

## Complaint – Jack Wolfskin, Odlo – Myanmar

### Status: Resolved

*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 company involved

Jack Wolfskin

Odlo

### 2. Accused party

A shared supplier located in Myanmar supplying Jack Wolfskin and Odlo.

### 3. Date of receiving complaint

27 October 2016

### 4. Filing party

Solidarity of Trade Unions in Myanmar (STUM)

### 5. The complaint

- On 27 October 2016 Jack Wolfskin received a communication from the Solidarity of Trade Unions in Myanmar (STUM), stating, among others, that two union leaders, including the union President and General Secretary of factory union affiliated with STUM were unlawfully dismissed on 26 September 2017.
- The communication indicated that STUM believes that the evidence clearly shows that the primary motivation for the termination of both men was their pursuance of starting a union at their factory.
- On September 27, 2016, the two dismissed workers filed a complaint against the factory with Township Arbitration body. After three attempts at mediation at the township level, the case was referred to the regional Arbitration Body, Burma's main adjudication body for labor disputes.

- On 16 November workers informed FWF that about 15 workers have been pressured to resign including 3 union executives, a wife of a fired union leader and others who are affiliated or sympathetic to the union.

## 6. Admissibility

FWF decided that the case is admissible on 27 October 2016. The factory is an active supplier of Jack Wolfskin, Odlo, both members of FWF.

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

- Legally Binding Employment Relation
- Freedom of Association

## 7. Investigation

Jack Wolfskin and Odlo immediately contacted the supplier and asked for a response. In addition, FWF consulted with STUM and the 2 fired workers, as well as the group of resigned workers. Furthermore, FWF engaged the services of an external expert in facilitation and conflict resolution. This expert also had various meetings with the factory owners and top management which are based abroad.

In addition, early 2017 Fair Wear Foundation (FWF) conducted an investigation related to the complaint that 15 workers have been intimidated/pressured to resign because of union affiliation.

## 8. Findings and conclusions

On 21 November 2016, the regional Arbitration Body ruled that the factory is to reinstate the two workers. On the same day, factory management confirmed its agreement to, *inter alia*:

- a) Reinstate the two workers effective immediate (21 November);
- b) Pay full compensation to the two workers for the period of dismissal until reinstatement. The workers were to collect their October payment on 22 November 2016 at the factory. Details of payslips and formal letter of reinstatement were also shared that day for review;
- c) After the reinstatement, workers and management will from both sides state their concerns to be laid down in a written mutual recognition agreement;
- d) On 30th November, factory management will meet with the two workers to conclude and sign the recognition agreement. Workers return were to work once the agreement is concluded and agreed upon, tentatively on 1st December 2016;
- e) During the period of working on agreement, workers are fully compensated;
- f) Once the reinstatement of the 2 workers is completed, the factory is willing to conduct a joint investigation with FWF about the workers who were reportedly pressured to resign, as indicated by STUM, and find solutions.

Subsequently, a next meeting was arranged for 30 November 2016. Participants included EC members of the factory union, STUM, MWRN, factory management and FWF. During the meeting, the factory management reconfirmed its agreement to reinstate the 2 workers. Reinstatement letters were shared during the meeting. Factory management also agreed to reinstate the 14 resigned workers back with the same seniority. Factory management also agreed to stop interfering in the workers right to form, join and

assist a basic union; recognize the union and to negotiate with the unions on all matters of employment. However, despite the important progress that was made on many issues, some important points remain open (e.g. payment of compensation to resigned workers who do not want to be reinstated) and disagreement remained on the 5 points that were put forward by the factory management, as STUM indicated that it did not have a chance to review these before the meeting. It was suggested STUM is to review and comment on the 5-points brought up by SVT and add points of its own for inclusion in a final agreement.

On 16 December STUM shared its draft agreement with the factory management, which, integrating the 5 points of the factory management, but also included a number of additional points. The agreement consisted of 16 points altogether. A meeting was scheduled for 21 December with the aim to reach agreement on all the points. Through there was no disagreement about reinstatement of the 2 workers, disagreement remained about the terms of reinstatement of the group of resigned workers and about the composition of the WCC. Moreover, the factory insisted that they need more time to review, investigate and verify the circumstances which prompted workers to resign. Factory was willing to have a third party like FWF to do the investigation and willing to comply with results of the investigation. STUM and union did not agree to this. The meeting ended with no agreement reached.

In the meanwhile, the 2 workers decided not to be reinstated out of solidarity with the larger group of resigned workers. As the 2 workers were not reinstated, the Ministry of Labour sued the factory for not complying with the Arbitration Council decision of 21 November 2016. On 18 January 2017, the supreme court ruled that the factory was to pay a fine of Kyat 2 mln, in accordance with the article No. 48-a of the settlement of labor dispute law (2012). If the verdict was not followed, one month imprisonment without hard work would be penalized. From the fine, compensation was to be paid to the 2 fired workers. The court confirmed that on 19 January 2017 the Kyat 2 million fine was transferred by the factory management into the designated bank account.

During the course of January 2017, the Clean Clothes Campaign informed FWF that STUM eventually did agree to the investigation and continued facilitation by FWF. A Terms of Reference for the investigation into the circumstances that prompted workers to resign were elaborated by FWF and shared with the CCC and STUM. Inputs received were incorporated and the final TOR was endorsed mid-February. The investigation took place in February and early March. In the list of 15 workers, FWF could reach 9 workers for individual interviews. FWF repeatedly tried to reach all workers, but contact numbers of the remaining 6 workers were switched off and could thus not be reached.

The investigation concluded, from the individual interviews, that 8 workers confirmed that they resigned because of the pressure and discriminatory behavior of the management of the factory. One worker said that he left because of his personal (family) reasons. The investigation concluded that there were circumstances beyond the doubt that the ECs and the union members were under credible pressure to resign from the factory because they were emotionally intimidated and threatened by the factory management, and their freedom of association and movement were inappropriately and negatively affected. One worker already rejoined the factory. The investigation report was shared with STUM on 9 March to give it the opportunity to respond first. The report was subsequently shared by the brands with the factory management on 13 March 2017. On 22 March 2017, the factory management confirmed its agreement to reinstate the 7 workers for which the FWF investigation established that they felt pressured to resign (see chapter 9 Remediation below).

On 8 July, FWF received an additional complaint from STUM that suggests that the factory management continues to interfere with ongoing efforts to establishment the union at the factory. FWF investigated the complaint during offsite interviews with current workers, and during onsite interviews which took place at the time of the FWF audit on 27 – 28 July 2017. FWF also talked to the factory management team including the factory manager and HR manager. The preliminary findings were subsequently discussed with STUM on 10 August. Feedback from STUM led to further crosschecking including worker interviews. FWF investigation report concluded the following:

- FWF observed that the factory management does not oppose the union establishment in accordance with the law. The signed document with all the supervisors is an indication that the factory does not oppose or hinder the union formation process and recognized the right to FOA. This is also evidenced by the fact that the factory management readily agreed to allow the 7 EC members to go to the labour office in order to sign the necessary form at the labour office needed for union registration, and take leave to attend the financial training the following day.
- However, it was also clear that there was no open dialogue among the concerned parties yet to discuss about the union formation. Although the management has a signed agreement with the supervisors, it has not disseminated it to all the workers. As a result, each party has formed its own assumptions. In this regard, the previous dismissal of the two union leaders has instilled a real concern among the workers to exercise their right to FOA and weakens the trust in the leadership of current union organizers. Against this background, actions by the management are easily mistrusted and perceived in a negative way.
- Moreover, there are misconceptions of some supervisors about the union establishment. Several supervisors appear to have a negative attitude towards the union. This is most apparent in Line 2, where there has been frequent conflict and mistrust between the Line supervisor and the workers. The Line-2 supervisor has also publicly made derogative comments about workers who want to join the union, which discourages workers from joining the union.
- In addition, there is an apparent mistrust between the current WCC workers' representatives and the union organizers, which divides workers. Workers also have lack of knowledge on the difference between the WCC and labour union.
- Consequently, the union organizers inside the factory are facing those challenges, which render the union's efforts to enlist more workers more difficult

Based on the above, FWF recommended to the factory management to (a) disseminate its written policy on FOA to all the factory workers so that the workers feel comfortable joining the new union; (b) the factory management is to ensure that all supervisors are fully aware and abide by the factory's policy and refrain from making any negative comments or discriminate against any workers that want to join the union; (c) The factory management is to support all the necessary documents required for the new union establishment, as required by the labour office; and (d) Given the history, the factory management is to refrain from all actions that could be 'perceived' as undermining the trust of workers to join the union, including asking questions about workers' motivation to join the union.

Following the investigation, on 26 August factory management indicated that it has posted a Public Announcement on Freedom of Association on the notice board. However, STUM indicated that the wording in Burmese of the announcement was incorrect, as it indicated that the factory does not prohibit the workers to organize a 'philanthropic organization' rather than a 'union'.

Meanwhile, Workers Rights Consortium (WRC) and Clean Clothes Campaign increased pressure and wrote letters to some of the other brands that source at the factory, and its mother company abroad.

These developments gave FWF the opportunity to reopen the discussions with the factory management. Factory management agreed to meet with the 2 workers on 22 September 2017. On the same day, a meeting between the factory management and the factory union was to be held. Both workers and factory management requested that FWF facilitates the meeting, and recognize FWF as an independent party. International labour NGOs and STUM insisted that STUM is present in the meeting, which was not accepted by the factory management. Workers and factory union confirmed that they wanted to proceed with the meeting, even if that means that the meeting takes place without STUM presence. The outcome of the meeting is reflected under 9 Remediation.

## 9. Remediation

### *On the reinstatement of resigned workers:*

On 22 March 2017, following the investigation report, factory management confirmed the following:

- to pay compensation for 7 workers, for which the investigation established that they felt pressured to resign. The amount of the compensation is calculated by multiplying their daily wage to the number of days from their resignation date to 28th February 2017. OT and other incentives are not included.
- any of the 14 employees, who wishes to return, can return to work immediately with 1) same wage 2) same skill matrix (without the need to be re-examined) and 3) same position.

STUM and workers expressed appreciation for the offer of reinstatement, but insisted that the month of March was to be included in the compensation as well. On 6 April, factory management agreed to this. STUM appreciated this and agreed to the terms of reinstatement. Subsequently, on 10 April 2017, five of the workers were reinstated. A sixth worker indicated that she wanted to resume on 24 April and the 7<sup>th</sup> worker finally decided not to be reinstated.

### *On the reinstatement of 2 fired workers:*

A meeting was held between factory management and the 2 workers on 22 September 2017. The meeting, which was facilitated by FWF, resulted in the following agreement:

- Reinstatement of the 2 workers in their previous positions within the factory.
- Workers agreed to receive the basic salary for the compensation that covered 12 months.
- Both the factory management and the workers signed the employment contract with their original starting date. Workers kept the original copy. The signature of witness for employer and employee will be signed on 10 October 2017, and the factory management would send the complete employment contract to the labour office for the official endorsement.
- The factory management will ensure to protect the two workers from any form of retaliation either from the management or co-workers when they come back to the factory.

### *On Freedom of Association*

- The factory management agreed to correct “Labour Organization” as mentioned in the law, in the Burmese version of the FOA policy announcement to the workers.
- The factory management agreed to give the original endorsement letter for union establishment to the union leader on 23 September 2017.
- The workers agreed to review the agreed 15 points by discussing with the current union leaders, and will come up with the updated list of agreement relevant to current conditions of the factory. Both the factory management and the union will discuss about the revised agreement on 10 October 2017, and will sign on it upon the agreement from both sides.

Finally, on 10 October a meeting was held with the factory management and the 2 workers; followed by a meeting between the factory management and the factory union. Both meetings were facilitated by FWF. Results of the meetings:

- Factory management shared the signed employment contracts, as agreed upon on 22 September, in both English and Myanmar.
- Since their seniority is fully given, the factory only has to extend their old employment contracts. Therefore, both workers got the copy of contract extension document signed by the factory manager, and will get the copy again after the labour officer signs the extension.

- It is agreed that one worker would start the work at the factory on 11 October 2017, while the other would start the work on 25 October 2017 due to his contract with the current work.

After the handover of employment documents, the meeting proceeded with all the union EC members to discuss the 17-points agreement updated by both the SVT management and the union. All 9 union EC members including the two reinstated workers joined the meeting with factory management.

FWF facilitated the meeting by introduction to each other, and highlighting the importance of the meeting for the better of workers and the factory. Then, the union leader explained constructively why each point is important to include in the agreement given the situation at the factory. Factory management was receptive to all the feedback and information provided by the union ECs, and all 17 points were agreed and signed by both parties. FWF also encouraged both parties to have dialogue for any concern, conflict or issue, and offered our help when it is necessary.

The current WCC will expire on 17 November, so the factory management was keen to arrange new elections. It was decided to postpone until early November. In accordance with the law, factory management confirmed that if the union represents less than 50% of the workforce it may nominate one worker representative. If the union represents more than 50%, the union would be entitled to nominate two representatives.

## 10. Verification

### *On the resigned workers:*

- On 10 April 2017, five of the workers were reinstated. A sixth worker was reinstated on 24 April 2017.
- On Sunday 23 April, FWF and STUM were present when the factory paid compensation to 7 workers concerned.

### *On the 2 fired union leaders*

- On 10 October 2017, FWF witnessed that employment contracts were provided to the 2 workers to formalize their reinstatement. Workers were reinstated with fully seniority.
- Full compensation was paid to the two workers that, combined with compensation paid via the court, would amount to 12 months.
- One of the workers was resumed his work in the factory on 10 October, while the second worker requested three times to postpone the date of his reinstatement to (eventually) 6 November 2017. On this date of his reinstatement, however, the worker did not show up and he informed a worker in his former department by telephone that he does not want to come back to the factory.

### *On Freedom of Association*

- Factory management corrected the public announcement on Freedom of Association
- Factory management cooperated with the union establishment, e.g. it allowed the EC of the factory union to take leave to go to the labour office and sign an endorsement letter, as required by the labour office.
- On 17 October, the labour union shared Form 6 signed by the labour office which recognized the union application by the government. According to the union leaders, this form is regarded as the official registration.



## 11. Evaluation by the complainant

- The 2 workers indicated that they were satisfied with their reinstatement and compensation provided to them. One worker, however, at the day of his planned reinstatement decided not to return to the factory. FWF repeatedly tried to contact him to understand the reasons for his decision, but he could not be reached.
- The reinstated resigned workers were satisfied with their reinstatement and compensation provided to them. Especially the fact that they successfully argued for an additional month of compensation was appreciated. Workers were not entirely satisfied with the fact that they did not receive their previous full seniority, but decided to accept the reinstatement nonetheless.
- Factory union was satisfied with the improvements in the climate towards Freedom of Association in the factory and with the factory's collaboration towards the successful union establishment.
- One of the reinstated workers shared with FWF about a complaint from some workers who are asked to work on Dapaweli Holiday in replacement of the public holiday back in 2016. However, as those workers were not employees of the factory during the public holiday in 2016, they complained to the union that it was not fair to ask them to work as a replacement of the time they were not benefited. FWF suggested the union to discuss about this issue with the factory manager and HR manager. Initially the factory management refused his reasoning, but later they understood why the new workers were not satisfied, and then promised that they would discuss with the factory's top management. As a result, in the end the factory decided to close for all workers for the Dapaweli public holiday. This is a good example of social dialogue and very promising sign that both sides are willing to listen to each other seriously.
- STUM indicated that it one would still need to be wary for Freedom of Association violations in the factory. STUM also indicated that it was not satisfied with the fact that it was not included in the meeting between the two fired workers and factory management, as this was perceived to create division between the factory union and federation. FWF explained that this happened in the interest, and with the explicit agreement, of the two fired workers and factory union.