



## Complaint – Jack Wolfskin, Salewa & Dynafit – Myanmar

### Status: Closed

*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

Salewa & Dynafit

### 2. Accused party

A shared supplier located in Myanmar supplying Jack Wolfskin and Salewa & Dynafit.

### 3. Date of receiving complaint

16 August 2016

### 4. Filing party

The Confederation of Trade Unions of Myanmar (CTUM).

### 5. The complaint

A previous complaint case, [the report](#) of which is posted on the FWF website, resulted in the successful reinstatement of 24 dismissed workers.

Following this reinstatement, FWF received reports that 1 of the 24 reinstated workers, a union leader, was again dismissed on 20 June. The worker, supported by CTUM, contested the legality of his dismissal and demanded his immediate reinstatement.

## 6. Admissibility

FWF decided that the case is admissible on 17 September 2016. The factory is an active supplier of Jack Wolfskin, and Salewa & Dynafit, 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 Salewa & Dynafit immediately contacted the supplier and asked for a response. FWF also made enquiries with the CTUM. Through a number of communications, FWF established that the following has transpired:

- The worker was in fact dismissed on 20 June 2016.
- The supplier provided the following justification for the dismissal:
  - When reinstated workers returned, the factory specified that returning workers had to agree to a number of terms. One of the terms was that the factory is at liberty to assign workers to a location where they are needed most for the factory's operations.
  - One of the workers, a union member, defied these terms and did not want to work at the location (sample room) where he was assigned. The worker wandered across the areas of the factory and did not work.
  - Disciplinary actions began according to internal procedures, and after four warnings (signed also by the Labour Dept.) and three weeks of "defiance", his contract was terminated on 20 June 2016.
- The worker felt that his dismissal was unfair and fueled by his union membership. The worker also refused to sign any of the warning letters. With the support of CTUM, he filed a complaint at the Arbitration Body.
- The Arbitration Body ruled that the factory must accept the worker back with full back pay. The factory did not agree and appealed this decision to the Arbitration Council.
- The Arbitration Council, while noting that the worker's behavior was not appropriate, as the worker refused to sign the warning letters and was absent to follow the orders from management, maintained the ruling that the factory must reinstate the worker and provide compensation for the period of unemployment without overtime.
- The factory contested what it felt to be an unfair decision of the Arbitration Council and appealed to the Supreme Court, which, in accordance with relevant legislation, has the final say in case of labour disputes in Myanmar.

## 8. Remediation



On 18 November 2016, FWF facilitated a meeting between the factory, CTUM and the worker. The meeting took place in a positive and constructive atmosphere.

The meeting concluded with the factory management's agreement that it would discuss (without making any promises) the following proposed solution with the factory owners:

- Consider the reinstatement of the worker and withdraw the case from the Supreme Court. Consider backpay of wages according to the law from the date of dismissal till the date of reinstatement (if he is reinstated).
- Have an open dialogue with the worker to agree upon a mutual recognition agreement with the facilitation of FWF.
- Clear the warning records of the worker in the HR system and address these issues in a mutual recognition agreement, which can be made after the decision of reinstatement is made, to ensure that the worker complies with the company's rules and regulations as others.
- The worker can return to the previous job as mechanic with respect to the management's decision of job posting. Factory management made it clear that it has the prerogative to assign the worker to an actual job location.
- Review the disciplinary procedures and grievance process and communication to ensure that all employees have another channel to voice concerns and complaints with fairness and transparency if they disagree with the disciplinary actions done by the supervisors and/or HR.

However, following discussion with the owners of the factory, the management conveyed the following terms for the reinstatement of the worker:

- A letter of intent must be written and signed by the worker whereby he states his acknowledgement for past violations and his intentions of improving and coming back to the factory as a good performing employee. This will be kept on record.
- The worker must sign and acknowledge previous warnings given to him for the violations; these warnings must be kept on record.
- There must be a clear statement that this is his last chance, any further violations of the factory rules will warrant a permanent employment termination with no further chances for clemency.
- The worker must accept and obey the job location that his immediate superiors / supervisors assign to him. Of course, this is given that the factory will not change his job designation nor his tasks.
- FWF must have continuing involvement in this case to monitor in case of any breach of agreement, and if such is to occur, then FWF have the responsibility to mend the situation to the best of their degree, and to act as a witness to any breaches that might occur.

Worker and CTUM made it clear that it could not agree to the proposed terms, especially having the worker accept all the warning letters was not considered acceptable.



FWF and the FWF brands appealed (by e-mail and in person) to the factory management to consider the mutual recognition agreement, acknowledging that mistakes were made on both sides, rather than having the worker sign for the warning letters. Factory management, however, maintained that it could not compromise on this point.

In January 2017, the factory was informed that the Labor Department was going to sue the factory for refusing to heed the previous decision from arbitration council to reinstate the worker. Factory management and worker appeared in court. Following the court hearing, the court ruled that the factory had to pay a fine, as well as compensation to the worker.

The court provided a handwritten document, signed by the worker, which confirmed the worker's agreement to receive a lump sum compensation payment.

Following the court order, the factory made the payment for the fine and the compensation directly to the court.

## **9. Verification**

CTUM confirmed that the worker has accepted the compensation payment and decided not to pursue further action.

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

CTUM indicated that it was not satisfied with the conclusion of this case. After the factory's appeal of the arbitration council's ruling to reinstate, the court finally decided to issue a fine to the factory and order it to pay compensation. The worker felt he had no other choice than to accept the compensation and try to move on.

CTUM argued that the legal system is not very fair in this regard. It indicated that if a factory continues to appeal it would simply end with having to pay a fine and compensation.