

## Complaint – Outdoor & Sports Company Ltd. – Vietnam

### 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

Outdoor & Sports Company Ltd. (OSC).

### 2. Accused party

A factory located in Vietnam supplying OSC.

### 3. Date of receiving complaint

The complaint was received on 4 November 2016.

### 4. Filing party

A worker that was employed until 4 November 2016 by the factory.

### 5. The complaint

The complainant claimed she has been working at the factory for about 1 year without a signed labour contract. The worker does not have an employee's card or health insurance card. She received the pay slip every month but she was not able to share it with the complaints handler. The complainant stated she was fired on 4 November without advance notice.

According to the worker, factory management has sent the working time sheets in October to workers for checking. The complainant's name was not in the time sheet. When she informed her line leader and vice line leader, her supervisors informed her they have forwarded the issue to the accountant. The accountant replied that the worker

was fired by an HR manager who is working at Administration Department and was off that day.

The next day on 5 November, the worker went to the factory, but the security did not let her enter. The complainant indicated she needs to receive her salary for October (22 days and 41 hours of overtime) and 4 days in November (1~4 Nov). The line leader had informed her that her salary for October will be paid if she agrees to work extra 3 days without payment. This meant there will be no payment for working days in November.

## 6. Admissibility

FWF decided that the case is admissible on 5 November 2016.

The factory is an active supplier of OSC, a member of FWF.

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

- Payment of a living wage
- Legally binding employment relationship

## 7. Investigation

FWF informed OSC about the case. OSC is expected to contact the supplier and ask for a reply within one week.

FWF's complaint handler obtained evidence the worker was in fact employed by the factory. The complaint handler asked the complainant whether she could share the telephone phone numbers of her line leader/vice line leader or co-worker in order to verify that she has worked at the company until 4 November.

FWF's complaint handler called one of the complainant's coworker who works at the factory approximately 4 months without a labour contract. The coworker informed FWF's complaint handler she was under the impression the plaintiff was fired because she was absent for 2 days without permission (29&31 Oct). The coworker confirmed that the plaintiff has worked at the factory until yesterday (Nov 4) and she got fired at the end of working time.

The factory informed OSC the complainant was indeed employed by their company. Factory management indicated the employee started working in December 2015 and had her first contract in April 2016. According to management the employee left and came back in September 2016. Management stated many workers do not stay with the same company for a long time, rather move back and forth between different factories. Factory management sent the employee's time record for October and November 2016.

On 14 November, another employee from the same company called FWF's complaints handler. She claimed to have worked for the company 2.5 years and she resigned 16 November. She only wanted to state she would like to receive her social insurance book. According to her, the resigned workers often received their social insurance book so late in some cases, 6~7 months after termination date. Therefore, they cannot receive the unemployment allowance. She sent her pay-slip to the complaints handler but did not receive a copy of labor contract.

FWF had scheduled an audit at this supplier on behalf of Outdoor & Sports in December. FWF proposed to move the audit date forward to end of November. During

the audit, FWF can verify the labour contracts for all workers and further investigate this case. Payday is every 15<sup>th</sup> of the month, which will allow the audit team to verify the paid wages, including the complainant's wage payments.

In the evening of the first audit, the complaints handler met with one of the complainants at a coffee to share information on the status of her social insurance book.

## 8. Findings and conclusions

After the above mentioned investigation and the FWF audit, the following conclusions were drawn:

- The complainant has worked at the factory from 17 November 2015 to 4 November 2016. From reviewing her personnel file, it was noted that there was no labor contract kept in her personnel file. The factory management could not provide the complainant's labor contract during the FWF audit.
- The complainant received her October salary on 25 November. Factory had informed her salary of November will be paid on Dec 25<sup>th</sup>.
- The complainant did not submit a resignation letter. From the interview with the line leader, the line leader confirmed that someone in her line wrote the resignation letter (on behalf of the complainant) and the line leader has signed to approve her termination on Nov 7.
- The interviewed HR manager (who is also a labor union leader) indicated she needs a resignation letter to complete payment procedures to resigned workers. According to factory's policy, factory will not pay for resigned workers who resigned without resignation letters. From the pay roll inspections it was noticed no severance pay was paid.
- The complainant confirmed that she was off 2 days without giving notice on 29th and 31st of October. She did not confirm however that she would have walked away without an answer, and as there are no meeting minutes it is not possible to confirm what happened. For the fact that she was absent for 2 days, she could have been disciplined by a written reprimand. Factory cannot use that as reason for dismissal. Looking at the legal provisions, it is noted that the dismissal did not comply with the legal procedure. Factory indicated to not have dismissed her, but the fact that she was not on the list of the time sheet while she was still working could be considered as unilateral termination by the factory. Which means that severance payments need to be paid.
- According to the time-sheet that factory sent and reviewing the time record during audit, it is noted that 1) the complainant has work continuously at the factory, no stop or return many times, 2) It is noted that the time record showed the complainant did not work from Sept 19 to Oct 3 due to work stoppage (downtime). In case of work stoppage, factory did not pay workers as required by local laws (according to Article 98 of the Labor code, factory should pay workers in full).
- The second employee who contacted FWF's complaints handler received her salary of October on 22 November and factory has informed her her salary of November will be paid on Dec 25 as well. Factory did not inform the date she can get her insurance book. Factory cannot settle her social insurance book at

the moment because factory is late in paying social insurance. So far it only pays until June 2016. The social insurance of Lam Dong Province conducted an inspection at factory on 19 Oct 2016 and require factory must pay the shortage amount by Nov 30, 2016.

## 9. Remediation

All workers must receive copies of labour contracts. Labour contracts must be signed with all employees after probation period and include provide social insurance, medical insurance and unemployment insurance. Factory should avoid late payment of insurances.

Factory should pay resigned workers due wages within 7 days from terminating the labor contract. Factory must pay severance allowance to the two complainants for the working time served when employees did not pay unemployment insurance contributions as prescribed by law.

The labor discipline (such as dismissal) or termination should be in compliance with local laws requirements. For both complainants, factory must pay their severance allowance for the working time served when they did not pay unemployment insurance. When factory provides insurances and settle the insurance book on time, the employees will receive job-loss allowance from the insurance agency when they are unemployed.

In case of work stoppage, factory should pay employees in full according to Article 98 of the Labor code.

Factory should set up a written resignation/termination policy that includes factory will not pay for resigned workers who resigned without resignation letters. According to Article 20 of the factory's labor regulations, the complainant should have been disciplined by the written reprimand for her violations (2 days off without permission).

According to Article 126.3 of the Labor Code and Article 22.3 of the factory's labor regulations, the form of disciplinary dismissal is applied by the employer in case "the employee is absent for 5 accumulating working days within 30 days since the 1st absent day or 20 days accumulating working days within 365 days since the 1st days without legitimate reasons". Therefore, the factory cannot dismiss her for her violation.

In the longer run, it is suggested to investigate ways of reducing worker turnover; job security might reduce the need for workers to come and go. A training as part of FWF's Workplace Education Programme can be a first step in discussing labour rights with workers and management.

## 10. Verification

Part of this case was verified during the audit that was conducted by FWF's local audit team end of November after the complaint. On 2<sup>nd</sup> of January 2017, FWF's complaint handler confirmed both employees were paid their due salaries of November and December 2016. However, social insurance and severance compensation were not paid. Remediation and follow up by OSC will be verified during next Brand Performance Check.



## **11. Evaluation by the complainant**

The complainant shared she is happy with the result of her October, November and December wage being paid. The employee wishes to be reinstated, but not in the same line.

Update: On 22 March 2017 FWF received news that the complainant was reinstated by the company and is working in the finishing department.