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Thailand: Arbitration Clauses In Employment Agreements – Watertight Or Providing A Loophole? (03 Apr 2006)

Summary

The recent Supreme Court decision in *Mrs Harley Van de Glind v The Freight Ltd.* (No. 1460/2548) highlights the importance of including a binding arbitration clause in the employment agreement to avoid a loophole for one party to choose not to solve the dispute by arbitration.

Full Update

Introduction

Arbitration clauses can be included in employment agreements whereby the parties agree at the beginning of the relationship that if they ever have a dispute about any aspect of the employment relationship, they will submit the dispute to arbitration rather than seeking judgment by a court of law. The clause may include details about the arbitration, such as whether the arbitration decision will be binding and how the parties will find an arbitrator if the need arises. However, care should be taken when drafting arbitration clauses to make them binding on both parties by avoiding an option to choose between arbitration and taking the dispute to court. The recent Supreme Court's decision in Thailand highlights why both parties may want to include a binding arbitration clause in a Thai employment agreement.

Facts Of The Case

The Plaintiff entered into an employment agreement with the Defendant to work in Bangkok. A dispute arose as the Plaintiff demanded a higher salary because she was transferred to continue her work in Singapore. The Plaintiff did not continue her work and filed a claim with the Central Labour Court to demand payment of a bonus, compensation and damages. The Defendant asked the Court to dismiss the case on the ground that the dispute had to be resolved by an arbitrator and not by a Thai Court as stated in the Employment Agreement.

Issue

The issue was whether or not the Plaintiff was entitled to file a claim with the Central Labour Court instead of having the dispute resolved by an arbitrator.

The Defendant's case that the Plaintiff's claim should be dealt with by arbitration was based on Clause 12 of the Employment Agreement.

Clause 12 stipulated the following:

"Both parties shall use their best endeavour to settle any dispute that has arisen out of or in connection with this Agreement. Any conflict, demand or dispute that cannot be settled by this way ***shall be finalised by a court of Thailand****. Any relevant arbitration proceedings shall be made in Bangkok or other places as mutually agreed by both parties within 15 days. Each party shall elect its own arbitrator who shall choose the third arbitrator within 10 days after they are appointed. Each party shall be liable for its own costs. Expenses and administrative fees of the arbitrators shall be shared equally by both parties."*

The Central Labour Court held that this Arbitration Clause did not expressly specify that in case of a dispute between the Plaintiff and the Defendant both parties must resolve the dispute by an arbitrator. This Clause entitled both parties to choose between court proceedings or arbitration proceedings.

The Decision

The Central Labour Court held that the Plaintiff was entitled to file a claim instead of having the dispute resolved by arbitration and ordered the Defendant to pay a bonus as well as

compensation. The Supreme Court upheld the judgement of the Central Labour Court (the Court of First Instance).

Comment

This decision stresses the importance of choosing the right wording for an arbitration clause in an employment agreement in order to avoid a loophole for one party to choose not to resolve the dispute by arbitration if this is the intention of both parties.

The following are some reasons as to why both parties (employer and employee) should include a watertight arbitration clause in the employment agreement to resolve employment related disputes.

- Arbitration may save the parties time and money;
- Arbitration proceedings and awards can be kept confidential - unless both parties agree otherwise;
- Arbitrators are typically professionals with experience in the industry and have an understanding of workplace realities; and
- Arbitration is usually final and binding, so neither side will be able to appeal.

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Relevant area(s) of interest :
- Thailand
- Employment & Employee Benefits
- Arbitration