

## Complaint – Jack Wolfskin– Indonesia

### 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

### 2. Accused party

A factory located in Indonesia supplying Jack Wolfskin

### 3. Date of receiving complaint

FWF took the complaint into the FWF complaint procedure after the union filed the complaint directly with FWF. The date FWF received the complaint letter from complainant is 16<sup>th</sup> November 2015.

### 4. Filing party

Complaint letter was sent to FWF by Chair of one of the factory's trade unions (FSPMI) representing its members in the factory.

### 5. The complaint

After an Indonesian garment manufacturing company, owning 2 factories at different locations (one in Cikupa, Tangerang, and the other in Majalengka, West Java), employing in total around 4000 workers, went bankrupt in April 2015, all workers' contracts were ended June 21, 2015. The complainant claims workers have not received their due wages for the period March-June 2015 and have not received any of the severance payments and fringe benefits still owed to them according to Indonesia law. The union FSPMI does not expect the legal process in Indonesia to provide the workers the payments they are owed.

## Admissibility

FWF decided that the case is admissible on December 10<sup>th</sup> 2015.

The factory in Cikupa, Tangerang, was an active supplier to FWF member Jack Wolfskin. The last production to Jack Wolfskin took place February 2015.

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

- Payment of a living wage
- A legally binding employment relationship

This claim relates to the two above mentioned labour standards of FWF's Code of Labour Practices. Nonpayment of wages falls under the FWF CoLP standard 'Living Wage', whereas nonpayment of severance pay and fringe benefits after dismissal falls under the standard 'Legally binding employment relationship' (obligations to employees under labour or social security laws and regulations arising from the regular employment relationship).

## 6. Investigation

Since the factory has gone bankrupt, management can no longer be contacted to provide information and remediation. The FWF complaint procedure assumes there is an active supplier which enables remediation. In a case of bankruptcy, there is no longer an active supplier and counterpart for the FWF brand. Because of this, options for investigation of the case are also limited.

FWF received information from factory trade union FSPMI (incl. chronology and financial data from the curator) and other stakeholders, such as Worker Rights Consortium (WRC). The [WRC account](#)<sup>1</sup> of the case (December 21, 2015) is accepted by the complainant and Jack Wolfskin to provide a solid overview of the case, which means information from this report can feed into the investigation.

Furthermore FWF reviewed a.o. information in the FWF members' supplier database, information on the order data in financial years of Jack Wolfskin, social audit reports of factory (Cikupa, Tangerang) in in the period 2011-2015 and other internal reports and company information of Jack Wolfskin. FWF moreover consulted international experts on international sourcing strategies in the garment industry and on the UN Guiding Principles on Business and Human Rights.

## 7. Findings and conclusions

### On the claim of the complainant:

It can be concluded that the claim of the workers and the union of not having received

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<sup>1</sup> 'Worker Rights Consortium assessment PT Jaba Garmino (Indonesia) Findings, Recommendations and Status', December 18, 2015, by Worker Rights Consortium, <http://workersrights.org/freports/WRC%20Assessment%20re%20Jaba%20Garmino%20%28Indonesia%29%2012.21.2015.pdf>

- wages from March till the dismissal due to bankruptcy became effective on June 21 2015 and
- severance payments and fringe benefits after dismissal

is justified.

Nevertheless, the company having the employer responsibilities and owning the 2 factories became insolvent and all the financial affairs were handed over to the curator.

The curator, appointed by the court to administer the factory's assets, issued workers' dismissal notices on May 7 2015, stating workers dismissal would be effective June 21, 2015. The Ministry of Labor has confirmed that the workers are entitled to all unpaid wages for March-June 2015, to severance payments, and to the annual holiday bonus for 2015. According to the complainant and the WRC report, the curator has confirmed that workers of the 2 factories are owed in total Rp140,969,105,614.40. This sum is mentioned to only cover workers who have filed claims with the curator via a union or attorney.

The Worker Rights Consortium report states it is extremely unlikely that workers receive payment of funds owed to them, in a timely or substantial manner, through pursuing their claim through the bankruptcy process, because of several reasons. Workers' claims hold a disadvantaged legal position vis-à-vis the secured creditors (which are recognized by the court to have preferential claims over other creditors); WRC and complainant do not expect the auction of company assets will be able to cover a considerable part of all claims of creditors; even if workers would be allocated funds through the sale of assets by the curator, it can be assumed that workers may have to wait years because of legal delays before seeing any of these funds (which would likely only compensate (part of the) due wages, not the severance pay and fringe benefits).

**On the relation between FWF member Jack Wolfskin's business practices and the labour conditions and financial problems at its supplier:**

As mentioned before, the FWF complaint procedure assumes a business relation with an active supplier to enable remediation by the supplier, with the support/mediation of the FWF member. In this case the supplier, which has the legal employers' responsibilities towards the workers, is bankrupt and no longer active. The curator is appointed to deal with the claims of the creditors and workers of the company.

This means that in this case the FWF complaint procedure will conclude on the extent to which remediation can be expected from Jack Wolfskin, as buyer of the bankrupt factory, towards the workers employed by the factory itself. To this end, FWF investigated if there is reason to believe that there is a causal relation between the business practices of Jack Wolfskin and the bankruptcy. Also the actions Jack Wolfskin took to monitor and improve social conditions at the factory before bankruptcy and its response to the bankruptcy are taken into consideration.

Overall FWF concludes that Jack Wolfskin:

- paid its own bills in time for its goods produced at the factory and shared production planning well in advance
- did not withdraw orders, unlike what other customers possibly did
- actively monitored labour conditions and made an endeavor to realize corrective actions and improvements on labour conditions in the factory over years
- actively involved other customers and its buying agent on a complaint case in 2014 to join actions towards management at the factory (and convinced the factory management to accept more than just one union and make a public statement (which was developed

- together with WRC) on Freedom of Association and organize a training for management and workers)
- was actively engaged in this complaint case and in touch with stakeholders from the start, both directly and through FWF
  - actively informed and tried to involve other customers from the start, as also suggested by FWF, and involved its buying agent on the current complaint when approached by the local union, in an endeavour to join efforts to promote workers getting their rights, a.o.:
    - Jack Wolfskin sent a letter to the supplier in March 2015 on outstanding wage payments, urging the supplier to pay workers their full wages, including overtime premium and other benefits, for February and March. In the end, workers received their February wages in April.
    - Jack Wolfskin sent a letter to the appointed curators, as suggested by FWF, together with its Indonesian buying agent, with the appeal to make sure that workers receive their due wages and other benefits they are legally entitled to, and asked other customers of the factory to do the same
  - did not conduct any of the buyers' business practices that factory management gave as a reason for its financial problems (as recorded at a hearing on the suspension of debt payments to creditors at the Commercial Court Jakarta, January 2nd, 2015).

FWF has not been able to conclude that any of the reasons given in Commercial Court apply to Jack Wolfskin.

#### **Conclusion on the responsibilities of Jack Wolfskin:**

Through FWF membership, Jack Wolfskin is committed to help support (the development of) good labour conditions at suppliers and conduct social business practices which support this at supplier level.

FWF concludes that Jack Wolfskin has taken its responsibility to conduct business with the supplier concerned in a responsible way, according to FWF standards and expectations. It has monitored labour conditions at the factory and subsequently motivated the supplier to improve the labour conditions at the factory. FWF cannot find reason to believe that its sourcing practices may have caused or contributed to the bankruptcy. Furthermore, Jack Wolfskin tried to mitigate the harm of the bankruptcy to the workers (as it did with the harm of an earlier complaint).

#### **Jack Wolfskin meets the requirements of FWF:**

Even though FWF does not require this and there is also no legal obligation for Jack Wolfskin to pay outstanding wages and other outstanding payments to workers, FWF does recommend Jack Wolfskin, on a voluntary basis and as gesture of solidarity with the workers, to contribute to (setting up) a solidarity fund for / consider solidarity payments to the former workers working at its supplier, the factory in Cikupa, Tangerang.

Herewith Jack Wolfskin can show support to the workers, especially considering the high impact of the bankruptcy on the daily lives and living conditions of the former workers of the factory.

Furthermore, Jack Wolfskin can consider to base a voluntary donation to be paid to the workers of the factory in Cikupa, Tangerang, on its leverage at the factory (Jack Wolfskin's buying share of the total factory production volume produced yearly by the factory) and an average sum per worker of due wages, severance pay and fringe benefits. For this solidarity payment, the number



of workers at the social audit done in January 2015 can be used as basis ((a total number of 1284 employees at the time of the audit, of which 830 at the garment division where Jack Wolfskins production was made).

FWF proposes to base the calculation of the voluntary payment on:

- The leverage of Jack Wolfskin based on its yearly order volume in either the amount of pieces in relation to the total yearly factory production capacity in pieces or on the bases of FOB/financial order of Jack Wolfskin in relation to total factory turnover.
- Based on available data of the yearly production capacity of the factory in amount of pieces and the amount of pieces bought by Jack Wolfskin, FWF calculates this leverage to be 2.04%.
- Based on a representative year, for which financial data is available on total factory capacity and Jack Wolfskin's buyer share.

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FWF recommends making sure that this solidarity payment will be done in such a way that the payments will actually get to the workers. For this purpose, this payment process should be witnessed and guided by independent parties. The complainant party, the factory union FSPMI, should have the possibility to comment on the procedure beforehand and should be able to observe the payment process.

## **8. Remediation**

Jack Wolfskin, on a voluntary basis, supported the former workers of the factory in Cikupa, Tangerang, with a financial payment, which reflects Jack Wolfskin's share at the factory.

The payment process was done on a collaborative basis involving Jack Wolfskin, the two trade unions (both at the factory level as well as the national level), FWF, the buying agent, the Worker Rights Consortium and the curator. The curator transferred money via bank transfer to 1963 workers. Exactly 100 workers for various reasons were unable/unwilling to provide bank account information. To compensate those workers, the curator transferred the remaining money to the two trade unions to distribute to these workers.

This donation does not imply that Jack Wolfskin can be held responsible for the financial situation of its (former) supplier(s), nor can it be used as a basis for future claims in this or other cases.

## **9. Verification**

As FWF was closely involved in the collaborative process described above, it is able to verify that workers received the funds.

## **10. Evaluation by the complainant**

In this case, the complainants are all the workers previously employed at the factory located in Cikupa, Tangerang. The complainants were on the one hand pleased to be able to receive



compensation. On the other hand, they felt that the compensation provided was small in comparison to the amount still owed them as described earlier in the report.