



มูลนิธิเพื่อสิทธิมนุษยชนและการพัฒนา (มผว.)
Human Rights and Development Foundation

เลขที่ 109 ซอยสิทธิชน ถนนสุทธิสารวินิจฉัย แขวงสามเสนนอก เขตห้วยขวาง กรุงเทพฯ 10310
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Press Release

Migrant worker from Myanmar holding Social Security Office accountable for denying him access to compensation from the Workmen's Compensation Fund claiming the SSO's directive a breach to the ILO's C019

Today (29 December), Mr. Sai Kein, a migrant worker from Myanmar, has authorized a representative to bring the case to the Labour Court of Samut Sakhon against the Social Security Office in Nakhon Pathom as defendant no. 1 and the Workmen's Compensation Fund Committee, defendant no. 2. It has stemmed from that the WCF Committee had issued a decision no. NT 0030.1/33948 dated 18 November 2016 on 'the result of the appeal regarding the directive on compensation' which denied Mr. Sai Kein access to compensation from the WCF per the Workmen's Compensation Fund Act BE 2537 (1994). Instead, Mr. Sai Kein was instructed to ask for compensation from the Feeling Care (Thailand) Co., his employer.

Mr. Sai Kein had disagreed with the order of the WCF Committee and has decided to invoke his judicial right to hold the SSO and the WCF Committee accountable with the Labour Court. The Court is asked to review his case and to annul the directive of the WCF Committee no. NT 0030.1/33948. Mr. Sai Kein, a migrant worker from Myanmar, was employed by the Feeling Care (Thailand) Co. as a worker in production line feeding synthetic fiber into a spinning machine. On 11 May 2015, while working on the machine, Mr. Sai Kein has cut his left hand from his wrist upward leaving just his left thumb. He had to stop working to receive treatment for 45 days, after which he applied for work-related injury compensation from the SSO in Nakhon Pathom. On 30 December 2015, the SSO issued a directive stating that Mr. Sai Kein had suffered a work-related injury from working for his employer and thus was eligible to have compensation from his employer for the amount of 309,504 baht. Mr. Sai Kein did not agree with this since he was a migrant worker registered per the policy of the Thai government and had a passport and work permit issued by the Office of Employment, the Ministry of Labour. He also worked for an employer who ran a business required by the Ministry of Labour to pay contributions to the WCF. And if the employer had failed to register the worker and failed to pay the contributions, which was a breach of the law, the SSO itself was obliged to provide Mr. Sai Kein the compensation tapping into the WCF and then to sue the employer for the amount paid.

After reviewing the appeal by Mr. Sai Kein, the WCF Committee insisted that he had no access to the WCF claiming that he was a migrant worker with a passport and was waiting for employment quota from the Office of Employment. While suffering from a work-related injury, he was working for the company and had a work permit issued by the Ministry of Labour. But the Committee has found the work permit indicated that Mr. Sai Kein was still employed by the previous employer. And the current employer has failed to register him with the Office of Employment. Mr. Sai Kein was suffering from a work-related injury while working for the Feeling Care (Thailand) Co., the employer which was illegally employing him and there were no records that he had been registered to the SSO. Therefore, the employer had to bear all the responsibility regarding the compensation. Regarding the opinion of the WCF Committee that he was illegally employed by the company, Mr. Sai Kein deems it has to be considered in view of the Working of Alien Act and could not be used as a reason to deny his access to the WCF per the Workmen's Compensation Fund Act BE 2537 (1994)

In the complaint against the SSO and the WCF Committee, apart from asking the Court to annul the directive of the WCF Committee, Mr. Sai Kein has found the Workmen's Compensation Fund Act BE 2537 (1994) had been promulgated to protect the employees including migrant workers. The law provides for the establishment of the WCF and the employer is required to pay contributions to the Fund as an assurance for the payment of the compensation to the employee when they suffer from a

work-related injury, sickness or death or disappearance while working for the employer. In this case, the SSO has imposed a condition requiring that an eligible migrant worker who suffers from a work-related injury has to have legal immigration status, and ID paper and a work permit. Should the employee fail to produce the documents as required, the SSO shall instruct the employer to bear the responsibility. In such case, the employee is left with little leverage and has to make the negotiation themselves while the SSO simply plays a mediator role to mediate and record the result of the negotiation regarding the payment of the compensation. In many instances, it has been found that after the SSO had made an agreement regarding the payment of the compensation by the employer, the employer had simply failed to honor the word, or they had just run away and failed to provide the compensation. In addition, the directive of the WCF Committee is deemed a discriminatory treatment against the migrant worker with regard to their access to the WCF different from how the Thai workers are treated. Therefore, it could be a breach to the International Labour Organisation's 1926 Convention C019 - Equality of Treatment (Accident Compensation) to which Thailand has become a state party since 1968,

The Labour Court of Samut Sakhon has accepted the complaint from Mr. Sai Kein and set 14 March 2017 for a hearing on mediation, taking evidence and prosecution witness examination at the Central Labour Court (Samut Sakhon) at 09.00am.

For more information, please contact Mr. Wichan Thamrai, Human Rights and Development Foundation (HRDF), phone 087-138-7897 E-mail: legal.wichan@gmail.com