



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាពន្ធដារ**

**THE ARBITRATION COUNCIL**

**Case number and name: 06/13-Cambo Kotop**

**Date of award: 31 January 2013**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Tan Try**

#### **DISPUTANT PARTIES**

##### **Employer party:**

Name: **Cambo Kotop Ltd.**

Address: Kantork Cheung Village, Sangkat Kantork, Khan Po Sen Chey, Phnom Penh

Telephone: 077 888 885

Fax: N/A

Representatives:

- |                      |  |
|----------------------|--|
| 1. Mr Kwak Tae Kyung | Head of Legal Affairs Section                |
| 2. Mr Huot Sok       | senior staff member of Legal Affairs Section |
| 3. Mr Soeung Sophal  | staff member of Legal Affairs Section        |

##### **Worker party:**

Name: - **Federation Union for Cambodian Workers (FUCW)**

- **Local Union of FUCW (the union)**

Address: Kantork Cheung Village, Sangkat Kantork, Khan Po Sen Chey, Phnom Penh

Telephone: 012 650 779

Fax: N/A

Representatives:

- |                   |                        |
|-------------------|------------------------|
| 1. Ms Tuy Sreymom | President of the union |
|-------------------|------------------------|

## ISSUES IN DISPUTE

(From the Non-Conciliation Report of the Ministry of Labour and Vocational Training)

1. The workers demand that the employer stop deducting union contribution fee from wages of workers who have already withdrawn their memberships as payment to the Cambodian Union. The employer claims that until it receives proper membership withdrawal letters, it will still deduct union contribution fee from workers' wages as payment to the Cambodian Union.

2. The workers demand that from December 2012, the employer stop deducting union contribution fee from the workers' wages as payment to the Cambodian Union from those workers who have already withdrawn their memberships. The employer claims that until it receives proper membership withdrawal letters, it will still deduct union fee from workers' wages as payment to the Cambodian Union.

## JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour 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. 121 dated 7 June 2012 (Tenth 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 non-conciliation report No. 026 dated 8 January 2013 was submitted to the Secretariat of the Arbitration Council on 9 January 2013.

## HEARING AND SUMMARY OF PROCEDURE

**Hearing venue:** The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Commune, Tuol Kork District, Phnom Penh

**Date of hearing:** 22 January 2013 (at 2 p.m.)

**Procedural issues:**

On 6 December 2012, the Department of Labour Disputes (the department) received a complaint from FUCW, outlining the workers' demands that the employer improve working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 2 January 2013; however, two of three issues remained unresolved. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 8 January 2013.

Upon receipt of the case, the SAC summoned the employer and the workers to a hearing and conciliation of the two non-conciliated issues. The hearing was held on 22 January 2013 at 2:00 p.m. with both parties present.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interest disputes. The parties are able to choose non-binding arbitration for interest disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties choose non-binding arbitration for their interests disputes.

The Arbitration Council considers the issues in dispute in this case based on the evidence and reasons below.

#### **EVIDENCE**

*This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.*

#### **FACTS**

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers; and
- Having reviewed the additional documents;

#### **The Arbitration Council finds that:**

- Cambo Kotop Ltd. received the certificate of registration no. Inv. 0158E/2012 dated 17 January 2012. This company is a garment factory employing 2,000 workers.
- The local union of FUCW is the claimant in this case. The union received its certificate of registration from the Ministry of Labour and Vocational Training on 14 December 2012.

**Issues 1&2:** The workers demand that the employer stop deducting union contribution fee from the wages of workers who have already withdrawn their memberships from the Cambodian Union.

At the hearing, the workers agree to merge Issues 1 and 2 into a single issue. The workers demand that from January 2013, the employer stop deducting union contribution fee

from wages of workers who have already withdrawn their memberships as payment to the Cambodian Union.

- The workers claim that they had submitted membership withdrawal letters to the Cambodian Union and made two requests to the employer that it stop deducting the union contribution fee from their wages as payment to the Cambodian Union. The first request was made on around the 20<sup>th</sup> December 2012. 74 workers submitted their membership withdrawal letters, but the administrative staff members of the company rejected it on the reason that it was the matter of the union and it should be resolved by the union. The workers submitted the second request after 2 January 2013, the day the workers and the employer's collective labour dispute was conciliated at the Ministry of Labour and Vocational Training.
- The employer claims that the administrative staff members rejected the membership withdrawal letters submitted by the workers because they had no experience in dealing with union matters and that they did not read the letters in detail. The company's administrative staff mistook the letters requesting the employer stop deducting union contribution fee from the workers' wages for those withdrawing membership from the Cambodian Union. It was not until the employer read the letters in detail at the conciliation session that it realised they were requesting that the employer stop deducting union contribution fee as payment to the Cambodian Union.
- The employer claims that the Cambodian Union objected to the workers' requests mentioned above. Consequently, the employer refused to meet the workers' requests as it believed that this matter had nothing to do with the company.
- The employer submitted to the Arbitration Council letter from the company dated 4 January 2013 concerning the deduction of union contribution fee from workers' wages as payment to the Cambodian Union and the union's objection letter dated 14 January 2013.
- The Arbitration Council finds that according to the employer's letter dated 4 January 2013, the Head of the Administration of Cambo Kotop Ltd. notified the Cambodian Union that Cambo Kotop Ltd's administration staff member had received the letter from 54 workers requesting the employer stop deducting union contribution fee from their wages as payment to the Cambodian Union. The Cambodian Union's letter of objection dated 14 January 2013 showed that the President of the Cambodian Union objected to the request letter to stop deducting union contribution fee from 54 workers' wages and requested the company keep deducting the union contribution fees because the Cambodian Union had not received any voluntary membership withdrawal letters from them. Once the union received the voluntary membership

withdrawal letter from the workers, the union would notify the employer to stop deducting union contribution fees from the workers' wages.

- The Arbitration Council also receives 52 letters from workers withdrawing their membership from the Cambodian Union, complete with fingerprints and names. The heading of the letter is "Letter of Membership Withdrawal from the Union Federation" and the subject line reads, "**Re:** *To notify on membership withdrawal from the Cambodian Union Federation from the date of inking the fingerprint and Reference: Article 273, Labour Law of Cambodia.*" The letter reads "As mentioned above, for your information, I do not authorise you, the Executive Director of the Company, to deduct 1,000 riel from my wages because I have already withdrawn my membership from the Cambodian Union."
- At the hearing, the workers claimed that 74 workers thumb printed for withdrawing from the Cambodian Union. They requested the employer stop deducting the union contribution fee from their wages. The Arbitration Council also notices that the employer's letter dated 4 January 2013 on the cessation of deduction union fees from the workers' wages showed that 54 workers made the demand. In the letter headlined "Membership Withdrawal Letter from the Union Federation" submitted to the Arbitration Council, only 52 workers thumb printed on the Membership Withdrawal Letter to request cessation of the deduction of union contribution fee from workers' wages.

### **REASONS FOR DECISION**

**Issue: The workers demand that from January 2013, the employer stop deducting the 1,000 riel union contribution fee from wages of 52 workers, who had already withdrawn their membership from the Cambodian Union as payment to the Cambodian Union**

First, the Arbitration Council considers whether the issue gives rise to a rights dispute or an interests dispute.

In the previous cases, the Arbitration Council found that "*Rights disputes involve the rights stipulated in the laws, agreements, or collective agreements*" (see the Arbitral Award no. 05/11- M & V (Branch 1), Issue 1 and 5, 13/11-Gold Kamvimex, Issue 1 & 2, 14/11-GHG, Issue 4).

The Arbitration Panel in this case also agrees with the interpretation made in previous cases.

The issue is about the union contribution fee deduction from wages stipulated in Article 129:

However, the worker can authorise deduction from his/her wages for dues to the trade union to which he/she belongs. This authorisation must be in writing and can be revoked any time.

Therefore, the Arbitration Council finds that this is a rights dispute.

The workers demand that the employer stop deducting the 1,000 riel union contribution fee from the wages of the 52 workers who had already submitted a Membership Withdrawal Letter. The workers also do not authorise the employer to continue deducting the union contribution fee from their wages.

The employer contends that it rejected the workers' demand as the Cambodian Union raised objections to ceasing deductions of the union contribution fee, and the Cambodian Union claimed it had not received any formal membership withdrawal letters from the workers.

The Arbitration Council considers whether the employer is under an obligation to stop deducting union contribution fee from workers' wages in the event the workers have already submitted their membership withdrawal letters to the Cambodian Union and they have revoked their authorisation allowing the employer to continue deducting their wages for the union contribution fee.

Article 114 of the Labour Law (1997) states *"The employer, however, is prohibited from restricting the worker's freedom to using his wage at his disposal."*

In reference to this article, the Arbitration Council finds that the workers have full freedom to use and manage their wages and that the employer cannot restrict the workers' freedom to using their wage at their disposal.

Article 129 of the Labour Law states:

Collective agreements authorising any wage deductions other than these cases are null and void. However, the worker can authorise deductions from his/her wage for dues to the trade union to which he belongs. This authorisation must be in writing and can be revoked at any time.

In reference to this article, the Arbitration Council finds that the law requires the employer to deduct the union contribution fee from the workers' wages only when there is written authorisation from the workers who are union members. The article also stipulates that it is the right of workers who are union members to advise their employer at any time to stop deducting union contribution fee from their wages.

In previous cases, the Arbitration Council interpreted the purpose of the law requiring written authorisation from workers to deduct union contribution fee from their wages, was to protect each worker from having such fee deducted unwillingly, and the employer from any wrongful deductions of union contribution fee. It is a must to have the clearly and properly written authorisation of deduction of the union contribution fee from wages to show the willingness and exact intention of each worker to authorise the employer to deduct such fee from their wages (see *the Arbitral Award 60/05-Evergreen Apparel, 154/11, Issue 16*).

In addition, in Case no. 13/09-June Textile, the Arbitration Council found that:

To ensure that there is no deduction from wages against the willingness of the workers, letters of deduction authorisation shall be proper and clear. For this reason, when the workers are not willing to authorise the employer to deduct union fee from their wages, the workers shall have proper proof. They can prove via letter or other official means.

In the case above, the Arbitration Council interpreted in reference to Paragraph 2 of Article 129, *“The right to request the deduction or non-deduction of the union fee from wages was an exclusive right of the workers expressed via written letter.”* For this reason, when the employer received the letter of request from workers proving clear intentions that they no longer authorised the employer to deduct union fee from their wages, the employer shall not deduct from their wages or keep part of the deduction. (see *the Arbitral Award no. 46/10-E-Garment, Issue 3, 15/11-Golden Gain Shoe, Issue 3, 154/11-B & N, Issue 16*)

The Arbitration Panel in this case also agrees with the interpretation made in previous cases.

According to the finding of the facts, the workers submitted the letter of membership withdrawal that they had supplied to the Cambodian Union withdrawing authority from the employer to continue deducting 1,000 riels from their wages as they had already withdrawn their memberships from the Cambodian Union. This letter bears 52 signatures and thumbprints with specific dates provided. The Arbitration Council finds that the 52 workers expressed their willingness via properly and clearly written letters requesting the employer stop deducting union contribution fee for payment to the Cambodian Union. The employer’s contention that it continued deducting the union fee from the wages of 52 workers as payment to the Cambodian Union has no legal ground. The Arbitration Council finds that the employer is obligated to comply with the Labour Law. The objection from the Cambodian Union has nothing to do with that obligation. For this reason, the Arbitration Council finds that the employer is obligated to stop deducting 1,000 riel union contribution fee from the wages of 52 workers as payment to the Cambodian Union starting from January 2013 onward.

In conclusion, the Arbitration Council decides to order the employer to stop deducting 1,000 riel union fee from the wages of 52 workers as payment to the Cambodian Union starting from January 2013 onward.

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

### **DECISION AND ORDER**

#### **Part I. Rights dispute:**

##### **Issue 1 & 2:**

Order the employer to stop deducting 1,000 riel union fee from the wages of 52 workers as payment to the Cambodian Union starting from January 2013 onward.

**Type of award: binding award**

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 3 October 2012.

**Part II. Interests dispute: N/A**

**SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Tan Try**

Signature: .....