

Report No. 114/2559 on labour rights in a case that Company T. in Lopburi Province was accused of violating labour rights and restricting workers' right to travel.

Issue of complaint

A group of complainants through Migrant Workers' Rights Network (MWRN) submitted a petition to the National Human Rights Commission of Thailand (NHRCT) requesting it to investigate a case of labour right violation. It was claimed that all 14 of the complainants, holding Burmese nationality, came to work as employees in a chicken farm of the accused in Lopburi Province, with agreement for receiving a daily wage of 300 Baht per person. The accused, however, deducted various expenses from the wage, making net payment that the complainants received decreased to only 230 Baht per day. The complainants were also forced to work without weekly rest days, an annual vacation and national holidays. In addition, the accused forced the complainants to do overtime work between 9 pm to 5 am, and also dissuaded the complainants, depriving them of their rights to travel by limiting time that the complainants could leave their workplace to only two hours per week, and seizing their identity documents.

Actions

The NHRCT took this case into consideration and opined that Section 4 of Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) provided that "Subject to the provisions of this Constitution, human dignity, rights, liberties and equality previously enjoyed by the Thai people with the protection under Thailand's constitutional convention of the democratic regime of government with the King as Head of State and Thailand's existing international obligations shall be protected under this Constitution." Labour rights, especially the right to receive fair wage and right to have leave days, are human rights recognized by Article 7 of the International Covenant on Economic, Social and Cultural Rights and were thus protected by the Constitution, and Section 28, 29, 30, 56, 60, 61, 62, 63, 64, 76 and 77 of Thailand's Labour Protection Act B.E.2541 (1998). Actions taken by the accused to deduct house rent, electricity and water bills, cost of drinking water, advanced payment, 2nd installment of health insurance premium and other expenses from the complainants' daily wages of 300 Baht without any details given resulted in the 14 complainants receiving only 230 Baht per day, and to allow the complainants to have 30-35 days off in a year, including all the holidays, without prior agreement, were violation of the 14 complainants' labour rights and violation of human rights. However, concerning the 14 complainants' demands for full wage payment, labour inspectors according to Labour Protection Act B.E.2541 (1998) had already used their authority under Section 124 of Labour Protection Act B.E.2541 (1998) amended by Labour Protection Act (No.2) B.E.2551 (2008) to order the accused to pay ordinary wages, wages for working on holidays, overtime wages and interests to the 14 complainants since 1st August 2016. Both the employer and 14 employees had been informed about this order. If the employer and employees were not satisfied with the order, they should bring this case to court within 30 days from the day they received the order.

As for the issue that the complainants claimed that they had been forced by the accused to work overtime from 9.00 pm to 5.00 am without any rest stop and payment of overtime wage, explanation given by the accused was in line with explanation given by the complainants that in each day, they slept only from 10 pm to 3 am. So it is believed that between 10 pm to 3 am, the 14 complainants did not work overtime. As for the issue that the

complainants claimed that accused had restricted their liberty to travel, there was neither human rights violating action nor action deemed to be forced labour according to the Anti Human Trafficking Act B.E.2551 (2008).

Therefore, in order to promote and protect human rights, and to prevent any occurrence of more problems like this one, the NHRCT opines that it is appropriate to propose measures to solve labour rights violation problems according to Section 28 of the National Human Rights Commission Act B.E. 2542 (1999) and policy recommendations to related agencies according to Section 15 (3) of the same Act as follows:

Measures to solve human rights violation problems

(1) Ministry of Labour and related agencies shall quickly move to produce guidelines for entrepreneurs in avian industry to treat foreign workers legally according to human rights principle and give these workers protection not different from Thai workers, especially in terms of wage payment and holidays according to the Labour Protection Act. Related knowledge should be quickly and regularly given to entrepreneurs.

(2) Ministry of Labour and related agencies shall quickly come up with measures to forbid entrepreneurs to seize or collect workers' identity cards and important documents. If it is necessary to have such documents, only copies of them can be collected in order to make this action being consistent with international labour standards concerning rights of transnational workers to prevent occurrence of forced labour and human trafficking problems.

(3) Ministry of Labour and related agencies with participation of all concerned parties shall prepare guidelines for labour employment and protection of foreign labour who legally enter the country in the avian industry, and amend existing legal measures, such as ministerial regulations, proclamations or regulations, related to labour protection, making them clear and implementable in practice.

Actions to solve the problems are to be carried out within 90 days from the date this report is received.

Policy recommendations or suggestions for law improvement

(1) The Cabinet shall consider quickly put the Guiding Principles on Implementing the UN Protect, Respect, Remedy Framework for Business and Human Rights to use in the agricultural industry sector.

(2) The Cabinet shall consider quickly prepare a National Action Plan on Business and Human Rights as it acknowledged on 16th May 2016, using information about labour problems in agricultural industry sector as occurred in this case of complaint to develop an action plan to sustainably solve the problems.

(3) The Cabinet shall consider enact new, or amend existing, laws related to employment and labour protection to cover and correspond to the whole system of agricultural works and agricultural industrial works, ensuring that they go along with the International Covenant on Economic, Social and Cultural Rights, and related international human rights standards, so that they are up to international labour standards on rights of foreign workers in order to prevent forced labour and human trafficking problems.

Successes/Progress in human rights protection

Ministry of Labour had reported that it took actions according to the measures to solve human rights violation problems by having a policy that actions for labour protection by the Department of Labour Welfare and Protection are to be based on a principle of “equality without discrimination in case of foreign workers, whether they enter the country legally or illegally, are to be protected the same as Thai workers”; workers are to be protected to enjoy their rights according to the Labour Protection Act B.E.2541 (2008). Department of Labour Welfare and Protection produced a labour inspection manual to prevent and solve the problems of forced labour and debt bondage labour, convened a series of consultation to gather comments from stakeholders, and reviewed legal provisions related to wage for working on the weekly rest days, traditional holidays and rest stop time. It assigned a legal working group to consider taking actions, coordinating with chicken farms and cattle farms to collect data to create a database for inspection, prepare guidelines for best practice in chicken farm industry and avian incubating stations in Thailand, prepare a strategy for management of foreign workers 2017-2021, develop a labour system to reduce dependence on foreign workers according to labour needs for development of the country, control entrance and exit of foreign workers, develop standards for employment of foreign workers in accordance with international standards, set up foreign workers service centers in ten provinces, and provide application DOE Help, emergency telephone helpline 1694 and a website, <http://www.doe.go.th/helpme> to be a channel to receive complaints, for example.