.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to seek additional information relevant to this dispute and attempted to further the conciliation on the two non-conciliation issues and the parties reached agreement on issue 1. Therefore, the Arbitration Council will consider the remaining non-conciliation issue based on the evidence and clarification of the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: *names*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter dated 12 May 2008 to Ms. Van Kunthea, Chief of Administration of Focus Footwear Company, authorizing her to resolve the collective labour dispute in the name of the owner or executive of the company and authorizing her to decide on all agreements in case 61/08.
- Internal Work Rules registered No 117 SKBY.RK dated 20 December 2001.
- Certificate of business and company registration No 1449 BN.BKB.KN dated 16 May 1997.
- List of workers who agree and disagree to the company deducting union contribution fees from their wages.

Provided by the worker party:

- Complaint from Khmer Youth Free Trade Union No 79 SSYX dated 22 January 2008
- Union registration certificate of KYFTU at Focus Footwear Company No 1227 LB/VK dated 10 September 2008.
- List of workers who are KYFTU members at Focus Footwear Company [and who] agreed for the company to deduct 1000 riels from their wages for union contribution fees (in the list there are 817 who endorsed their thumbprint as attached in Annex 1: Form for union contribution fee)

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

- Report No. 485 KB/RK/VK, dated 24 April 2008 on the collective labour dispute settlement at Focus Footwear Company;
- Minutes of the collective labour dispute conciliation at Focus Footwear Company, dated 19 March 2008.

Provided by the Secretariat of the Arbitration Council:

- Invitation No. 300 KB/AK/VK/LKA dated 05 May 2008 to invite the company party to attend the hearing;
- Invitation No. 301 KB/AK/VK/LKA dated 05 May 2008 to invite the worker 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 demand in this case is the same as in case 64/07-Focus Footwear; [in that case] the Arbitration Council made a decision that while waiting for the registration certificate from the Ministry of Labour and Vocational Training, KYFTU at Focus Footwear does not have a right to demand that the company deduct 1000 riels for union contribution fees from the wages of workers who are union members.
- In case 61/08- Focus Footwear, KYFTU at Focus Footwear demands that the company deduct 1000 riels of wages from each worker who is a union member and who agreed to this deduction. The union has received the registration certificate from the Ministry of Labour and Vocational Training. This certificate is No 1227 KB/VK dated 10 September 2007 and lists Ms. Mov Sovanna as Union President, Ms. Thy Ny as Vice president and Ms. Van Siphon as Secretary.
- The union stated in the hearing that KYFTU at the factory submitted a letter requesting deduction of union contribution fees to the company but the list of workers who are union members and who agreed to the deduction is the old name list that the union submitted to the company in case 64/07-Focus Footwear. The union will prepare another list of their members who agreed to the deduction and submit it to the company for [deduction of] union deduction fees.
- KYTU submitted a name list of workers who are members of the union and who agreed to the deduction of union contribution fees by the deadline of 20 May 2008 set

by the Arbitration Council. The Arbitration Council asked the company to respond to the evidence by 22 May 2008.

- The company stated in the hearing that the company can not deduct wages for union contribution fees because the computer system, which is used to pay monthly wages is very difficult to change.
- The company mentioned in the hearing that based on the Prakas of the Ministry the company has to provide a US\$6 of living allowance from 04 April 2008; however the company can not include the US\$6 allowance in its computer system. The company places this US\$6 into an envelope and the company selects one staff member to assist. Therefore, the company can not make deductions from [workers'] wages to pay union contribution fees.

REASONS FOR DECISION

KYFTU at the company demanded that the company deduct 1000 riel union contribution fees from the wages of those workers who agreed to the deduction.

The demand in this case is the same in case 64/07-Focus Footwear, in which the Arbitration Council decided that, while waiting for registration from the Ministry of Labour and Vocational Training, KYFTU did not have a right to demand that the company deduct 1000 riel union contribution fees from the wages of workers.

In this case, 61/08- Focus Footwear, KYFTU demanded that the company deduct union contribution fees in the amount of 1000 riel from the wages of workers who agreed to the deduction because they have received the registration certificate from the Ministry of Labour and Vocational Training. Therefore, the Arbitration Council will consider as follows:

1- Does KYFTU have a right to demand that the company deduct union contribution fees in the amount of 1000 riel from the wages [of workers]?

Article 268 of the Labour Law states "In order for their professional organization 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. All request for registration shall be appended with the statement of constitution of the organization.

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

The Arbitration Council finds that KYFTU received a registration certificate from the Ministry of Labour and Vocational Training No 1227 KB/VK dated 10 September 2007. Therefore the Arbitration Council considers that KYFTU at Focus Footwear is a professional organization and has the right to demand that the company deduct union contribution fees from the wages of its members who agreed to the deduction.

2- Based on the Labour Law and relevant Prakas, should the employer deduct union contribution fees in the amount of 1000 riel from the wages of workers who are union members?

Article 129 Paragraph 2 of Labour Law states: *“However, 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 anytime. “*

In addition to this Article, Clause 5 of Prakas 305/01 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states: *“Any worker who belongs to a union may make a written request, at least 15 days in advance, that her/his union dues be withheld from her/his salary, in accordance with Article 129 of the Labor Law, and the employer shall properly comply with such request.”*

Based on the law and the above Prakas the employer shall deduct wages from workers who are union members and who make a written request that union contribution fees be withheld from his/her wages.

However Article 281 of Labour Law states *“All employers are forbidden to deduct union contribution fees from the wage of their workers and to pay contribution fees for them.”*

The Arbitration Council notes that Article 129 and 281 of Labour Law seem to contradict each other. However, in previous Arbitral Awards the Arbitration Council held that the meaning of Article 281 of Labour Law is to protect workers’ rights and forbid the employer interfering in union activities so that the union is under their control as stated in Article 280 of Labour Law. (See *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, 16/05- New Point World Trade Cambodia, Issue 11*). The Arbitration Council considers that the Labour Law does not prohibit an employer from making deductions from workers’ wages to pay for union contribution fees where the workers have agreed in writing for the employer to do so. Hence, in this case the employer has an obligation to deduct workers’ wages for payment of union contribution fees.

In previous Arbitral Awards the Arbitration Council has consistently ordered the employer to make deductions from workers’ wages to pay union contribution fees if the workers are union members and made a written request (See *Arbitral Awards 03/03-Tonga, Issue 9, 60/07- Suit Way, Issue 7 and 65/07-Jia Fung, Issue 2*).

In this case the Arbitration Council agrees with the previous decisions of the Arbitration Council.

Therefore, the Arbitration Council finds that the employer should deduct 1000 riel from the wages of workers who are KYFTU members and who agreed [to the deduction] for payment of union contribution fees.

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

DECISION

- Order the employer to deduct 1000 riel from the wages of workers who are KYFTU members and who agreed [to the deduction] for payment of union contribution fees.

Type of Award: Non binding or binding awards

1- 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: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: