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**WORKER RIGHTS
CONSORTIUM**



**WORKER RIGHTS CONSORTIUM REPORT
FINDINGS, RECOMMENDATIONS, AND STATUS
KT EMBROIDERY (BANGLADESH)**

August 6, 2018

I. Introduction and Summary

This report concerns the resolution of labor rights violations at KT Embroidery, a factory in Savar, Bangladesh. The factory embroidered collegiate licensed hats, which were supplied to Zephyr Graf-X Headwear (“Zephyr”). While the factory was not disclosed by Zephyr, the Worker Rights Consortium (“WRC”) confirmed that this production was subcontracted to KT Embroidery by Zephyr’s supplier, Han Apparels.

As discussed below, the WRC’s investigation found that, in May 2017, KT Embroidery violated its workers’ rights under Bangladeshi labor law, international labor standards, and university codes of conduct by:

- Unlawfully suspending 23 workers, in some cases for more than seven months; all of whom are officers and/or members of the factory’s registered trade union;
- Imposing on these workers, who were suspended in May 2017, as well as others, unlawful conditions for the continuation of their employment violating their right to freedom of association; and
- Further retaliating against employees for their exercise of associational rights through forfeiture of seniority and related statutory rights.

The WRC asked Zephyr and Han Apparels to take measures to compel KT Embroidery to undertake the remedial measures necessary to correct these violations. After nearly one year of back and forth with the companies, in March 2018, Zephyr committed to ensure that the payments would be made to the workers as compensation for their loss of employment. These payments were made on June 1, 2018, in the amount of US\$22,889, which is equal to an average of 15 months’ salary for each worker. This partial remedy was the best outcome that could be achieved, since Han Apparels had ceased doing business with KT Embroidery prior to the WRC’s reporting of the violations to Zephyr and Han Apparels (though Han Apparels was producing Zephyr product at KT Embroidery when the violations first occurred), and therefore, Han Apparels lacked sufficient leverage to compel reinstatement of the workers.



Workers formerly employed by KT Embroidery collect their severance benefits on June 1, 2018.

II. Methodology

The WRC's findings are based on the following sources of evidence:

- Interviews with workers who were suspended on May 11, 2017;
- Interviews with staff members of the National Garment Workers Federation (NGWF), the union federation representing the workers;
- Communications with KT Embroidery management, Han Apparels management, and the leadership of Zephyr;
- Suspension (“show cause”) notices issued by KT Embroidery to workers on May 11, 2017;
- Workers’ written responses to KT Embroidery dated May 15, 2017, to the “show cause” notices issued by KT Embroidery on May 11, 2017;
- Closure notice issued by KT Embroidery on May 3, 2017, stating that its management was closing the factory under Section 13(1) of the Bangladesh Labour Law;
- Certificate of Failure issued by the Bangladesh Department of Labour stating that the department had attempted, but failed to reach an agreement between KT Embroidery and the union regarding the suspension of workers from the factory; and
- Documentation related to workers’ pay and benefits.

III. Findings: Illegal Denial of Workers’ Right to Freedom of Association

1. Unlawfully Conditioning Workers’ Continued Employment on the Waiving of their Associational Rights

On May 3, 2017, KT Embroidery workers held a peaceful protest at the factory premises to demand that the factory improve labor conditions with respect to payment of pension and maternity benefits, allowances for night work and meals during working hours, and payment of attendance bonuses. The protest came after the employees’ union, which is registered with the Bangladesh government as the workers’ representative, had attempted for the previous three months to meet with the factory management concerning these issues, but had been rebuffed by the company.

In response to this protest, KT Embroidery temporarily closed the facility on May 3, as documented by the factory management and according to workers’ testimonies.

KT Embroidery and Han Apparels claim that when the factory reopened on May 4, the management permitted and, moreover, requested all employees to return to work, and provided to the WRC copies of notices to this effect, which management claims were posted at the factory on May 7-9. KT Embroidery claimed that these notices prove that it did not suspend any of the factory’s employees.

However, detailed, credible, and mutually corroborative worker testimony shows that, when employees attempted to return to work on May 4 and thereafter, management refused to permit

workers to enter the factory unless they signed an agreement promising to no longer raise their demands for better labor conditions. Management had also summoned the police to the facility. Since there is no evidence of any legitimate basis for management to summon security forces, the WRC concluded that the purpose of the police presence was intimidation.

Out of the roughly 80 workers employed at the factory, approximately 40 workers, all of whom were members and/or officers of the employees' union, refused to accept the condition that they cease their efforts to demand improvements at the factory, since this would have meant the effective nullification of their associational rights. These employees were then barred from entering the factory by the management. One KT Embroidery manager reportedly told these workers, "If you have grand visions of waging movements, get the hell out of here; don't dare show your face again."

KT Embroidery's refusal to permit its employees to return to work unless they agreed to cease engaging in lawful collective action violated their right to freedom of association, as protected by Bangladeshi and international law and university labor standards.¹ It is important to note that the violation affects all employees: those who refused management's unlawful demand, who were thus deprived of their employment, and those who acceded and returned to work, who were thus stripped of their associational rights.

2. Unlawfully Suspending Workers for Refusing to Waive their Associational Rights

In response to the management's refusal to permit the employees to enter the facility, on May 5, the workers' union submitted a complaint to the Bangladesh labor authorities, who responded by directing the employees to return to the factory on May 11 and make another attempt to return to work. However, when these workers attempted to re-enter the factory on May 11, police were again stationed around the facility, and KT Embroidery's management told the employees that if the workers wanted to go back to their jobs, they would have to sign an agreement promising that they would not raise any further demands for better labor conditions inside the factory.

Workers testified that, of the 40 employees who sought to re-enter the factory on this date, 17 decided at this point to accede to the company's illegal request and signed the agreement. They did so, according to their testimony, because they were afraid that they would permanently lose their jobs if they refused.²

In the case of the 23 employees who did not accede to KT Embroidery's illegal demand, management issued letters stating that workers were now temporarily suspended from employment, on account of the May 3 protest and workers' failure to return to work thereafter,

¹ Bangladesh Labor Act 2006, Article 195(c)(d). Also, See, ILO Convention 98 ("Right to Organise and Collective Bargaining").

² The number of workers who refused to accede to the company's request and were kept from returning to their jobs was initially reported to the WRC to be 24; however, the WRC's subsequent investigation determined that the actual number of workers affected was 23. The WRC was unable to contact four of the 23 suspended workers.

and that employees should explain to the company within seven working days “why [further] punitive action should not be taken against you.”

KT Embroidery subsequently denied that it issued the “show cause” letters to the 23 employees, a denial swiftly disproven by the existence of copies of the letters bearing the signature of KT Embroidery’s Managing Director, Kim Kong Te, which were provided to the WRC by workers (the suspended workers also produced documentary evidence that they responded to the “show cause” letters by the date requested by the company).

Six of the 23 employees who were suspended on May 11, later decided to accede to KT Embroidery’s unlawful demand to cease exercise of their associational rights and were reinstated. Of the six employees who were reinstated, as will be discussed below, one worker subsequently left the factory when she learned that the company was requiring her to forfeit her previous seniority and begin work as a “new hire,” a further penalty for her participation in legally protected associational activity. The remaining 16 workers maintained their refusal to accede and thus remained out of work.

The evidence demonstrates that management suspended the workers because they refused to sign an agreement to end their efforts to improve labor conditions. This constitutes illegal retaliation against workers for exercising their associational rights, a further violation of Bangladeshi law and university labor standards.

3. Indefinitely Suspending Workers Without Undertaking Legally Required Investigation

Bangladeshi law does not permit employers to suspend workers accused of misconduct indefinitely without due process. The law only permits companies to suspend such workers *temporarily*, pending a formal inquiry into the alleged misconduct, and requires that this inquiry be completed within 60 days of the date of the employee’s suspension, which, in this case, was July 10, 2017.³ KT Embroidery workers testified, however, that no inquiry was conducted by the company. The company’s management has presented no evidence to show otherwise.

Thus, in addition to KT Embroidery’s unlawful requirement that workers sacrifice their association rights as a condition of continued employment and its retaliation against those who refused, KT Embroidery also violated Bangladeshi law *on a procedural basis* by failing to conduct the legally required inquiry into the circumstances of workers’ suspensions. This is a further violation of university labor standards, which require compliance with local law.

4. Other Forms of Retaliation Against Workers for Exercising their Associational Rights

Employees who agreed to the management’s demand continued to face retaliation for their union activities. For example, one female employee, named Anjoli, who was mentioned above, testified that when she returned to work after signing the statement, the company insisted on treating her as a newly-hired employee, rather than recognizing her prior period of service with the company. By treating her as a new employee, KT Embroidery required this worker to forfeit

³ Bangladesh Labor Act 2006, Article 24 (2).

various statutory rights and benefits she previously received due to her tenure at the company. Under Bangladeshi law, these benefits are contingent on the worker's length of service with the employer.

The employee, Anjoli, was unwilling to accept this further retaliation, and, as a result, left the factory. However, she continues to seek reinstatement, should her legal seniority rights be respected. KT Embroidery management's treatment of Anjoli as a new hire imposed further punishment on this worker, again, without the company having conducted the legally required inquiry into her alleged misconduct. This represents an additional act of retaliation against the worker for her exercise of associational rights. By this conduct, KT Embroidery further violated workers' associational rights, and, by extension, placed Han Apparels and Zephyr in further violation of university labor standards, as well.

IV. KT Embroidery's Response to the WRC's Findings

KT Embroidery responded to the WRC's findings concerning the company's violations of workers' rights under Bangladeshi labor law, international labor standards, and university codes of conduct by claiming that: (1) the factory never suspended the employees who participated in the May 3 protest in the first place; (2) the company already permitted these employees to return to work; and (3) the company's management is currently attempting to resolve the dispute through the auspices of the Bangladeshi labor authorities. These claims by the company are factually false and/or intentionally misleading.

First, as discussed above, KT Embroidery's claim that it never suspended the 23 employees is belied by not only consistent and mutually corroborative testimony from employees, but also documentary evidence: the suspension letters issued by the company to the employees.

Second, the company's claim that it has already permitted these employees to return to work is disingenuous and intentionally misleading. As discussed, the company has only permitted to return to work those employees who have acceded to the company's demand waiving their right to engage in protected associational activity—a demand that represents a violation of these workers' labor rights. The return to work of these workers, in no way affects the finding of the WRC that another 17 employees remain unlawfully indefinitely suspended by the company, pursuant to suspension letters issued by the factory's own management.

Third, the company's claim that its management and the employees are working to resolve the dispute through Bangladesh's Labor Ministry, has been refuted by the labor authorities themselves, which have reported that all such efforts ended on in November of last year. Although the labor authorities convened at least six separate meetings between the employees' union and the factory between June and November 2017, these meetings failed to resolve the issue of the company's refusal to either permit the suspended employees to return to work or to provide the latter with severance benefits. Due to the failure to reach a settlement, on November 30, the Labor Ministry's Assistant Director of Labour, Abu Hasnat, issued a "Certificate of Failure." The Certificate states that "the arbitration [of the dispute] has failed due to the obstinate attitude of the management of KT Embroidery."

In sum, KT Embroidery's responses reveal the lack of credibility and good faith its managers have shown with respect to the issues discussed in this memorandum. The factory provided no credible exculpatory evidence.

V. Recommendations

The WRC recommended that Zephyr and Han Apparels:

1. Use all available economic leverage to require KT Embroidery to offer the 17 suspended employees, which includes the employee Anjoli who had returned to work but then left, reinstatement to their prior positions, without any conditions restricting their associational rights or any loss of seniority or other changes in their terms of employment, and full back pay for the period between the date of their suspensions and the date upon which the company permits them to return to work; or
2. If despite application of all available economic leverage, Zephyr and Han Apparels are unable to secure KT Embroidery's agreement to reinstate and provide back pay to the 17 employees, to then ensure they receive full statutory severance benefits, in the amount of: (a) 30 days' wages for each year of service with KT Embroidery;⁴ plus (b) an additional 120 days' wages, in lieu of notice of termination;⁵ plus (c) payment of wages in lieu of half of the number of annual earned leave days that the employees would have accrued during 2017;⁶ plus (d) back pay equal to seven months' gross wages, inclusive of overtime, calculated based on their average monthly earnings for the prior six-month period.⁷

VI. Brand Response to the Violations at KT Embroidery

The only adequate remedy for the violations committed by KT Embroidery would have been reinstatement of the 17 workers. The WRC urged Zephyr to require Han Apparels to exert all available leverage, including offering the prospect of new orders, to achieve this remedy. However, given Han Apparels' prior discontinuation of business with KT Embroidery, Han Apparels could not compel KT Embroidery to reinstate the workers.

In the absence of sufficient leverage over the employer to achieve full remediation, Zephyr's obligation was to use its leverage to achieve the best remediation possible under the circumstances. By ensuring payment of termination benefits, and substantial back pay, to these workers, as recommended by the WRC, Zephyr did so, with the result that partial remediation has been achieved.

⁴ Labour Act, 2006, Art. 26(4).

⁵ Labour Act, 2006, Art. 26(1)(a) and Art. 26 (3).

⁶ Labour Act 2006, Art. 117(1)(a) and 2013 Labour Law Rule 107(1)(2).

⁷ As discussed, the workers also should be paid for the days of work they missed since they were suspended in May. This amount should include all wages and benefits workers would have earned, including overtime, that the workers would have received had they been performing their regular schedule in the factory during this period. Because the workers did not receive their May wages after being suspended, the total back pay owed to workers includes their average "take-home" pay for each month between May and November 2017.

VII. Successful Distribution of Compensation

In March 2018, Zephyr committed to ensure the payment of workers' severance benefits and back wages in the amount of US\$22,889.46, an average of US\$1,430.59 per employee, which is equal to an average of 15 months' salary for each worker. Han Apparels and KT Embroidery provide the funds for the compensation.

In consultation with NGWF, the union representing the workers, the WRC developed and proposed a plan for the distribution of payments. Zephyr agreed to the WRC's distribution plan in March, and the WRC and Zephyr worked together to finalize the details.

Under the agreed plan, KT Embroidery management processed the payments to workers on June 1, 2018, with the oversight and observation of the WRC. The WRC and NGWF worked jointly to contact all eligible workers. All but one worker, who is currently employed outside of Bangladesh, have received their compensation.



Workers formerly employed by KT Embroidery collect their severance benefits on June 1, 2018.

VIII. Conclusion

Although this remedy does not fully resolve the violations or address the chilling effect on the exercise of freedom of association by workers who are still employed at KT Embroidery, it does help to alleviate the financial hardship that the suspensions visited upon the suspended workers and their families. It is heartening to see these workers, who exhibited tremendous courage and made great sacrifices in defense of their fundamental labor rights, to receive a level of compensation that will materially improve their circumstances. Needless to say, in the absence of university labor codes, the workers would have had no hope of securing any meaningful remedy.

While Zephyr has fulfilled its obligations to its university licensors in this case, it is important that the company improves its monitoring of suppliers. Zephyr was not only unaware of the violations at KT, until notified by the WRC, but was not even aware that KT Embroidery was producing Zephyr product. This is the second time, in two years, that Zephyr's main supplier, Han Apparels, has engaged in unauthorized subcontracting to a supplier that violated university labor standards. In October 2016, the WRC found that a factory known as Han Embroidery

was subcontracted by Han Apparels to embellish collegiate licensed caps for Zephyr. Han Embroidery subsequently closed, without paying legally mandated wages and severance.⁸

If Han Apparels is unwilling to abide by university disclosure requirements and university labor standards, then the company is not suitable as a supplier of university logo product. We will ask Zephyr to advise us as to what specific steps it is taking to ensure that Han Apparel ceases its flouting of university requirements. If Zephyr does not take sufficient action to prevent further misconduct by Han Apparels, but nonetheless continues to use Han Apparels as a supplier, Zephyr will be knowingly entrusting a habitual violator of university standards with the production of university logo products and will be in intentional breach of its contractual obligations to its university licensors.

⁸ See WRC memo on Han Embroidery, April 28, 2016: <https://www.workersrights.org/wp-content/uploads/2016/02/Remediation-of-Severance-Pay-Violations-at-Han-Embroidery-Bangladesh.html>; WRC memo on Han Embroidery, August 19, 2016: <https://www.workersrights.org/wp-content/uploads/2016/02/WRC-Update-Successful-Remediation-at-Han-Embroidery-Bangladesh.html>.