

Independent Investigation

Preliminary Report: Joe Anne Dominicana Ltd.

**Zona Franca Santiago, Dominican Republic
June 15-18, 2015**



FAIR LABOR
ASSOCIATION™

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CONTENTS

I. Investigation Scope and Methodology	p. 3
II. Background	p. 5
III. Results of the Investigation	p. 6
IV. Conclusions	p. 12
V. Recommendations	p. 13
VI. Appendix	p. 14

I. Investigation Scope and Methodology

This report contains the results of an independent investigation conducted by the *Fair Labor Association* (FLA) at Joe Anne Dominicana Ltd. (hereinafter referred to as the factory or Joe Anne Dominicana) in response to a Third Party Complaint filed with the FLA on March 2, 2015, by the Dominican Federation of Free Trade Zone Workers, Diverse Industries and Services (Federación Dominicana de Trabajadores de Zonas Francas, Industrias Diversas y de Servicios, FEDOTRAZONAS), alleging violations of freedom of association to the detriment of the United Workers Union (Sindicato de Trabajadores Unidos) at the Company Joe Anne Dominicana (hereinafter referred to as the union) and its affiliates in Santiago, Dominican Republic.

Specifically, the investigation focused on the following issues:

1. Allegations of harassment of union leaders/members and abusive language against union leaders/members, by factory representatives.
2. Allegations of threats of terminating employment of workers who have indicated union affiliation (management has received a list of 20 workers that are union members, as part of the official union registration process performed by the Ministry of Labor, on March 25).
3. Review documents and compile testimony from management and workers regarding the termination of 3 union leaders in 2015. Evaluate if the factory has disciplinary regulations that include the principle of progressive discipline as part of its internal work rules and regulations; and if so, if said rules were applied in the cases of the terminated workers, who occupied positions of leadership within the union. Particularly assess whether: a) Joe Anne Dominicana followed appropriate termination procedures, in taking the proposals to dismiss union leaders to the Ministry of Labor channels, before going to the Labor Court; b) the workers had the opportunity to defend themselves against the accusations of indiscipline presented against them.

The following FLA-affiliated companies currently source from Joe Anne Dominicana: *Fruit of the Loom Inc.* and *Franklin Sports*.

Between June 15 and 18 of 2015, an investigator from FLA conducted interviews with various stakeholders related to the case, such as, delegates from the Ministry of Labor in Santiago and FEDOTRAZONAS union leaders, including the three terminated members of the union's Founding Committee.

Furthermore, an on-site visit was conducted during two days at the premises of Joe Anne Dominicana, located in the Santiago Free Trade Zone, in order to perform interviews with workers and management, documentation review and a visual inspection of the facilities. A total of 29 workers from all departments were interviewed, including seven union members, two supervisors and off-site interviews with two former Joe Anne Dominicana workers.

Additionally the investigation process included the review of official documents from the Ministry of Labor and Labor Court from Santiago's Judiciary Department, and internal factory documents.

All consulted information sources (interviews, reviewed documents, etc.) are listed in Appendix 1 of this report.

II. Background

In April 2013, the FLA commissioned Comisión de Verificación de Códigos de Conducta (COVERCO) to conduct an independent investigation at Joe Anne Dominicana, in response to a Third Party Complaint filed by FEDOTRAZONAS alleging the termination of a group of workers on account of their union activities, as well as an anti-union environment within the company.

On this occasion, COVERCO determined that, indeed, anti-union discrimination had existed during this retrenchment process and it was recommended –among other actions– the reinstatement of terminated workers, payment of back pay for lost wages associated with the employer’s actions and the implementation of a training program on freedom of association and non-discrimination. In fact, these recommendations –among other actions– were included in the remediation plan elaborated by the factory together with the FLA affiliated brands involved in the mentioned Third Party Complaint.

In February 2014, the FLA commissioned the Dominican Labor Foundation (Fundación Laboral Dominicana, FLD) to conduct a verification visit at Joe Anne Dominicana and evaluate the state of the implementation of the remediation plan. In the report, the FLD concluded that the factory had complied with the majority of the expected actions, primarily the most sensitive ones related to freedom of association and non-discrimination. Specifically, it was reported that Joe Anne Dominicana had adopted the necessary measures to avoid discrimination on account of the exercise of freedom of association, adopted policies regarding freedom of association and trained workers in this matter, and reinstated workers identified in the COVERCO report with payment of lost wages associated with the employer’s actions.

Thus, the FLA decided to close the Third Party Complaint considering that the remediation process had transpired satisfactorily. However, the FLA stated that it would continue to support the implementation of the remediation plan and the collaborative process between the factory and FEDOTRAZONAS.

As previously mentioned, in March 2015 FEDOTRAZONAS filed a second Third Party Complaint with the FLA, making the allegations indicated in the previous section of this report. In response to this complaint, the FLA commissioned the present investigation, whose results will be presented below.

III. Results of the Investigation

The following facts were corroborated by the FLA investigator:

1) Allegations of harassment of union leaders/members and abusive language against union leaders/members by factory management

As part of the Third Party Complaint, FEDOTRAZONAS expressed that management representatives commit acts of harassment and use abusive language against union leaders and members.

In off-site interviews with the three members of the union's Founding Committee terminated in February 2015, two of them manifested that one supervisor in particular had utilized offensive language against them, and has told them that "the company would continue making efforts to dismantle the union." However, they did not single out an individual management representative responsible for committing acts of harassment or verbal abuse against them.

In the group interview with union leaders and members –the interview was with seven workers out of the total 16 current members of the union–, they all stated that they were victims of harassment and verbal abuse by the supervisors; but none of them provided concrete phrases or expressions of abuse against them, the names of supervisors who engaged in these practices, or the dates when these acts might have occurred.

In the interviews with the rest of the factory workers, the FLA investigator did not find evidence to sustain the allegations of harassment and verbal abuse against union leaders and members: none of the interviewees reported having seen or heard about cases in which a manager or supervisor verbally abused another worker, including union members. Discussions were held with workers that were workmates of the three terminated members of the union's Founding Committee, and none stated having heard a supervisor utilize abusive language against them. Conversely, all interviews indicated that workers at Joe Anne Dominicana had the freedom to associate with a union if they so wished.

In interviews with supervisors and managers –including the supervisor identified by the terminated members of the union Organization Committee as utilizing abusive language– all expressed that they have received guidelines from the company's President to avoid any act of hostility against union members, and strongly denied harassing or verbally abusing union leaders or members.

The FLA investigator corroborated some positive actions adopted by the company for the purpose of generating an environment conducive to the free exercise of freedom of association:

- During the visual inspection it was noted that notices were posted in various places on the production floor, in plain view of workers, containing a message from Joe Anne Dominicana's President supporting freedom of association. The notices restate the factory's position of respecting the right to freedom of association and include a declaration that no representative of Joe Anne Dominicana will commit acts of retaliation against those exercising their right to associate. Finally, it lists the various channels a worker may use to report cases of violations against freedom of association.
- Through document review and interviews with supervisors, management and workers, it was observed that the factory has held training for all workers with respect to freedom of association. Joe Anne Dominicana has a training program on this subject and a session on this topic was under way at the time of FLA's visit. Furthermore, periodic communication is offered to workers about freedom of association, through lectures conducted by supervisors in each production module.

Notwithstanding all communication and training efforts by Joe Anne Dominicana, during the interviews with non-union workers it was observed that the majority of interviewees still hold negative views about freedom of association. As rightly pointed out by a local organization, the worker culture of Santiago, Dominican Republic, tends to be conservative tendency, fueled perhaps by anti-union practices implemented for years in the country's industrial parks in free trade zones and the myths that have existed regarding the exercise of the workers' rights to form unions.¹

Therefore, it is imperative to continue the training and communication efforts made by the factory to date, with the purpose of dismantling existing preconceptions regarding the right to freedom of association, since this situation may pose an obstacle to the free exercise of the aforementioned right.

2) Allegations of threats against continued employment of workers indicating union membership

FEDOTRAZONAS also alleged in the Third Party Complaint that workers who expressed their membership in the union were threatened with termination by factory representatives.

Regarding this point, it is important to note that, on March 25, 2015, and as part of the legal union registration process with the Ministry of Labor, Joe Anne Dominicana management received a list of 20 workers who at that time were participating in the

¹ Fundación Laboral Dominicana (FLD), Report on Independent Verification Process at Joe Anne Dominicana, presented to FLA, February 2014, p. 7.

registration process of the Joe Anne Dominicana United Workers Union (Sindicato de Trabajadores Unidos de la Empresa Joe Anne Dominicana).²

As a result of the efforts of the union's Founding Committee, the Ministry of Labor granted the registration—or legal recognition—to the union on April 16, 2015.³

The FLA investigator found no evidence regarding termination of union members or leaders between March 25, 2015 –when Joe Anne Dominicana was informed of the 20 founding union members– and June 17, 2015, the date when the field visit to the factory associated with the current investigation concluded.

The workers interviewed did not provide any information regarding dismissals or threats of dismissal of affiliated to the union. The same was true with respect to telephone interviews with former Joe Anne Dominicana workers.

In the group interview with current union leaders and members, they expressed that supervisors threatened some workers with dismissal due to the fact that they are affiliated with the union; however, they also could not provide information about specific cases, names of supervisors making these threats, or dates when they might have occurred.

The investigator observed that the current union leaders and members could openly express their condition of union members within the factory, without finding any evidence of anti-union persecution. In fact, the majority of the interviewed workers stated that they knew various union members, and they stated that, in their opinion, there is no danger of losing employment or of incurring any other act of retaliation for ties of friendship or sympathy with any union member.

While worker terminations occur frequently within the company, this is due to the nature of the production process: Joe Anne Dominicana manufactures a variety of products for its customers whose demand is seasonal; when production orders are filled and the workers that manufactured those products are unable to be relocated to another position, the company downsizes.

Finally, the investigator observed that, of the total of 20 workers that founded the union, only one had left the factory, due to voluntary resignation; the remaining union members continued to be active Joe Anne Dominicana workers at the time of this investigation.

Therefore, the investigator concluded that there was no evidence to indicate that union leaders and members are threatened with terminations on account of union affiliation.

² Article 324 of the Labor Code of the Dominican Republic establishes that worker unions may not have fewer than 20 members.

³ As stated in the registration act issued by the Ministry of Labor, on April 16, 2015, granting registration No. 07/2015 to the union.

3) Procedure followed by Joe Anne Dominicana in the cases of the dismissals of the three members of the union's Founding Committee.

Under Dominican labor law, the union's Founding Committee is the group of workers that promotes the organization of a union; the members of said committee –up to a maximum of 20 workers– enjoy a special protection known as union immunity (*"Fuero Sindical"*), whereby they may only be terminated by the employer with the authorization of the Labor Court.⁴

On February 18, 2015, legal counsel for Joe Anne Dominicana presented the Labor Court of the Santiago Judiciary Department a request for authorization to terminate four factory workers, all members of the union's Founding Committee of the "Sindicato de Trabajadores Unidos de la Empresa Joe Anne Dominicana." Hereinafter, these workers will be identified as⁵:

- **Worker # 1**
- **Worker # 2**
- **Worker # 3**
- **Worker # 4.**

The company lawyers alleged before the Labor Court, that the four workers had committed repeated disciplinary violations that, in the judgment of the company, warranted termination. Specifically, Joe Anne Dominicana presented the following facts before the Labor Court:

1. That on February 4, 2015, **Worker # 1** and **Worker # 2** stopped production in their module for about 20 to 30 minutes, as a means of protesting their dissatisfaction with the calculation of their weekly salary. In addition, **Worker # 2** had disconnected both workers' machines, which in the judgment of the factory constitutes a serious risk to his safety since the machinery operates with high voltage (220 volt) electricity.
2. **Worker # 3** was accused of verbally assaulting a pregnant worker during regular work hours. The management, the alleged victim and the witnesses could not provide information regarding the exact date of this occurrence.⁶
3. Finally, **Worker # 4** was accused of abandoning work on repeated occasions.⁷

⁴ Articles 390 and 391 of the Labor Code, and Articles 86 and 87 of the Regulations for the Application of the Labor Code.

⁵ In order to protect the identity of the workers, their names will be omitted and reference will be made to them with the designation "Worker #."

⁶ According to testimonial evidence collected by the investigator, this action occurred between 5 and 7 days prior to stopping of production and disconnecting of the machines by Workers 1 and 2 (on February 4). Worker # 3 states that the altercation with the pregnant worker occurred on January 27, and according to his version it was she who verbally assaulted him.

In the case of **Workers # 1 and # 2**, Joe Anne Dominicana requested the intervention of the Ministry of Labor in order to conduct an investigation regarding the facts related to halting production and disconnecting machinery. As a result, a labor inspector conducted an investigation at the company on February 6, 2015. In the final report, the inspector concluded that **Workers # 1 and # 2** had committed the actions attributed to them by the company.

With regard to the actions attributed to **Worker # 3**, the factory did not request the intervention of the Ministry of Labor; instead it decided to approach the Labor Court directly.

When interviewed, **Workers # 1, 2 and 3** all denied the actions attributed to them by the company, and confirmed that they had the opportunity to attend the legal process that took place before the Santiago Labor Court and to defend themselves and present proof in favor of their arguments, with the legal assistance of FEDOTRAZONAS.

As part of the investigation, it was determined that some of the sanctioned conduct attributed to **Worker # 1** and to **Worker # 3** occurred prior to the 15-day time period required by Article 90 of the Dominican Republic Work Code to request termination of a worker. However, considering that the Santiago Labor Court has already issued a definite resolution about the case, and that the FLA does not have the jurisdiction to review actions and decisions taken by government entities in any country, it is not possible to evaluate if there occurred any violation of rights recognized by local Dominican law and by the FLA Workplace Code of Conduct.

Nevertheless, and in order to determine if Joe Anne Dominicana followed an internal disciplinary process which conforms to the principle of progressivity, the FLA investigator interviewed management representatives and workers from the modules where these actions occurred and in neighboring modules, and conducted a review of documents related to the facts.

Thus, it was determined that the factory did not initiate any internal disciplinary process for the actions described above attributed to the terminated workers. The company's Human Resources Manager explained that given the seriousness and recurrence of the inappropriate conduct by these four workers, Joe Anne Dominicana decided to take their cases to the Labor Court directly. The FLA investigator did not find evidence to indicate that this action by management constituted noncompliance with local laws or with the FLA Workplace Code of Conduct. However, the termination of these workers without following an internal disciplinary procedure permitted the identification of some gaps in the factory's disciplinary system:

⁷ This was confirmed by a FEDOTRAZONAS representative and by **Workers # 1, 2 and 3**, who expressed that, in addition to resigning from the factory the worker also resigned from the union's Founding Committee, which is why they decided not to include him in the Third Party Complaint filed with FLA. For this reason, the FLA will not issue a decision in the case of this worker in the present investigation.

1. FLA Compliance Benchmark Employment Relationship ER.27.3 requires that all disciplinary actions be communicated to the affected workers, and that any exception to this requirement be made in writing. Joe Anne Dominicana does not include the possibility of such written exceptions within its disciplinary system.
2. In reviewing personnel files for **Workers # 1, 2 and 3**, only one written warning was found in the file of **Worker # 1**; therefore the recurring disciplinary infractions committed by these workers –according to management– were not found to be documented, representing an inconsistency in the application of the disciplinary system. The majority of the interviews with workers confirmed that discipline is not applied uniformly at the factory, citing concrete situations in which certain disciplinary infractions are tolerated, when in other cases those same infractions are sanctioned.

Regarding the formal review of the company’s disciplinary system, other areas for improvement were also identified:

1. The Internal Work Regulations at Joe Anne Dominicana mention only six discipline rules in the workplace, and some of them are very vague and allow for the possibility of discretionary application. For example, some rules require that workers demonstrate “good behavior,” that they dress appropriately – and in the case of women dress “modestly”– and work in “good faith.” But there are no clear criteria to define how each of these categories is applied.
2. The Internal Regulations mention that workers may be subjected to Private/Verbal Warning or Written Warning; the first is applied in cases of “minor offenses,” but there is no definition of what is considered a minor offense. In general, there is no clear definition of the various levels of disciplinary actions corresponding to the seriousness of the offense within the disciplinary system.
3. The disciplinary system at Joe Anne Dominicana does not recognize in writing the right to appeal disciplinary actions, the review of disciplinary actions by someone senior to the manager who imposed the disciplinary action, or the right of the workers to present witnesses during the imposition of disciplinary actions (FLA Compliance Benchmarks ER.27.2.1 and ER.27.4).

Finally, it is necessary to clarify that in practice, there was no evidence that measures to close the above-mentioned gaps have been implemented.

IV. Conclusions

- The current work environment at the factory permits the free exercise of the right to freedom of association for its workers, and no evidence was found of harassment or verbal abuse or other acts of retaliation or discrimination, by supervisors or management, against union leaders and members. Likewise, no evidence was found indicating that supervisors or manager threaten union leaders or members with terminating employment, on account of their union affiliation.
- Joe Anne Dominicana has undertaken important efforts regarding training and dissemination of information regarding freedom of association among its workers. In spite of this, many workers expressed negative views about the right to freedom of association, making evident the need to continue efforts that to this date have been undertaken to increase knowledge of workers about the importance of the human right to freedom of association.
- Joe Anne Dominicana did not initiate an internal disciplinary process against terminated members of the union's Founding Committee; it also did not properly document all disciplinary infractions attributed to them. However, the termination of these workers, requesting the judicial authorization before the Labor Court, was carried out in compliance with the local legal framework, and said action does not constitute a violation of the standards contained in the FLA Workplace Code of Conduct or its Compliance Benchmarks.
- The investigation permitted the identification of some gaps in the current disciplinary system at Joe Anne Dominicana, such as the lack of definition of clear disciplinary rules that do not allow the possibility of the discretionary application of discipline, and the absence of some elements required by the FLA, such as the formalization of the right to an appeal, the possibility of having witnesses during the application of a disciplinary action, and the review of disciplinary sanctions by a higher ranking management representative than the person applying the sanction.

V. Recommendations

For Joe Anne Dominicana management:

1. Review and modify the current disciplinary system, in order to:
 - A) Define in writing the exceptional cases in which disciplinary actions will not be communicated to the worker because in its place an authorization for termination will be requested from the competent authorities.
 - B) Eliminate imprecise and general provisions that may lead to the discretionary application of discipline.
 - C) Define various levels or categories of disciplinary offenses, according to their seriousness, and the disciplinary sanctions that will be applied or each of these offenses.
 - D) Formalize in writing the following elements required by the FLA: right to appeal disciplinary actions, the review of disciplinary actions by someone senior to the manager imposing the disciplinary, and the right of workers to present witnesses during the imposition of a disciplinary action.
2. Once the disciplinary system has been reviewed, hold periodic training for workers –including supervisors and managerial positions–, for the purpose of familiarizing all with the new system.
3. Ensure the uniform and consistent application of disciplinary rules and document all infractions committed by workers, as well as sanctions imposed, including those exceptional cases in which disciplinary actions will not be communicated to the worker.
4. Continue to conduct training and disseminate information about the right to freedom of association, emphasizing the importance and benefits of freedom of association, with the purpose of eliminating negative preconceptions that some workers still hold about the right to freedom of association.

For companies affiliated with FLA:

1. In collaboration with Joe Anne Dominicana management, develop a remediation plan consistent with the recommendation for the factory, mentioned above, and follow-up with compliance of actions contained in said plan.
2. Verify within six months, through an independent evaluation, the current state of the implementation of the remediation plan and report to FLA.

VI. Appendix

Appendix 1: Information sources

Interviews Performed	On-site and telephone interviews with the FEDOTRAZONAS Secretary General and Assistant Secretary General
	Group interview with 3 members of the Union Organizing Committee for the Union of United Workers for Joe Anne Dominicana, terminated in February 2015
	Group interview with 7 union leaders and members from the Union of United Workers at Joe Anne Dominicana
	Group interview with the Labor Inspector and the Supervisor from the Inspection Department at the Ministry of Labor in Santiago
	18 individual interviews with active Joe Anne Dominicana workers
	2 interviews with active supervisors from Joe Anne Dominicana
	2 telephone interviews with former Joe Anne Dominicana workers
	Interviews with the President, General Manager, Human Resources Manager and company legal representative from Joe Anne Dominicana
Documentation reviewed	Complaint announcement from FEDOTRAZONAS, from March 2, 2015
	File 15-00359 from the Labor Court for the Santiago Judiciary Department
	Record of registration of the Union of United Workers of the Company Joe Anne Dominicana (Registration 07/2015), issued by the Ministry of Labor on April 16, 2015

	Ministry of Labor inspection report, February 6, 2015, regarding an investigation at Joe Anne Dominicana about infractions attributed to the members of the union's Founding Committee
	Personnel files for 3 members of the union's Founding Committee
	Company policies relating to non-discrimination and freedom of association
	Joe Anne Dominicana Internal Regulations
	Payroll for January and February 2015
	Records of training held in the matter of freedom of association
	Final report of independent evaluation conducted at Joe Anne Dominicana by COVERCO, April 2013
	Report of Independent verification conducted at Joe Anne Dominicana by FLD, February 2014
	Final report from FLA regarding the Third Party Complaint at Joe Anne Dominicana, April 2014