

Complaint – Espresso, Mayerline – China

Status: Resolved

FWF is responsible for setting up a complaints procedure in production countries where FWF is active. The complaints procedure allows third parties to make complaints about the working conditions or the way the Code of Labour Practices is implemented in factories which supply FWF members.

The responsibility of FWF includes investigating the complaint, verifying whether the agreed corrective action plan is implemented and public reporting. This complaint report gives an overview of a complaint filed to FWF, the investigation and agreed corrective action plan as well as how the outcome is verified. For more information on the complaints procedure see the FWF website. FWF also publishes an overview of complaints received in its annual reports.

1. Member company involved

Espresso and Mayerline.

2. Accused party

A factory located in China supplying Espresso and Mayerline.

3. Date of receiving complaint

The complaint was received on 25 February 2016.

4. Filing party

A worker that was employed by the factory until recently.

5. The complaint

The complainant claimed that he was forced to quit without receiving proper severance per legal requirements. The complainant is 58 years old and has been working at the factory for 15 years from 2001 to 2016.

Before Chinese New Year on 30 January 2016, his due wage was paid by the factory and he was informed he can no longer be working because of his old age. The factory informed him that the retirement age for male worker is 55 years old.

After Chinese New Year, on 24 February 2016, the complainant went back to the factory. They gave him 3 months of wages as compensation. The complainant signed a wage journal to confirm the receipt of the severance which totals 8400 CNY (2800*3),

but has not received a copy of this receipt. The complainant thinks it is not sufficient due to his long seniority.

Legal reference: The retirement age for male employees in China is 60 years old. In case of dismissal, the dismissed worker shall be entitled to a severance pay of N + 1 month salary (N is years worked at the factory). The complainant has been working at the factory for 15 years from 2001 to 2015.

If the complainant's claim is true he would be entitled to 16 months of salary as severance: N+1 months, that is 16 months of salary. The base for these 16 months' salary should be the average wage of his most recent 12 months. According to the complainant, he received a fixed wage of 2800 RMB per month from The factory.

As a result, in case the complaint is grounded, the severance pay should be 44,800 RMB (2800 RMB/month * 16 months). An amount of 36,400 RMB is due.

6. Admissibility

FWF decided that the case is admissible on 26 February 2016.

The factory is an active supplier of Espresso and Mayerline, members of FWF.

The case is relevant to the following labour standards of FWF's Code of Labour Practices:

- Labour standard : A legally binding employment relationship

7. Investigation

FWF informed Espresso and Mayerline about the case on 26 February 2016. Because of its larger leverage it was decided that Mayerline took the lead and contacted the factory.

FWF country representative checked the documents that the factory sent on 1 April 2016. According to these documents they started to make economic compensation payments to the complainant in 2009. These yearly payments can substitute severance pay after dismissal. According to these documents the total compensation paid to the complainant would be 20,292 RMB (that includes the yearly economic compensation payments and the 8400 compensation paid in 2016).

The country representative checked this with the complainant, and he informed FWF that he only received 3 months compensation totaling 8400 RMB. He did not sign other documents sent by the factory, and claimed to not have received the other payments.

The complainant further informed FWFs' country representative of the following:

- The complainant signed a labour contract with the factory, but the factory did not provide him with a copy.
- The factory paid him monthly in cash instead of by bank and the complainant has therefore no proof of his payments, or his employment at the factory.
- The complainant joined the factory in 2001, when it was located in Dongguan city.



- In 2009 the factory relocated to the current operation site in Huizhou city. Human resource records of the company in the previous location were not maintained or not available for review.
- The complainant sought support for his complaint from the local arbitration committee, but his requests were not accepted by the committee, because he was not able to provide any documents to prove he was an employee of the factory.

After this conversation with the complainant, and a second check on the documents that the factory sent as evidence, FWF's country representative concluded that the factory does not acknowledge the complainant's employment from 2001-2008 in Dongguan.

FWF suggested a mediation meeting between the factory and the complainant. But as the complainant is now based in his hometown on more than 10 hours train distance from the factory's location, and there is no guaranteed outcome, he declined.

Therefore FWF's country representative investigated the case further by visiting the factory management on 22 April. The factory showed that they paid extra amounts to the complainant between 2009 and 2014 totaling 11892 RMB. They proved this with showing the economic compensation slips signed by the complainant.

However, per legal requirements, these payments should be based on the average wage of the most recent 12 months, which is 2800 RMB per month. In total the factory should have paid 16800 RMB (2800*6 years). Therefore the factory was required to pay the difference, which totals 4908 RMB.

8. Findings and conclusions

The complainant's employment between 2001-2009 in the old location could not be proven and is not acknowledged by the factory.

The economic compensation payments that the factory made to the complainant are disputed by the complainant. However it cannot be proven that these payments have not been made either, as the signatures looked realistic.

Therefore the outcome of the investigation is that the factory at least should make sure the economic compensation payments follow the legal requirements and are based on the average wage of 2800 RMB. Therefore the factory needs to pay an additional 4908 RMB to the complainant.

9. Remediation

FWF country representative checked with the complainant who indeed received the additional 4908 RMB.

FWF strongly encourages the members to make sure all workers of the factory receive a copy of their contract and wage slips and the HR policy is adapted to include the correct retirement age of 60.



10. Verification

FWF suggests a verification audit for the factory to verify remediation.

11. Evaluation by the complainant

The complainant confirmed he received 4908 RMB from the factory. He was satisfied to receive this additional amount and agreed to close this case.