



Complaint – Nudie Jeans– India

Status: Under remediation

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

Nudie Jeans

2. Accused party

A factory located in India supplying Nudie Jeans.

3. Date of receiving complaint

Januar to July 2016.

4. Filing party

Six workers that were dismissed by the factory. Their identity has been disclosed to the factory with their consent.

5. The complaint

From May-June 2015 to June-July 2016 a total of 8 workers have been dismissed/terminated by the factory and out of this 6 approached FWF to register their complaints in January and July 2016.

The complainants claim that they were given this severe punishment of dismissal based on petty issues; most of them on charges of engaging in conflicts (verbal, no physical violence) with co-workers. In all cases but one, both the workers engaged in conflict were dismissed/terminated. The complainants claim that they were not given opportunity to defend themselves and to prove that they were not guilty. No formal legal procedures were followed for disciplinary action and termination/dismissal.

Based on above arguments the complainants claimed that the immediate reasons of dismissals/terminations were not the actual reasons of dismissals/terminations. They claim that those dismissed/terminated were identified and targeted well before by the management on the basis of two factors: a) those alleged for engaging in unionization efforts and those who opposed the unjust behavior of supervisors to them or to other workers; and b) those who frequently denied to work overtime in late hours (beyond 6pm).

6. Admissibility

FWF decided that the case is admissible on 12th July.

The factory is an active supplier of Nudie Jeans, a member of FWF.

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

- Employment is freely chosen
- No discrimination in employment
- Freedom of association
- No excessive working hours
- Legally binding employment relationships

7. Investigation

FWF received one initial complaint regarding this case in January 2016. During the investigation, FWF was however unable to reach a final conclusion which version was correct; management claiming that the worker left on her own wish or the worker claiming that she had been dismissed.

The complaint was closed, but then several other workers who had heard about FWF during the first investigation also called the FWF hotline in July 2016 sharing similar stories as the worker who complained in January. After receiving these calls, FWF sent a team for a second investigation in July. During this investigation interviews were conducted with all complainants (except for one who was not available), four neutral workers still working in the factory (two lastly chose not to come forward for interviews), one former worker, and the management. Relevant documents were also checked to verify the facts and see the legality of the process of disciplinary actions. The investigation team also tried to contact two other dismissed workers, who had not registered a complaint, but were unable to reach them.

8. Findings, conclusions and remediation

During the investigation, the team was able to identify a pattern of common issues, which are presented in the following table. A detailed account of every individual case has been shared with Nudie Jeans and the factory.

Common Issues of Concern in Complaints	Management's Response	The Legal Position and our explanation	Actions recommended with brief explanations
<p>Formal legal procedures of disciplinary actions/dismissals/terminations were not followed.</p> <ul style="list-style-type: none"> -No so-cause notice -No legal domestic enquiry -Workers were not given a fair chance to defend themselves -Letters of dismissals/terminations were not given to the workers 	<p>Accepted that legal procedures were not followed and agreed that in future it will be insured that all legal procedures are followed in such cases, and also agreed to follow the legal procedures in current cases to the extent</p>	<p>If a legally justified enquiry was not held then it cannot be argued that those workers were given enough opportunity to defend themselves; and in such situations dismissals cannot be legally justified.</p> <p>INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946, Section 14 (4)</p> <p>(b-a) In the enquiry, the workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member.</p>	<p>Legal procedures need to be followed in all cases, current and future, and it is to be insured that no disproportionate punishment is awarded to any worker</p>

	<p>possible in this stage But argued that all were given enough opportunity to defend themselves</p>	<p>(b-b) The proceedings of the enquiry shall be recorded in Hindi or in English, the language of the State where the industrial establishment is located, whichever is preferred by the workman. (b-c) The proceedings of the inquiry shall be completed within a period of three months: Provided that the period of three months may, for reasons to be recorded in writing, be extended by such further period as may be deemed necessary by the inquiry officer. (c) If on the conclusion of the enquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly: 16. Certificate on termination of service.--Every permanent workman shall be entitled to a service certificate at the time of his dismissal, discharge or retirement from service.</p>	
<p>Dismissal without notice pay is disproportionate punishment in all cases except in one case and possibly another. In all Other cases: By all means, dismissals are legally unjustified and highly disproportionate punishment. For lack of any domestic enquiry, the dismissals appear to be legally invalid and indicate towards some kind of victimisation.</p>	<p>Argued that two workers were terminated and not dismissed for any misconduct; and that the rest were not dismissed but they resigned. Agreed to have a fresh look at two cases and insure that there is no</p>	<p>The workers who are shown as resigned have not submitted any resignation. Therefore they can either be considered as terminated or dismissed without following the legal procedures and without holding enquiry. Therefore the cases of those terminated and those shown to have resigned have no difference. In either case they need to be taken back in job or paid notice pay and retrenchment compensation. Dismissal without notice pay can only be justified in</p>	<p>There is a need to have a fresh look in all cases possible legal procedures need to be followed to insure that there is no disproportionate punishment to any worker.</p>



<p>Resigned or Dismissed or terminated: In documents all those thrown out are shown to have resigned except two workers. However, there is no resignation letter of workers in the documents and HR representative also accepted that they have not submitted resignations, except in one case for which management claims she has submitted resignation but she denies.</p> <p>Two workers are shown to have been terminated rather than dismissed for any misconduct. But the whole story and also the documents provide evidence that their terminations were also linked with disciplinary actions.</p>	<p>disproportionate punishment.</p>	<p>cases of grave misconducts as provided ID Act and Standing Orders and also only after these misconducts are proved in domestic enquiry.</p> <p>Industrial Employment (Standing Orders) Central Rules, 1946 Section 14</p> <p>(2) A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.</p> <p>(3) The following acts and omissions shall be treated as misconduct.</p> <p>(a) wilful in subordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior,</p> <p>(b) theft, fraud or dishonesty in connection with the employer’s business or property,</p> <p>(c) willful damage to or loss of employer’s goods or property,</p> <p>(d) taking or giving bribes or any illegal gratification,</p> <p>(e) habitual absence without leave or absence without leave for more than 10 days,</p> <p>(f) habitual late attendance,</p> <p>(g) habitual breach of any law applicable to the establishment,</p> <p>(h) riotous or disorderly behaviors during working hours at the establishment or any act subversive of discipline,</p> <p>(i) habitual negligence or neglect of work,</p> <p>(j) frequent repetition of any act or omission for which</p>	<p>If these cases are considered dismissals for misconduct then all of them need to be taken back in the job, and a fresh and legally justified enquiry needs to be conducted to insure that there is no disproportionate punishment to any worker.</p> <p>If these cases are not considered as dismissals then they all fall in category of termination (without misconduct); and then all workers need to be paid notice pay and retrenchment compensation</p>
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<p>Non-payment of notice pay and retrenchment compensation</p> <p>In cases of terminations without misconduct</p>	<p>Need to respond (the issue emerged during document check and therefore was not</p>	<p>ID Act 1947: section 25F Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than</p>	<p>If these cases are considered dismissals for misconduct then all of them need to be</p>

<p>the workers must be paid notice pay and retrenchment compensation. This may also apply to the cases of dismissals where charges are not of grave nature. However, no workers were paid notice pay except two, and no workers, including these two, were paid retrenchment compensation.</p> <p>As per the amendment in ID Act done by government of Madhya Pradesh, 3 months' notice pay is required to be paid to the workers, however, only 1 month notice pay is paid to both the above workers</p>	<p>discussed in the meeting with management</p>	<p>one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months</p> <p>Part VI: AMENDMENT OF THE INDUSTRIAL DISPUTES ACT, 1947 (ii) in Section 25-F,- (a) in clause (a), for the words “one month’s notice”, the words “three months’ notice” shall be substituted; (b) for clause (b), the following clause shall be substituted, namely:- “(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months, or an amount equivalent to his three months’ average pay, whichever is more; and”: (MADHYA PRADESH LABOUR LAWS (AMENDMENT) AND MISCELLANEOUS PROVISIONS ACT, 2015; M.P.G.G. dt. 27.11.2015, November 27, 2015, MADHYA PRADESH ACT No. 21 of 2015</p>	<p>taken back in job, and a fresh enquiry needs to be conducted to insure that there is no disproportionate punishment to any worker.</p> <p>If these cases are not considered as dismissals then they all fall in category of termination (without misconduct); and then all workers needs to be paid 3 months’ notice pay and retrenchment compensation equivalent to 3 months’ wages</p>
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<p>In cases of conflicts between the workers, both accused and aggrieved were dismissed, except in the case of one worker where only he was dismissed. This dynamics may lead to a situation when those who are oppressed by some other workers or supervisors may not dare to complain for fear of indiscriminate action of dismissal</p>	<p>Agreed to have a relook at two cases and insure that there is no disproportionate punishment.</p>	<p>Law on domestic enquiry as referred above</p>	<p>If these cases are considered dismissal for misconduct then there is a need to conduct domestic enquiry following all legal procedures in all cases to transparently decide who is guilty and who is not and whoever is found guilty of misconduct is awarded a punishment proportionate to his/her misconduct</p>
<p>A practice of closing the gate for workers for 5-15 days as a measure of punishment for some misconduct. This is a general practice and not only linked to the current cases</p>	<p>Argued that they were not stopped by the management, they themselves stopped coming to the factory. There is no such practice</p>	<p>The argument of the management can be accepted only if there were any letters in the nature of so cause notice seeking the explanation of workers for their absence. But we have not found any such documentary evidence. Legally, A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct after a legally justified enquiry. And if the workers are suspended pending enquiry they must receive subsistence allowance as per legal provisions</p>	<p>This practice is legally not justified and therefore needs to be stopped</p>
<p>Some workers allege that immediate issues cited were not the real factors behind their dismissals/terminations. They cite two issues as real factors behind their dismissals/terminations:</p>	<p>Explained that there was an attempt of unionisation in the company with outside influence. There after a</p>	<p>ID Act 1947 (THE FIFTH SCHEDULE): UNFAIR LABOUR PRACTICES I. ON THE PART OF EMPLOYERS AND TRADE UNIONS OF EMPLOYERS 1. To interfere with, restrain from, or coerce,</p>	<p>There is a need to have a fresh look at the cases concerned to insure that there is no victimisation of workers</p>

<p>a) Those not willing to do overtime in late hours or on weekly offs b) Those alleged for engagement in unionisation efforts or those who opposed the misbehaviour or oppression by supervisors</p> <p>In the face of the facts that most of the workers were thrown out on very simple charges, this allegation gets some ground.</p>	<p>meeting of workers (2 workers from each line) was conducted by a senior management official. In this meeting it was explained to the workers that unionisation may not be bad but outside influence in unionisation may prove disastrous. The importance of works committee was also explained to them. However, categorically denied any charges of targeting any workers for engaging in unionisation and stated that there was no connection of the issue of unionisation or the issue of doing or not doing overtime to the actions of terminations or dismissals</p>	<p>workmen in the exercise of their right to organise, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say—(a) threatening workmen with discharge or dismissal, if they join a trade union;.....</p> <p>5. To discharge or dismiss workmen— (a) by way of victimisation; (b) not in good faith, but in the colourable exercise of the employer’s rights; (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence; (d) for patently false reasons; (e) on untrue or trumped up allegations of absence without leave; (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste; (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.</p>	<p>for allegations of engaging in unionisation or for not being willing to do overtime.</p> <p>In addition, management should communicate to all workers that they are free to form a union. This might include engaging with persons outside the factory.</p>
<p>Harassment including Sexual Harassment by Supervisors</p> <p>Most of the workers interviewed alleged that:</p> <p>a) 2-3 supervisors particularly those looking after line no. 6&7 engage in misbehaviour and oppression of workers b) These supervisors engage in sexual</p>	<p>Agreed to conduct an investigation on the issue and take effective measures to ensure that the workplace is completely safe for women and there is no harassment of any kind</p>	<p>With emergence of issues this is an Ethical need to conduct an impartial investigation to see whether such issues exist and to bring out the real nature of dynamics responsible for creating such conditions</p> <p>Preventive measures to avoid any incidences of harassment including sexual harassment and sexual exploitation</p>	<p>There is an urgent need to conduct an impartial investigation on this issue, with an extra focus on investigating the existing dynamics in production line no. 6&7 and take effective</p>

<p>harassment of women workers c) They also indicated about sexual exploitation culminating in to regular sexual relations linked with favouritism by supervisors. It is interesting to note that all workers facing dismissals and terminations are from these two production lines (6&7), except one who is from line no.8</p>	<p>including sexual harassment and sexual exploitation</p>		<p>measures to insure that the supervisors are not in a position to put any undue pressure on workers and are dis-empowered to take any undue advantage of their positions and sexually harass or exploit women workers</p>
<p>Workers allege that there are discrimination in the wage increments linked to favouritism by supervisors</p>	<p>The wage increments are done according to wage increment policy and there is no discrimination of any kind in this regards. However, it may be possible that workers do not fully understand the Wage increment policy. Therefore a meeting of workers will be organised to explain the wage increment policy along with many other management policies.</p>	<p>Principle of equal opportunity and no discrimination</p>	<p>There was no copy of wage increment policy in the unit when we visited. The policy needs to be distributed to all workers and also needs to be properly explained to them Wage increment policy is not clear about the criteria adopted for evaluations of workers' performance. The Criteria for evaluation of workers' performance need to be clearly spelled out in the policy to bring transparency.</p>
<p>Eligibility for availing earned leave needs to be changed from 240 days to 180 days</p>	<p>Need to respond (the issue emerged in</p>	<p>Part V: AMENDMENT OF THE FACTORIES ACT, 1948</p>	<p>Eligibility criteria for availing EL needs to be</p>

<p>in accordance with the new law</p>	<p>discussions during document check and therefore was not discussed in the meeting with management)</p>	<p>(iii) in Section 79, for sub-section (1) and Explanation 1, the following sub-section and Explanation shall be substituted, namely:- “(I) Every worker who has worked for a period of 180 days or more in a factory during a calendar year shall be allowed during the same calendar year, leave with wages for a number of days calculated at the rate of- (i) if an adult, one day for every twenty days of work performed by him during the calendar year; (ii) if a child, one day for every fifteen days of work performed by him during the calendar year. Explanation 1.- For the purpose of this sub-section- (a) any days of lay-off, by agreement or contract or as permissible under the standing orders; (b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and (c) the leave earned in the year prior to that in which the leave is enjoyed, shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 180 days or more”. (MADHYA PRADESH LABOUR LAWS (AMENDMENT) AND MISCELLANEOUS PROVISIONS ACT, 2015; M.P.G.G. dt. 27.11.2015, November 27, 2015, MADHYA PRADESH ACT No. 21 of 2015</p>	<p>changed from 240 days to 180 days and accordingly this benefit needs to be provided to workers from 27.11.2015</p>
<p>Workers alleged that the representative of the contractor demand INR 1000 from workers for applying for PF withdrawal</p>	<p>Agreed to look in to the issue and ensure that there is no such exploitation of workers</p>	<p>Preventive measures to stop exploitation and corruption</p>	<p>Urgent need for an intervention to stop such exploitation of workers</p>



FWF requires Nudie Jeans to discuss the findings with management and ensure that all cases are re-assessed and solved in a legally compliant manner, as outlined in the table. Other findings that address structural issues beyond individual cases (freedom of association, sexual harassment, disciplinary practices etc.) must be remediated as well.

9. Verification

FWF will contact all workers at a later stage to verify whether their cases were re-assessed and solved in a legally compliant manner.

FWF will conduct a verification audit in 2017 to assess whether structural remediation steps have been implemented.

10. Evaluation by the complainant

FWF will contact all workers at a later stage to verify whether their cases were re-assessed and solved in a legally compliant manner.