

To: WRC Affiliate Universities and Colleges
From: Jessica Champagne and Scott Nova
Date: December 16, 2022
Re: Successful Remediation of Violation of Freedom of Association in Cambodia

The Worker Rights Consortium has reached a successful remediation of violations of associational rights at B.D. (Cambodia) Sport Co., Ltd. (“B.D. Cambodia”). The factory employs roughly 700 workers. This factory supplies collegiate apparel to alphabroder (Broder Bros., Co.) and Founder Sport Group (formerly known as Badger Sportswear), both of which engaged in reaching this successful remedy.

Case Background

The Worker Rights Consortium first investigated this case in 2020 after receiving a complaint from the Cambodian labor organization Coalition of Cambodian Apparel Workers Democratic Union (“C.CAWDU”). The complaint alleged that the factory, since 2017, had violated the associational rights of its workers and defied a court order that would have rectified the case. After receiving this complaint, the WRC investigated the alleged violations of worker rights, found evidence that the factory had impinged on workers’ freedom of association, and engaged in a remediation process with the factory and the involved collegiate licensees.

According to testimony from impacted workers, in early May 2017, workers at B.D. Cambodia established and elected officers for a union affiliated with C.CAWDU. Following the election, the union notified B.D. Cambodia management about the results of the union election and submitted their application for registration under the Ministry of Labor and Vocational Training (MOLVT), which issued the official registration document on September 12, 2017.

After management became aware that workers had established a union, a manager approached Mr. Chutt Darong, the newly elected union president. The manager informed him that he did not want to have a union in the factory and told the president that he should resign from the union, which he refused to do.

Like other employees at B.D. Cambodia, the union leaders were employed under successive three-month Fixed Duration Contracts. On July 23, 2017, management informed the union president and union treasurer that the company would not renew their contracts when those contracts expired on July 31, 2017. This effectively terminated these workers’ employment.

The two workers refused to accept the legitimacy of the terminations, which they believed were retaliatory for their union activity and, instead, filed a complaint with the MOLVT on August 11, 2017. However, during the wait for the official process to take its course, the union treasurer, needing money to support his family, accepted a financial offer from the company and stopped

pursuing reinstatement. During the fall of 2017, the union vice president and secretary also ended their employment; neither the WRC nor the union has been able to speak with these workers. Given these workers' unwillingness to speak with their former fellow union leaders or the WRC, it is likely that these two workers were induced by the factory to leave.

Attempt at Remediation through the Ministry of Labor and the Cambodian Legal System

Ministry of Labor Conciliation Process

After a delay of almost three times the legal allowable maximum,¹ the MOLVT convened a conciliation meeting on September 27, 2017. At that meeting, the parties reached a legally binding agreement to reinstate Mr. Darorng. According to the conciliation report, which was signed by Mr. Ho Vibol, the General Administrator of B.D. Cambodia, the company committed to reinstate the union president with full back pay on October 9, 2017.² The Cambodian Labor Code states that an agreement signed under the auspices of a MOLVT conciliation process “is enforceable by law”.³

Despite this agreement, factory management refused to allow Mr. Darorng to return to work. When he presented himself at the factory on October 9, 2017, he was not allowed to resume his work. B.D. Cambodia management instead offered him severance compensation, a payment on the condition that he end his employment. Choosing to continue to press for his legal rights, he instead filed a complaint with the courts on December 15, 2017.

Phnom Penh Court of First Instance Finding

On September 13, 2019, almost two years later, the Phnom Penh Court of First Instance ordered B.D. Cambodia to reinstate the union president with full back pay for the time he was off the job. Despite this clear verdict, however, B.D. Cambodia continued to refuse to reinstate the union president and, like the previous years, continued to offer him severance pay. Furthermore, the Court allowed B.D. Cambodia 30 days to appeal the decision, but, to this date, the union has not received any notice from the court that the decision was appealed. Given this, the verdict of the Phnom Penh Court of First Instance is final.

¹ The delay on behalf of the Ministry of Labor and Vocational Training was 47 days (from August 11 to September 27), while the maximum allowable period is 17 days. See, Labor Code Article 304 (“The Minister in Charge of Labor shall designate a conciliator within forty-eight hours from the moment he learns of the dispute.”) and Article 305 (“Conciliation shall be carried out within fifteen days from the designation by the Minister in Charge of Labor. It can be renewed only by joint request of the parties to the dispute.”).

² *In re B.D. (Cambodia) Sports*, Ministry of Labor: Labor Conciliation Notes (September 27, 2017) (on file with the WRC).

³ Labor Code, Article 301 (“On receipt of the complaint, the Labor Inspector shall inquire of both parties to elicit the subject of the dispute and then shall attempt to conciliate the parties on the basis of relevant laws, regulations, or collective agreements, or the individual labor contract.[...] The results of the conciliation shall be contained in an official report written by the Labor Inspector, stating whether there was agreement or non-conciliation. The report shall be signed by the Labor Inspector and by the parties, who receive a certified copy. *An agreement made before the Labor Inspector is enforceable by law.* In case of non-conciliation, an interested party can file a complaint in a court of competent jurisdiction within two months. Otherwise the litigation will be lapsed.” (emphasis added)).

Worker Rights Consortium Findings

In 2020, after B.D. Cambodia had refused for three years to live up to its commitment, Mr. Darornng and his union approached the WRC.

Based on documentary evidence and worker interviews, the WRC investigation found that B.D. Cambodia violated Cambodian law both by refusing to renew the contracts of Mr. Darornng and his fellow union leaders and by refusing to fulfill the commitments it made as part of the Ministry of Labor mediation process.

Under Cambodian law, employees who have been elected to union office and/or are the founding members of a union may not be dismissed by their employer for a defined period of time unless that employer first obtains authorization to terminate the employee from the Cambodian labor authorities.⁴

The factory failed to obtain permission from the government and, indeed, worked to pressure Mr. Darornng to leave his union post. The company's hostility to the workers' efforts to organize a union is clear in the factory management's testimony in court, other statements by management recounted by workers, and the fact that all four elected union leaders are no longer employed at the factory. This, combined with the timing of Mr. Darornng's dismissal, suggests that his termination was an effort to retaliate against him for his union activity and to prevent the workers from exercising their associational rights.

This would violate the prohibition under Cambodian law against taking into account an employee's membership in a union when making decisions concerning hiring and dismissal.⁵ Cambodia's Arbitration Council, which has statutory authority to interpret the country's labor

⁴ See, Trade Union Law, Articles 43 (“[T]he dismissal of a shop steward or of a shop steward candidate can only be carried out after authorization from the Labor Inspector.”) and 67 (“[A]ll workers who stand as candidates for elected [union] leadership [and] management positions shall enjoy the same protection from victimization and dismissal as shop stewards. Such protection begins 45 (forty-five) days prior to the election and ends 45 (forty-five) days after the election if he or she is not elected. In order to enjoy such protection, the union shall notify the employer of the candidacy and submit a copy to the Ministry in charge of Labor, by any certified means. The employer shall only be required to comply with these provisions once for each election of union leadership. From the time that the application for a registration is submitted, founders or workers who voluntarily become members of the union during the application period shall enjoy the same protection as shop stewards. This protection shall last for a period of up to 30 (thirty) days following the date on which the Ministry in charge of Labor has officially issued a union registration. Beyond the date specified in the preceding paragraph, this protection shall be extended to the leader, vice leader and secretary of the union. In order to enjoy such protection, the union shall notify the employer by any certified means, of the names of the individual persons to be protected. A copy of this notification shall also be sent to the Ministry in charge of Labor.”).

⁵ See, Labor Code, Articles 12 (“...[N]o employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.”) and 279, (“[E]mployers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”).

law,⁶ has made clear that this prohibition applies in cases where the employer refuses to renew a worker's Fixed Duration Contract on account of their union activities.⁷

Retaliatory termination of workers who are elected union officers through discriminatory refusal to renew short-term employment contracts has been widely recognized as a tactic commonly used by Cambodian factory owners to undermine workers' exercise of associational rights.⁸ Such retaliation contravenes the prohibition under international labor standards on discrimination against employees on account of their union activities.⁹

By failing to renew his contract, B.D. Cambodia effectively terminated Mr. Darorn in retaliation for his associational activity, which violates Cambodian law, as well as university codes of conduct.

Remediation and Conclusion

When a worker is terminated in retaliation for exercising their right to freedom of association, it violates the associational rights of that worker and of the whole workforce. The worker who is terminated loses their livelihood and often faces challenges finding new work, whether because of explicit blacklists, lack of a positive recommendation, or—particularly during the pandemic—lack of opportunities. This can be financially devastating for them and their families. The rest of the workforce is subjected to a climate of fear created when they see workers speaking up for rights on the job and being removed from the workplace. This sends a clear message that to exercise associational rights is to risk retaliation and termination.

In order to address both of these impacts, the preferred remedy in such a case is an offer of reinstatement with back pay from the time when the worker was terminated until the time the

⁶ The Arbitration Council is the leading body authorized under Cambodian law to adjudicate labor disputes and interpret the country's labor law.

⁷ *in re Jacqsintex*, Cambodia Arbitration Council Award 10/03 (July 23, 2004) (“...[T]he employer is strictly prohibited from terminating or not hiring a worker for reasons of union membership or participation in union activities in accordance with Arts. 12 and 279 of the Labor Law. In these circumstances both the decision not to renew a contract of fixed duration and the decision to terminate a worker on an undetermined duration contract should be considered to fall within the category of decisions which an employer cannot make for reasons of union membership or participation in union activity”) <https://www.arbitrationcouncil.org/download/10-03-jacqsintex-industry/?wpdmdl=3075&refresh=62a36930d64051654876464>.

⁸ See, e.g., Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*, Yale Law School, August 2011, https://law.yale.edu/sites/default/files/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf; Human Rights Watch, *Work Faster or Get Out: Labor Rights Abuses in Cambodia's Garment Industry*, March 2015, https://www.hrw.org/sites/default/files/reports/cambodia0315_ForUpload.pdf; and Fair Action, *A Short-Term Solution: A Study of the Use of Fixed Duration Contracts in the Cambodian Garment Industry*, September 2015, http://fairaction.se/wp-content/uploads/2015/09/A-Short-Term-Solution_Fair-Action.pdf.

⁹ ILO Convention 98 (Right to Organise and Collective Bargaining) (“Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. . . . Such protection shall apply more particularly in respect of acts calculated to--... cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities....”), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO.

worker returns to work. The worker must have the opportunity to return to the workplace and be made financially whole for the retaliation in order to address both the damage done to them and the damage done to the workforce as a whole.

After pressure from the WRC and university licensees, on May 29, 2021, B.D. Cambodia made a payment to Mr. Darorng of US\$8,000. The factory did not offer him the opportunity to return. When the WRC consulted with Mr. Darorng subsequent to this payment, he informed the WRC that, given the company's consistent hostility, he no longer wished to return to B.D. Cambodia.

Given this, the WRC recommended that the factory pay Mr. Darorng severance in addition to back pay starting from the time he was removed from the factory through May 2021, totaling US\$11,713 (US\$9,241 in back pay and US\$2,472 in severance).

The licensees communicated this expectation to the factory, which paid Mr. Darorng the full amount he was owed. In April 2022, the factory agreed to pay the outstanding amount, and the WRC confirmed the disbursement of the additional US\$3,713 to Mr. Darorng.

As Mr. Darorng agreed to this settlement and has now received his full back pay and severance, the WRC considers this case to be remedied.