

WORKER RIGHTS CONSORTIUM FACTORY ASSESSMENT

Thai Garment Export (Thailand)

Findings, Recommendations, and Company Response



August 1, 2023

Updated: September 28, 2023



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Table of Contents

I.	Introduction and Executive Summary	3
II.	Methodology	4
III.	Findings, Recommendations, and Company Response	5
IV.	Conclusion	9

I. Introduction and Executive Summary

This memorandum concerns the Worker Rights Consortium’s (“WRC”) findings, recommendations, and successful remediation of labor rights violations, specifically nonpayment of terminal compensation to workers, at Thai Garment Export 1/3 (“Thai Garment Export”), an apparel factory located in Samut Sakhon, Thailand. The factory, which is owned by the Hong Kong-based multinational garment conglomerate TAL Group, has produced collegiate apparel for almost two decades and has been the subject of multiple previous investigations by the WRC.¹

Although Thai Garment Export had, at the time the violations discussed in this report occurred, just recently been discontinued as a collegiate supplier, a sister facility—Thai Garment Export 2/4—was producing collegiate-licensed apparel for the university licensee, Peter Millar. Thai Garment Export also produces apparel for Burberry and L.L. Bean. Thai Garment Export is required to comply, therefore, with the codes of conduct of these companies. These codes of conduct uniformly mandate the factory to comply with Thai Labor Law. These codes of conduct uniformly mandate the factory to comply with Thai Labor Law.

In April 2020, the WRC received a complaint from the factory-level union that represents workers at the facility alleging that Thai Garment Export, in connection to cost cutting measures driven by the Covid-19 pandemic and the related downturn in orders, had terminated 43 Burmese migrant workers and had failed to pay their legally due severance.

The WRC carried out an investigation in April 2020 and presented its initial findings to the factory management in May 2020. After Thai Garment Export refused to provide severance to the terminated Burmese migrant workers, the workers brought a legal complaint to the Thai labor authorities. In July 2022, the issue was partially resolved as the company and the workers agreed to a settlement under which the company paid 80 percent of the legally due severance.

Late in 2023, following the WRC’s engagement with the company’s buyers, in particular, L.L. Bean and Burberry, Thai Garment Export agreed to provide the remaining 20 percent of the severance due to workers as a humanitarian grant. This report provides the details of the WRC’s findings and recommendations, the factory management’s response, and the successful remediation of the violation.²

¹ Worker Rights Consortium, “WRC Factory Investigation: Thai Garment Export 1/3,” November 25, 2019, <https://www.workersrights.org/factory-investigation/thai-garment-export-1-3/>.

² The fact that the WRC’s investigation, as reported in this document, did not yield findings of violations in any particular areas of the factory’s labor practices should not be construed as an affirmation of the factory’s overall compliance with respect to its practices in those general areas.

II. Methodology

The findings outlined in this memo are based on the following sources of evidence:

- Offsite interviews with Thai Garment Export Burmese migrant workers and the factory workers' union, carried out at various stages between April 2020 and May 2023;
- Thai Garment Export company documents, including announcements to employees and termination letters;
- Communications between the WRC and Thai Garment Export management; and
- Communications with customers of Thai Garment Exports, Burberry and L.L. Bean.

The WRC also reviewed relevant Thai labor laws, international labor standards, and the Thai Ministry of Labor announcements and guidelines for employers, which the ministry issued during the Covid-19 epidemic, and a letter of clarification concerning the payment of severance to migrant workers.

III. Findings, Recommendations, and Company Response

Dismissal of Migrant Workers without Payment of Severance

Background Information on Violation

On April 9, 2020, Thai Garment Export management informed 43 employees at the factory who are migrant workers from Myanmar that they would be dismissed on May 24, 2020, when their two-year contracts were set to expire. The dismissal notices the company provided to the workers stated that their contracts had ended and that Thai Garment Export would pay for their travel back to Myanmar. The notices did not state that the factory would pay severance, the proportion of annual bonus workers had earned, nor any remaining annual leave, all of which they were legally due. These workers had entered Thailand under the Memorandum of Understanding (“MOU”) between Thailand and Myanmar on Cooperation in the Employment of Workers³ and each had been employed by Thai Garment Export for at several years.

The WRC conducted an investigation which, in May 2020, reached a preliminary finding that Thai Garment Export was obligated to pay the 43 terminated workers their legally mandated severance in May 2020. In its communication, the WRC further pointed out that terminating the workers during the pandemic without payment of severance placed the dismissed workers in severe hardship, as they likely would not have a way to support themselves and their families after their termination and would not be able to return home to Myanmar as the border between Thailand and Myanmar was closed due to Covid-19 pandemic restrictions at that time.

In response, the factory management claimed that Article 118 of the Thai Labor Protection Act allowed the factory to dismiss the workers without payment of severance because the nature of their employment was seasonal and Thai law exempted employers from paying severance to workers on fixed-term contracts whose employment was seasonal or temporary. According to the factory, the terminated workers were seasonal because the orders received by the company are seasonal, and, since order levels were low due to the Covid-19 pandemic, the factory was unable to extend the workers’ contracts.

This claim did not hold up to scrutiny. A review of Article 118 of the Thai Labor Protection Act clearly showed that this Article was not applicable to the dismissed 43 migrant workers employed by Thai Garment Export since seasonal employment, under the law, means employment for business needs that continue only for one season and not for the normal business of the company.⁴

³ “Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on cooperation in the employment of workers,” June 21, 2003, https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/genericdocument/wcms_160932.pdf.

⁴ Thai Labor Protection Act, Art. 118 (4), (“Employment of a fixed duration referred to in Paragraph 3 shall be said to exist in the case of employment on a special project, which is not in the normal way of business or trade of the employer, where there is a fixed schedule for commencement and completion of work; or for work of a temporary nature with a fixed schedule for its commencement or completion; or *for seasonal work in respect of which employees are only engaged during that season*; provided that the work must be completed within a period of two years and the employer and employee have entered into a written agreement at or prior to the commencement of employment.”)(Emphasis added).

In reality, the 43 workers were employed in garment manufacturing, which is the normal business of the factory, and each had been employed at the factory between six to eight years. While Thai law exempts an employer from paying severance to workers in cases where workers are hired under fixed-term contracts for actual seasonal or temporary work,⁵ this was not the case in relation to the 43 migrant workers employed by Thai Garment Export.

During a meeting with the union representing the workers on May 27, 2020, Thai Garment Export management again stated that the factory did not intend to pay severance to the dismissed Burmese migrant workers. This time, management gave a different reason for its refusal, claiming that the factory is not obligated to pay severance to these workers because they were employed under a MOU between the governments of Thailand and Myanmar which caps the duration of work permits for migrant workers to four years. All 43 dismissed workers had reached this maximum duration and therefore, their contracts had expired.

This claim also did not hold up to scrutiny. First, while the MOU does in fact specify that four years is the maximum length of employment for migrant workers, in practice employers and workers have been able to extend the work permit beyond this timeframe. Indeed, many of these 43 workers had already been employed for significantly longer than four years at Thai Garment Export at the time they were terminated.

Furthermore, in 2016, the Department of Labor Protection and Welfare (“DLPW”) issued a legal notice regarding severance rights for migrant workers who, like the workers at Thai Garment Export, are employed under the conditions of the MOU between Thailand and Myanmar. In this document, the DLPW made it clear that workers covered by the MOU between Thailand and its neighboring countries, and who are employed on two-year contracts, are entitled to the legal severance upon termination.⁶ Since the 43 migrant workers entered Thailand under this MOU, and were employed on two-year contracts, they were entitled to severance pay in accordance with Thai law.⁷ By failing to pay these workers their terminal benefits, Thai Garment Export violated Thai law and, by extension, the codes of conduct of the company’s buyers.

Workers’ Legal Complaint Leads to Partial Resolution of Violation

On May 28, 2020, four days after they were terminated, the migrant workers filed a complaint with the DLPW, demanding that Thai Garment Export provide their severance pay. In June 2020, in response to the WRC raising additional concerns that the dismissed workers would not be able to travel home to Myanmar due to pandemic-related travel restrictions, the company offered the workers the opportunity to return to work for a three-month period, along with a payment of 5,000 baht (US\$157) for the period they had been unemployed.

⁵ Thai Labor Protection Act, Art. 118 (4).

⁶ Department of Labor Protection and Welfare, “Legal Explainer re severance when terminating migrant workers” (2016), page 4.

⁷ Thai Labor Protection Act, Art. 118 (“An employee who has worked continuously for at least one year but less than three years shall be paid basic pay for not less than 90 days at the most recent rate of basic pay received by him or not less than the basic pay for work performed in the last 90 days in respect of an employee who is rewarded on the basis of his output.”).

By June 30, 2020, 11 workers had decided to take this offer and had returned to work. The WRC confirmed that these 11 workers were subsequently offered two-year contracts by Thai Garment Export after completion of the three-month contract.⁸

The other workers explained that they had not received any assurances that Thai Garment Export would recognize their seniority if they returned to work on a short-term contract and, therefore, declined the offer. Another reason for the workers' reluctance to return to the factory was that Thai Garment Export had just terminated the contracts of almost 200 Thai workers, which caused concerns among the migrant workers concerning the financial viability of the company. It should be noted that, in contrast to the factory's treatment of the 43 migrant workers, Thai Garment Export paid the terminated Thai workers their legally mandated severance.

On July 24, 2020, the DLPW issued a decision that the employer did not have to pay severance to the workers, based on the reasoning that the workers had declined employment rather than having been dismissed, since Thai Garment Export offered them the option to return to work on a short contract of three months from May to August 2020 (after which they would be sent back to Myanmar). However, the DLPW's reasoning was flawed because it failed to consider that the company offered this short-term return to work *after it had already terminated the workers*, and Thai Garment Export had not expressed any willingness to pay workers' severance for their entire period of employment with the factory after the conclusion of this new short-term contract. Nevertheless, the DLPW interpreted the company's offer to mean that the company had not really terminated the workers.

In reaching this determination, the DLPW credited a submission by the company on July 23, 2020—only one day before the DLPW issued its decision—in which Thai Garment Export offered to recognize the workers' seniority if they agreed to be rehired, even though the company had not communicated this to the workers (and, in fact, implied the opposite) at the time that it initially proposed to rehire them on three-month contracts.

Following the DLPW's issuance of its decision on July 24, 2020, 28 of the 43 workers appealed the DLPW's ruling to the Thai Labor Court. Because of complications related to the Covid-19 pandemic, the Labor Court regularly postponed hearings during this period, resulting in the process taking much longer than usual.

In June 2022, before the Thai Labor Court issued any decision on the workers' appeal—and two years after the workers had been terminated—Thai Garment Export offered a settlement to the 28 workers who had appealed the DLPW's ruling. Under this settlement, the company agreed to pay 80 percent of the total severance legally owed to workers upon termination,⁹ amounting to 1,379,880 baht (US\$38,461), as “humanitarian aid”. The 28 workers confirmed that, over the following months, the company paid them this sum through bank transfer.

⁸ The union representing the workers and the WRC lost contact with four workers who had been part of the 43 Burmese workers who were dismissed by Thai Garment Export.

⁹ According to the calculations overseen by the Court, the workers were owed a total of 1,724,850 baht (US\$48,077) in severance.

Because the determination of the DLPW that the workers had not been terminated was so clearly erroneous, it was more likely than not that—had the workers not, in desperation, accepted the settlement—the Labor Court would have ruled that they were, in fact, owed severance by the company. Therefore, the WRC found that remediation of the labor rights violations in this case required that workers receive the remaining 20 percent of the severance—equal to 344,970 baht (US\$9,615)—that they were originally due.

Engagement with Buyers Results in Full Payment of Remaining Severance

As Thai Garment Export continued to refuse to pay workers the remaining portion of their statutory severance, the WRC in April and May 2023 contacted the factory's buyers, L.L. Bean and Burberry, concerning the need for corrective action. Both L.L. Bean and Burberry promptly informed the WRC that they would be urging Thai Garment Export to fully remedy the violation.

On May 8, 2023, Thai Garment Export informed the WRC that, while its management did not acknowledge that the company had violated the labor laws and considered that the case had already been settled at the court, the management had agreed to provide humanitarian relief to these 28 workers in the amount of severance due to workers that remained unpaid, 344,970 baht or US\$9,615. By the end of May 2023, the Burmese workers received these funds from Thai Garment Export, thereby, fully remedying the violation of Thai law and buyers' codes of conduct.

IV. Conclusion

Through the involvement of the buyers from Thai Garment Export, L.L. Bean and Burberry, these violations of buyers' codes of conduct were eventually corrected, to the benefit of the affected migrant workers. The WRC will continue to monitor the factory's labor practices.