



**New Holland Apparel de Nicaragua,
Nicaragua**
Summary Report
Third Party Complaint

On December 2, 2014, a worker at the factory New Holland Apparel de Nicaragua, in Nicaragua, filed a Third Party Complaint with the FLA alleging that she had been dismissed from her job because of her union affiliation; moreover, the worker alleged that she was harassed by management, which had led to psychological trauma and the need for medical treatment. At the time the complaint was filed, FLA Participating Company Under Armour sourced from the factory and Participating Company Adidas was in the process of starting a sourcing relationship with New Holland Apparel de Nicaragua.

The FLA accepted the Third Party Complaint at Step 2 of the process and requested that Under Armour and Adidas carry out an assessment of the allegations and conduct remediation, if appropriate. The FLA Compliance Benchmarks most directly relevant to the allegations are Freedom of Association FOA.5, Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting; and Freedom of Association FOA.4, Anti-Union Violence/Harassment or Abuse.

Assessment by FLA-Affiliated Companies

The FLA-affiliated companies had been aware of the factory's actions to dismiss the worker since shortly after management sought Ministry of Labor approval to effect her dismissal with just cause on August 8, 2014. Management justified dismissal of the worker on the following reasons: (1) recurring indiscipline in the workplace; (2) failure to abide by safety regulations of the industrial park where the factory is located; (3) repeated absences without leave in July-August 2014; and (4) forging of the signature of a supervisor on a request for leave. Although at the time of dismissal the worker held a leadership position in the union Sindicato Trabajadores al Poder de la Fábrica New Holland, affiliated with the Sandinista Central Trade Union CST (José Benito Escobar), the Ministry of Labor did not appear to take into consideration that the worker enjoyed "fuero sindical" protection and approved New Holland Apparel's request to dismiss the worker. On September 5, 2014, the Ministry of Labor ruled against an appeal filed by counsel for the affected worker seeking to overturn the dismissal. In the appeal to the Ministry of Labor, counsel for the union worker indicated that the worker had been on medical leave ("subsidio") allegedly because of psychological trauma associated with harassment and abuse from supervisors and raised the worker's union leadership position and "fuero sindical" protections.

In early September 2014, Under Armour and Adidas engaged well-respected academic and labor lawyer Fanor Avendaño to mediate the differences between the worker and the factory and to seek a negotiated solution. Dr. Avendaño met numerous times from

September 2014 through February 2015 with the dismissed worker, representatives of the Sindicato Trabajadores al Poder de la Fábrica New Holland, and factory management, seeking to reach a negotiated solution to the dispute.

Results of the Mediation Process

As a result of Dr. Avendaño's frequent contacts with the parties and understanding of their positions, on February 6, 2015, an agreement was signed between, on the one hand, New Holland Apparel, and on the other, the dismissed worker and the union Sindicato Trabajadores al Poder de la Fábrica New Holland. The main points of agreement were as follows:

- New Holland Apparel reaffirmed that its actions to dismiss the worker were not ruled to be improper by the Ministry of Labor; in view of the illness that has afflicted the worker, New Holland Apparel stated that it would not rehire or reinstate the worker to her duties until she has obtained an official document that certifies her physical and mental aptness to return to work.
- The worker acknowledged having received from the factory an advance payment equivalent to 80% of her termination benefits, in accordance with the collective bargaining agreement.
- New Holland Apparel committed to the following actions: (1) reimburse the union for transportation expenses associated with its activities in the case (up to an agreed amount); (2) take responsibility for legal expenses incurred by the worker in her defense (up to an agreed amount); (3) make a humanitarian assistance payment to the worker to aid her in dealing with the financial strains brought about by her illness; and (4) once the worker obtains an official legal medical diagnosis that she is apt to work, the company "will evaluate the situation and, relying on the existing legal mechanisms, may facilitate her hiring or reinstatement."
- All parties agreed to withdraw all legal claims and counterclaims regarding the case and to work toward workforce stability by encouraging alternative dispute resolution methods, dialogue and negotiation.
- New Holland Apparel committed to respect the right of freedom of association of its employees and the codes of conduct of its buyers, and not to retaliate against workers who hold union leadership positions.
- The union Sindicato Trabajadores al Poder de la Fábrica New Holland committed to exercise its associational rights without interfering with factory operations and to abide by disciplinary rules in accord with Nicaraguan legislation and the factory's internal rules.
- New Holland Apparel committed to conduct training on alternative dispute resolution techniques and on labor management relations for all managerial and supervisory personnel.

Rehiring/Reinstatement of the Worker

On March 11, 2015, the worker and the union submitted to the Mediator a document issued by a physician affiliated with the Ministry of Health of Nicaragua, dated March 4, 2015, which rendered a diagnosis for the worker of mixed anxiety-depressive disorder and prescribed treatment in the form of medication. Based on this report from the Ministry of Health, the worker sought rehiring/reinstatement by New Holland Apparel de Nicaragua pursuant to Article 3, subsection 4 of the mentioned February 6, 2015 agreement.

At a meeting held on March 26, 2015, called by the Mediator and involving representatives of New Holland Apparel de Nicaragua, the worker, and the union Sindicato Trabajadores al Poder de la Fábrica New Holland, the Mediator ruled that the document presented by the worker did not meet the requirements of Article 3, part 4, of the February 6, 2015 agreement and therefore New Holland Apparel de Nicaragua was not required to evaluate the rehiring/reinstatement of the worker at this time.

Conclusion

The mediation process conducted by Dr. Avendaño at the behest of Under Armour and Adidas has addressed many of the issues around the dismissal of a worker in a union leadership position at New Holland Apparel de Nicaragua. The February 6, 2015, agreement between the company and the worker and the union Sindicato Trabajadores al Poder de la Fábrica New Holland put in place a process to govern the rehiring/reinstatement of the worker. It also committed the factory to provide training to managerial and supervisory personnel on alternative dispute resolution techniques and on labor management relations.

The FLA calls on Under Armour and Adidas to continue to monitor the implementation of the February 6, 2015, agreement, particularly with respect to the application of Article 3, part 4, governing the conditions for the rehiring/reinstallment of the affected worker and to the training of managerial and supervisory staff on dispute resolution techniques and on labor management relations.