

**WORKER RIGHTS CONSORTIUM
FACTORY ASSESSMENT
RELIABLE SOURCE INDUSTRIAL CO. LTD.,
CAMBO YON XING GARMENT CO. LTD. (CAMBODIA)**

**FINDINGS, RECOMMENDATIONS, AND
REMEDATION**

January 19, 2017



I. Introduction and Summary

This report discusses the Worker Rights Consortium's ("WRC's") investigation and remediation of labor rights violations at Cambo Yon Xing Garment Co., Ltd. ("Cambo Yon Xing"), a garment factory located in Phnom Penh, Cambodia, that closed on February 7, 2016. Cambo Yon Xing is a subsidiary of Reliable Source Industrial (Cambodia) Co., Ltd. ("Reliable Source"), an apparel manufacturer that supplies collegiate licensed apparel to Hanesbrands that is sold under the latter's Under Armour by Gear for Sports label, as well as non-collegiate apparel to other apparel companies, such as VF Corporation, Lulu Lemon, Marks and Spencer, and New Balance.

Workers from Cambo Yon Xing and their representatives, the Cambodian Alliance of Trade Union (CATU), along with the Cambodian NGO, Center for Alliance of Labor and Human Rights (CENTRAL), contacted the WRC after the plant's closure, when Reliable Source refused to provide the factory's more senior employees with severance benefits required under Cambodian law, and then refused to comply with an April 2016 arbitration award ordering payment.¹ After the WRC engaged with Hanesbrands, Under Armour, VF Corporation, and New Balance concerning Reliable Source's denial of legally owed compensation to these workers, however, the factory agreed to provide the payments required under the arbitration award, resulting in the payment, in August 2016, of nearly \$91,000 to 75 employees – an average of eight months' wages per worker.

The payment of these funds provided these workers with significant compensation which they not only were legally owed, but also desperately needed, after the factory's closure. Given the factory owner's initial refusal to provide these funds, this successful outcome clearly would not have come about without the active engagement of multiple parties, many of which the WRC worked closely with in resolving this dispute. The CATU labor federation and the Cambodian NGO, CENTRAL, supported the factory's workers to seek full payment of their legally owed severance benefits and successfully secured the arbitration award that affirmed the employees' rights to these funds.

In addition, several of the company's buyers, in particular, Under Armour and Hanesbrands / Gear for Sports and VF Corporation, which are licensees of many WRC-affiliated universities, as well as New Balance, at the WRC's request, engaged extensively with the factory owners to insist that the latter comply with the Arbitration Council's award and provide workers with their legally owed compensation. All of these parties played vital roles in ensuring that an outcome was achieved that protected the rights and welfare of the Cambo Yon Xing workers and ensured compliance with Cambodian labor laws and university and brand codes of conduct.

¹ *In re Cambo Yon Xing*, Arbitration Council Award 67/16 (April 21, 2016); also, Arbitration Council Secretariat, "Notice 580 re Cambo Yon Xing Award 67/16," (April 29, 2016). The Arbitration Council is Cambodia's statutorily established adjudication body for labor disputes. Cambodian Labor Code, Article 312 ("The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations....").

II. Findings

A. Closure of Factory and Nonpayment of Legally Owed Severance Benefits

On February 2, 2016, Cambo Yon Xing's factory managers informed the plant's worker representatives that the factory would shut down on February 7, 2016. At the time of the factory's closure, Cambo Yon Xing had 393 workers, all of whom were employed on consecutive short-term contracts (known in Cambodia as "Fixed Duration Contracts" or "FDCs") of three months' duration.

Upon terminating the workers' employment, Cambo Yon Xing paid them the compensation ordinarily due to workers employed under FDCs when they are terminated prior to the end of their contracts. Cambodian law, however, requires that employees who have worked for a factory for more than two years under successive FDCs be paid a substantially higher level of compensation upon dismissal – equivalent to the amount that would be payable if they were employed under long-term contracts (known in Cambodia as "Unlimited Duration Contracts" or "UDCs"),² which includes pay in lieu of prior notice of dismissal,³ indemnity,⁴ and, if dismissed without a valid reason, damages.⁵



Explaining Severance Rights

² See, Cambodia Labor Code §67 (2) ("[T]he labor contract signed with consent for a specific duration cannot be for a period longer than two years. It can be renewed one or more times, as long as the renewal does not surpass the maximum duration of two years. Any violation of this rule leads the contract to become a labor contract of undetermined duration."); and *In re Jacqsintex Garment Co. Ltd.* Arbitration Council Award 10/03 ("The Arbitration Council finds that contracts of employment of fixed duration shall automatically be transformed to undetermined duration contracts where the total duration of the employment contract (including the period of the initial contract and any renewals) exceeds 2 years.").

³ See, Labor Code, Art.75 ("[T]he minimum period of a prior notice is set as follows: [. . .] One month, if the worker's length of continuous service is longer than two years and up to five years."). The Arbitration Council allowed Cambo Yong Xing to deduct five days of wages from the amount typically due in lieu of prior notice, on account of the five days advance notice of the factory's closure that the management did provide to worker representatives on February 2, 2016.

⁴ See, Labor Code, Art.89 ("[I]f the labor contract is terminated by the employer alone, except in the case of a serious offense by the worker, the employer is required to give the dismissed worker, in addition to the prior notice stipulated in the present section, the indemnity for dismissal as explained below: • Seven days of wage and fringe benefits if the worker's length of continuous service at the enterprise is between six and twelve months; • If the worker has more than twelve months of service, an indemnity for dismissal will be equal to fifteen days of wage and fringe benefits for each year of service. The maximum indemnity cannot exceed six months of wage and fringe benefits; • If the worker's length of service is longer than one year, time fractions of service of six months or more shall be counted as an entire year.").

⁵ See, Labor Code, Art.91 ("[T]he termination of a labor contract without valid reasons, by either party to the contract, entitles the other party to damages. These damages are not the same as the compensation in lieu of prior notice or the dismissal indemnity. The worker, however, can request to be given a lump sum equal to the dismissal indemnity. In this case, he is relieved of the obligation to provide proof of damage incurred.").

B. Arbitration Award against Factory for Unlawful Failure to Pay Severance Benefits



■ ■ *Reviewing Severance Calculations*

On Feb 16, 2016, 131 workers from Cambo Yon Xing filed a complaint against the factory with the Cambodian Ministry of Labor for their employer's failure to provide legally required severance benefits to employees with more than two years of service. After an attempt at mediation, the ministry forwarded the matter to the Arbitration Council (AC), Cambodia's main adjudication body for labor disputes – by which point, 54 of the Cambo Yon Xing workers had withdrawn from the original complaint.

On April 21, 2016, the AC issued an award against the factory and in favor of 75 of the remaining 77 worker complainants. The AC ruled that as these workers had been employed by the factory for more than two years, and as their employer had provided neither adequate notice nor justification for their dismissal, these workers were, therefore, entitled to additional severance benefits as if they had been employed under UDCs, including compensation in lieu of prior notice, indemnity, and damages.⁶

As Cambo Yon Xing failed to object to the arbitral award, on April 29, 2016, it became legally binding on the company to comply.⁷ According to employment records provided to the WRC by the Cambo Yon Xing workers and the CATU, the additional amount due to the 75 employees under the award was roughly US \$91,000.

C. Company Fails to Comply with Arbitration Award, WRC Engages with Licensees, Other Buyers

Reliable Source, whose other manufacturing facilities in Cambodia remained in operation after the closure of the Cambo Yon Xing, failed to comply with the AC's award, denying workers the funds they were legally owed. In May 2016, the WRC contacted Reliable Source's buyers, including the university licensees, Under Armour and Hanesbrands/Gear for Sport, and several of the company's other buyers, including VF Corporation, New Balance, and Marks and Spencer, urging them to require Reliable Source to comply with the arbitration award and pay the workers. Of these brands, only Marks and Spencer failed to respond to the WRC.

⁶ *In re Cambo Yon Xing*, Arbitration Council Award 67/16 (April 21, 2016).

⁷ *See*, Arbitration Council Secretariat, "Notice 580 re Cambo Yon Xing Award 67/16," (April 29, 2016).

1. Company Attempts to Take Unlawful Deductions from Compensation Owed to Workers

After having discussed the matter with Reliable Source's management, the buyers' representatives informed the WRC that the company was willing to provide payment to the workers covered by the arbitration award, but was insisting on deducting from the legally owed compensation an amount equal to the payments workers had received, prior to factory's closure, as severance benefits at the end of each short-term contract. Since the workers had been employed under successive three-month contracts for their entire length of service, and, as is required under Cambodian law, the company had paid them an amount equal to 5% of the total wages they had received during the contract's duration, at each contract expiration, the deduction the company was insisting on was substantial – nearly \$35,000 (more than one-third) out of the almost \$91,000 owed to the 75 employees.

The WRC explained to buyers, however, that the deduction that Reliable Source was seeking to make from the compensation to be paid to the Cambo Yon Xing employees lacked justification under Cambodian labor law, and, if permitted, would result in workers being denied a significant portion of the funds they were legally owed under the AC's award. The WRC noted that the AC has never permitted employers in these circumstances to take deductions from severance payments legally owed to workers on this basis.

Moreover, the WRC pointed out that while the AC had allowed Cambo Yon Xing to deduction from the compensation owed for a different reason, on account of the 5 days' prior notice of termination that the factory had given the workers, the AC said nothing in its award about permitting other deductions from the legally owed compensation for other reasons (such as prior severance payments under prior contracts).⁸ Finally, the WRC reminded the brands that the AC had found, in its award, that Cambo Yon Xing had employed the 75 workers on short-term contracts beyond two years of service *illegally*;⁹ the factory's owners should not be able to benefit financially on account of having previously broken the law by keeping the workers on revolving short-term contracts for an excessive period of time.

2. Company Attempts to Delay Payment of Compensation by Seeking "Clarification" of Arbitration Award

At the same time that it sought to extract unlawful deductions from the severance compensation it owed to its workers, Reliable Source also attempted to further delay payment of these funds on the grounds that it was seeking to have a "clarification meeting" with the AC and the Cambo Yon Xing workers' union concerning the AC's award. The WRC explained to the brands that are the company's buyers, however, that the consistent policy of the AC is not to hold such

⁸ Id.

⁹ Id.

meetings, and that, in fact, the AC has never done so – precisely because losing parties would use such meetings to ‘re-litigate’ unfavorable awards. As such, Reliable Source’s request for such a meeting was simply another unjustified attempt to avoid paying the compensation it legally owed to its workers.

D. Company Agrees to Full Payment of Severance Compensation



Workers Acknowledge Receipt of Funds

Having established that Reliable Source lacked any legitimate reason for delaying or reducing the amount of the payment of severance compensation mandated by the AC’s award, the WRC reaffirmed to the company’s buyers the need for prompt and full payment of these funds to the Cambo Yon Xing workers. To expedite this process, the WRC shared with these brands an individualized calculation of the exact amount of money legally owed to each worker, which had

been prepared by an attorney retained by the workers’ union, and which the WRC had reviewed for its consistency with the AC’s award and the country’s labor code.

On August 2, 2016, the company’s buyers informed the WRC that Reliable Source had agreed to make full payment of the funds workers were legally owed under the AC’s award, amounting to nearly \$91,000, more than \$1,100 per worker – the equivalent of eight months’ wages. According to a settlement agreement reached with the workers’ union, the entirety of these funds were distributed to the employees on August 18, 2016, slightly more than six months after the factory’s closing, and nearly four months after the AC issued its award against the company. Every one of the 75 workers covered by the AC award attended the distribution and received the full amount of compensation that was legally owed.