

Complaint – Deuter – Vietnam

Status: New complaint

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 involved

Deuter

2. Accused party

A factory located in Vietnam supplying Deuter.

3. Date of receiving complaint

The complaint was received by FWF through its local complaints handler in Vietnam on 1 July 2017.

4. Filing party

An employee that is employed by the factory.

5. The complaint

The complainant claimed his and his co-worker's labour contract was illegally unilaterally terminated by the factory.

According to the complainant his contract was terminated on 28 June 2017 by factory management without any reason or prior notice. Factory has suggested paying him two months' salary as compensation but he did not agree.

The complainant wants the factory to compensate him (and his co-worker) in accordance with Article 42 of the Labor Code, including: 1/ pay his remaining salary, 2/ pay a compensation equal to the salary of at least 2 months (Article 42.1), 3/ pay

severance allowance (if any) and 4/ pay a compensation equivalent to his salary of the days not given notice (e.g. 45 days for long term contract, article 42.5 of Labour Code), 5/ pay the extra compensation equal to the salary of at least 02 months (due to the factory not reinstating the employee, Article 42.3 of Labour Code. 6/ The factory must issue another terminated decision showing that he was illegally unilaterally terminated by the factory with details of compensations.

In total the complainant requested 4 month of salary and an additional compensation for the 45 days of days not given notice.

6. Admissibility

FWF decided that the case is admissible on the 1st of July 2017.

The factory is an active supplier of Deuter member of FWF.

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

- Legally binding employment relationship
- Payment of a living wage

7. Investigation

Deuter informed the supplier and received a reply immediately. Factory management informed Deuter they see the accusation differently. According to management the complainant (and his co-worker) misbehaved, shouting to and threatening workers and disobeying factory manager's instructions. The employees were given several oral warnings. The complainant did not accept the 2 months salary compensation, the co-worker did. Factory sent over payment details of the co-worker.

FWF's complaints handler reviewed the reply and the documentation. On 13 July, the complainant sent FWF the minutes of the unsuccessful mediation dated 10 July 2017. The mediation was hosted by a labor mediator of labor department of Chau Thanh District of Tien Giang Province. The minutes noted that the complainant did not agree with the 2 months of compensation as factory's proposal. The complainant required compensation equal to 4 months of salary and 45 unnoticed days. The factory's representative (HR manager) stated that the factory has decided compensation equal 2 months of salary. The mediator's conclusion: the two parties did not reach the agreement. The parties were entitled to request the Court to settle the case in accordance with the law.

On 18 July the complaints handler spoke to the factory's HR manager and complainant by phone again. The HR manager stated that the factory has illegally unilaterally terminated the labor contract with the complainant. The complainant violated the factory's regulations many times and had a bad attitude with his manager but the factory did not make discipline records as required by law. The HR manager stated the factory should comply with the decision of the Court.

The complainant stated he sent the complaint letter to the Court and will need to send additional records as required by the Court for further investigation.

8. Findings and conclusions

The payment details sent by factory management confirmed the 2 months salary compensation for the co-worker. The co-worker did not call the complaint hotline directly and accepted the compensation agreement. For this reason, the remediation of the complaint will focus on the complainant's case only.

According to FWF's complaints handler, based on the above information, there are a few issues where the factory did not handle this case directly:

Firstly, as the factory's explanation, the complainant violated the Labor Regulations many times but the factory did not carry out the discipline procedures.

Factory can only dismiss the employee if his violations are registered in the Labor Regulations. Factory must comply with the local laws on discipline practices (such as: 1) Workers are disciplined for violations registered in the Labor Regulations; 2) there is a meeting to verify violation; 3) Disciplinary procedures must be recorded on paper and signed by all concerned.

Secondly, the factory did not adequately negotiate the termination of the labor contract. According to Article 36.3 of the Labor Code, a labor contract can be terminated in case both parties agree to terminate the labor contract. In this case, the factory had issued a written terminated decision with 2 months' salary for compensation while both parties did not reach the agreement.

Thirdly, the factory did not follow the legal requirements to unilaterally terminate the labor contract. As per Article 38.1a of Labor Code, the employer is entitled to unilaterally terminate the labor contract in case the employee regularly fails to complete the work as described in the labor contract. And according to Article 12.1 of Decree No.05/2015/ND-CP, the employer must specify the criteria for assessing the work completion under the regulations of enterprises, as a basis for assessing the employees who often do not complete the work as described in the contract labor. Such assessment regulations shall be issued by the employer after consultation with the representative organizations of labor collectives at the company.

From the above it appears the factory has illegally unilaterally terminated the labor contract. Obligations of the employer when illegally unilaterally terminating the labor contract is specified in Article 42 of Labor Code. The claims of the complainant are based on this regulation.

In order to establish the most effective process of remediation, Deuter is requested to take the following steps:

1. Deuter informs the factory of the above and asks why they did not follow the discipline procedures. Factory may send over evidence that demonstrate the legal requirements were followed.
2. Factory should provide all relevant documentations, such as: discipline records (if any), the labor contract, etc.
3. Inquire with the factory how they want to resolve this case: They may 1/ want to re-employ the complainant or 2/ make a new deal with the complainant or 3/ accept/ adhere to the decision of the Court.



9. Remediation

The factory has illegally unilaterally terminated the labor contract. Obligations of the employer when illegally unilaterally terminating the labor contract is specified in Article 42 of Labor Code. The factory must adhere to the claims of the complainant which are based on this regulation. FWF suggests to await the Court's decision (according to the Article 179 of the Civil Procedure Code, The Court must open a trial session within 3 months from the date of acceptance of the case). However, while awaiting the Court's decision, factory must already pay the employee the remaining salary, severance allowance and unused annual leave (if applicable) as this is the responsibility of the employer to any employee when terminating the labor contract.

Secondly, the factory should draft a written procedure on discipline and strictly follow disciplinary procedures. This procedure must be clearly communicated to all employees.

10. Verification

Remediation in process.

11. Evaluation by the complainant

Remediation in process.