



**The Labour Hive (Pty) Ltd**  
*Reg Number:* 2020/866615/07  
*Mobile.* 0731233327  
*Email.* yaseen@labourhive.co.za  
[www.labourhive.co.za](http://www.labourhive.co.za)

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**Fair Labor Association (FLA) Brand-Commissioned Independent Investigation Report -  
Tropic Mad SA, Madagascar.**

**PREPARED BY: YASEEN MOOLLATJIE  
THE LABOUR HIVE**

**FINAL REPORT: 21 FEBRUARY 2023**

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## INTRODUCTION

Fair Labor Association (hereafter “FLA”) has contracted the services of Yaseen Moollatjie (hereafter “investigator”), in his capacity as Director of ‘The Labour Hive (Pty) Ltd’ in order to conduct an independent brand-commissioned investigation regarding allegations of violations of worker rights brought to the attention of brands sourcing from ‘Tropic Mad SA’ (hereafter “Tropic” or “factory”), part of the CIEL Group, situated in Antananarivo, Madagascar.

CIEL is an International Mauritian Group present in more than ten emerging markets across Africa & Asia with its operations focused on six strategic sectors. Textile is one of the six strategic sectors of the CIEL Group. CIEL Textile is a subsidiary of the CIEL Group which consists of three clusters, one being the Tropic Cluster. The Tropic Cluster consists of four factories. There are three Tropic Mad factories in the cluster situated in Madagascar, Mauritius, and India. CDL is the fourth factory in the cluster situated in Mauritius.

The four brands (PUMA, ASOS, Gymshark and Levi’s) received communication containing the worker complaints from IndustriALL Global Union (“IndustriALL”), since two out of the four active unions in the factory are affiliates of IndustriALL. Furthermore, one of these brands – ASOS -- is a signatory of IndustriALL’s Global Framework Agreement (“GFA”), which covers certain commitments from ASOS towards improving workers’ rights in ASOS’s global textile/apparel and footwear supply chains. These commitments include the facilitation and implementation of dispute resolution mechanisms and access to remedy for workers. Tropic is a contractor facility for the four brands, which include FLA members Gymshark and PUMA, as well as ASOS and Levi’s, which are not FLA-affiliated companies. After receiving the complaints, the brands immediately contacted the factory and conducted their own preliminary investigation, which was led by ASOS.

## SCOPE OF INVESTIGATION

The scope of the investigation included a number of allegations, namely:

- Wage discrimination due to an absence of an objective wage, job classification and discrimination in Tropic's hiring policies and supporting procedures;
- Unpaid overtime;
- Deductions of wages from worker salaries, including deductions as a sanction for participation in a strike;
- Dismissal of workers in relation to strike action that took place in February and May 2022;
- Sexual harassment and gender-based violence, including through verbal threats and "bullying" by management directed in particular at female workers;
- Assignment of short-term contracts to younger female workers;
- Absence of an adequate industrial relations policy and procedures, including with respect to the process for disciplinary actions;
- Certain questions raised in connection with pre-dismissal interview records;
- Soliciting workers to pay certain management personnel for better work assignments/tasks;
- Unfair dismissals based on union membership and other anti-union practices;
- Issues relating to the nomination process of SEMPIZOF/ FISEMA union (not affiliated with IndustriALL);
- Relationship of factory management with SVS/RANDRANA SENDIKALY union (affiliated with IndustriALL).

As an outcome to this investigation, IndustriALL and the unions are seeking the following:

- Workers' rights to be respected and realised;
- Any wrongdoing should be remedied;



- Wrongful practices to be rectified and changed appropriately;
- Promotion of social dialogue; and
- Appropriate action to be taken in favour of staff members that were unfairly dismissed.

## METHODOLOGY

The investigator gathered information from different sources including desktop research, documents review, virtual and in-person interviews with union representatives/workers and management staff, video footage taken via cellphone during the strike action in May 2022 and other physical evidence and meetings with other stakeholders such as IndustriALL, Better Work and the various brands.

All credible evidence and information was considered in the finalisation of the report.

Virtual interviews took place from 23 September 2022 to 16 January 2023. In-person interviews were done at the factory and off-site between 10 and 12 October 2022.

The information used for purposes of this report includes, but is not limited to:

- Correspondence between Tropic and the Labour Inspectorate;
- The GFA between ASOS and IndustriALL;
- Media publications and research studies;
- Court orders and legal documentation;
- Employment contracts and contractual agreements;
- The Madagascan Labour Code (Law No. 2003-44 of 28 July 2004) and other legislation;
- Investigation report of IndustriALL;
- Investigation report of the factory;
- Preliminary investigation done by the Brands in the form of questions sent to the factory via email;
- Internal policies and procedures at Tropic;
- Minutes of various meetings between staff representatives and management;
- 2021 audit report of PUMA;
- Fair Labour Association Workplace Code of Conduct and Compliance Benchmarks;
- International Labour Organisation decisions;

- Notices, requests for information, employee responses to questions and outcomes for disciplinary matters as a result of the strike action in February and May 2021;
- Various factory notice board communication;
- Government Decrees and decisions; and
- Various internal documents of Tropic such as the organogram, statistics relevant to the investigation, technical tests as well as training content and attendance sheets.

The investigator interviewed the General Secretaries and union officials of three of the four active unions at the factory namely, FISEMA, SVS and FISEMA Mifanampy. The investigator tried to contact the union FISEMARE on numerous occasions however all attempts were unsuccessful.

The investigator conducted interviews with a total of 80 individuals. The investigator requested a list of staff from factory management and selected individuals to be interviewed. There were three staff members selected for to be interviewed due to information received by other interviewees. The investigator interviewed union officials from two unions that arranged interviews with dismissed workers. The interviews were scheduled at a private location.

These interviews were conducted as follows:

- Individual interviews with staff;
- Group interviews with staff. The various groups of employees that were interviewed consisted of:
  - Females only;
  - Mixed females and males;
  - Female machinists only;
  - Mixed male and female machinists;
  - Employees of any occupation;
  - Senior employees;
  - Employees of any seniority;
- Interviews with dismissed workers;
- Interviews with factory management;
- Interviews with external stakeholders and organisations;

- Interviews with staff representatives and union officials that are not staff representatives; and
- Interviews with external union officials.

It is important to understand the structure of the report. The information gathered from interviews have been placed in bullet points and appears under each allegation. The investigator must emphasize that the information contained in the bullet points are not the conclusions of the investigator. The bullet points contain the information and various versions of events as received by the interviews.


The reason that the investigator has structured his report in this manner is to deliberately highlight to the reader the aspect of potential miscommunication, which is addressed by the investigator in his recommendations.


The conclusions of the investigator follow the bullet points in each section. The investigator's conclusions analyses the allegations, the information received from the interviewees, the corroboration of information, as well as the analysis and verification of various documentation and evidence.

This report then concludes with appropriate recommendations based on the findings of the investigator.

## TIMELINE OF EVENTS

Due to the nature and complexity of the issues raised in the complaint the investigator has included a timeline of events which will broadly highlight key events that will be necessary for the understanding of this report.

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**21 October 2011** The Talatamaty factory and the Andraharo factory merged. This was the beginning of the problem whereby machinists doing the same job received different professional classification. Each professional classification is paid at a different wage level. Machinists at the Talatamaty factory were absorbed by the Andraharo factory however the machinists at the Talatamaty factory were paid at a higher professional classification than the machinists at the Andraharo factory.
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**30 June 2021** Staff representatives made a request to management to ensure that there is equal pay for employees in the same position. Workers wanted their jobs to

be classified correctly. Management stated that it hopes to finalise the process between September 2021 and November 2021.

**31 January 2022** ● Employees embarked on an industrial action in the form of a work stoppage. Even though the work stoppage took place at the end of January, it is known in the complaint and via the workers as the February strike. The purpose of the work stoppage was to obtain an increase in salary from management. This work stoppage was not performed by following the relevant steps of a “legal strike” as defined in Malagasy Labor Code. It is important to note that the workers participated this industrial action in February were part of the finishing department.

**17 February to 1 March 2022** ● Disciplinary action was taken against the Employees that took part in the February work stoppage. Employees were dismissed for refusal to work and abandonment of their work post without notification.

**28 April 2022** ● Management provided a notice to staff that the project to align their professional categories/classification of work has been completed. The notice stated that there would be a further project to assess machinists which would determine their professional category/classification of work however, management informed staff that this may take several months to complete. This additional assessment was known as the People Value Management project.

**18 May 2022** ● Machinists were aggrieved by the decision of management which left machinists as the only group in the factory without wage adjustment/raise criteria, as a result, machinists decided to embark on strike action. This strike is not linked to the February strike.

**19 May 2022** ● Factory Management informed the Labour Inspectorate that about 350 workers have embarked on the strike action in the form of a work stoppage.

**24 May 2022** ● Factory Management informed the Labour Inspectorate that the work stoppage has now allegedly evolved into a demonstration with staff carrying placards, blowing whistles, making noise, harassing and disturbing other workers. Management further stated that due to the situation getting worse, the factory will be closed on 25 May 2022. On this day, the Labour Inspector

- attended the factory in order to assist with negotiations between management and staff representatives.
- 25 May 2022** ● A certificate stating there had been no resolution to the negotiations was issued. A strike notice was issued by the staff representatives on the same day.
- 1 June 2022** ● Factory management informed the Labour Inspectorate that it has proceeded with disciplinary action against staff that took part in the illegal strike.
- During June 2022** ● As a result of the illegal strike action, 314 staff members that took part in the strike received a 3-day suspension without pay as a sanction and 57 employees were dismissed.
- 22 June 2022** ● The factory entered into a mutual termination agreement with John. John was employed as an Industrial Engineer. Many of the complaints revolved around his alleged conduct. This is elaborated in more detail throughout the report.
- 25 June 2022** ● Levi's contacted the factory due to communication they had received from IndustriALL stating that one of their affiliated unions (FISEMA) had requested support relating to worker's rights violations. Tropic provided an investigation report to Levi's.
- July and August 2022** ● After consulting with the factory, the 4 brands decided to collaborate. After doing a preliminary investigation, they agreed that a further independent investigation be conducted relating to the issues raised at Tropic and they then approached FLA.

## APPLICABLE LAW AND CURRENT LEGAL DISPUTES

The applicable law which is to be considered in this investigation is Madagascar's Labor Code (Law No. 2003-44 of 28 July 2004) (hereafter "Code" or "Malagasy Labour Code"). This report will only mention and discuss the relevant sections of the Code.

The standard that Tropic's conduct will also be measured against is the Fair Labor Association "Workplace Code of Conduct and Compliance Benchmarks". This report will only mention and discuss the relevant sections of the Code.

An arbitration award was issued against Tropic in the matter regarding the classification of workers. The award stated that Tropic must comply with Article 53 of the Malagasy Labor Code by:

- ❖ Establishing an evaluation committee as provided for during the negotiation which will be composed of a representative from HR, a staff representative and a representative of each department;
- ❖ The committee will be responsible for setting up objective and verifiable evaluation criteria based on versatility, performance, diploma and seniority;
- ❖ Tropic must endeavour to correct the anomalies concerning the machinists revise their placement; and
- ❖ Tropic must strengthen the transparent communication system such as the displaying of job sheets for each category, function and department.

The current status of pending court cases involving Tropic is as follows:

- The unfair dismissal dispute related to the May strike:
  - SVS is representing 27 individuals in their unfair dismissal case. The case has been lodged at Court and the parties are awaiting a Court date.
- The unfair dismissal dispute related to the February strike:
  - SVS is representing 12 individuals in their unfair dismissal case. The case has been lodged at Court and the parties are awaiting a Court date.

## INVESTIGATION

### WORKPLACE CONTEXT

In order to understand the information gathered, one must first understand the context in which the factory operates.

There are 1,695 workers at the factory of which approximately 1,300 workers work in production. Two-thirds of staff are female and one-third of staff is male. The table below displays a breakdown of the workers in each department.

Department	Total permanent Workers	Temp. Workers
ADMIN	15	
CUTTING	117	50
FINANCE	6	
FINISHING	164	125
FRONT END	34	
HR	18	
IE.	17	
IT	2	
MAINTENANCE	39	6
MAKEUP	846	72
PERIPHERALS	67	6
PLAN & SHIPPING	10	
QUALITY	51	
SECURITY	3	
STORE	31	16
<b>TOTAL</b>	<b>1,420</b>	<b>275</b>

It is important to note the following concepts for better understanding of this report:

- Under each allegation, the interviewee comments will appear as bullet points. These comments are not the conclusions of the investigator and have been included to evidence the problem of potential miscommunication, which will be elaborated in the report and will be addressed in the recommendations.
- The report will make reference to Machinists on numerous occasions. According to the factory's organogram, the Machinists work in the Make-Up department.
- The employees that took part in the February strike were situated in the finishing department while the employees that took part in the May strike were situated in the make-up department, employed as machinists.

- The terms “employee”, “worker” and “staff member” are used interchangeably and have the same meaning for purposes of the report.
- The term interviewee refers to any person that was interviewed which includes a staff member, external union official, dismissed employee, etc. Where specific reference is made to staff, employees or workers, this would exclude any external individuals.

The factory has four unions that are recognised at the factory. The four unions are SVS, FISEMA-SEMPIZOF (hereafter “FISEMA”), FISEMA Mifanampy and FISEMARE. Only SVS (who collaborates with a union Randrana Sendikally) and FISEMA are affiliated with IndustriALL.

The factory has 12 staff representatives that are elected via an independent democratic vote. The elected staff representatives and the nominees are all representatives of the various unions. The result of the last election at the factory was that FISEMARE had 10 elected staff representatives in the workplace whilst the remaining two staff representatives are affiliated with FISEMA.

The difference between union representatives and staff representatives is that the union representative takes care of union matters only while the staff representative takes care of all staff matters regardless of which union he/she is affiliated with.

There is currently no collective bargaining agreement with any union. All negotiations are done with staff representatives. In terms of the law, the employer must elect a work council. The work council is comprised of staff representatives, union representatives and management representatives. Therefore, it is the union themselves that are leading the negotiations.

Management states that from a broader context, not a lot of companies have a work council because it involves a lot of specialists. An example would be that the work council has access the financial statements and the details of the company. However, a lot of companies struggle with the work council because the education of workers is not at a standard to understand the contents of these financial documents. The purpose of the work council is to deal with



collective staff and bargaining issues such as elections or conflict that may lead to strikes and collective grievances.

The factory pays workers according to their classification. The classifications relevant to this investigation is OS1, OS2 and OS3. The salary for classification OS1 is lower than OS2. Classification OS3 is the highest of the 3 pay grades. Workers that are paid at the OS1 classification, their work corresponds to the type of work that does not need any initiative or autonomy. HR and the HOD of a particular department will analyse what the difference is between employees' jobs.

It is important to note that machinists at Tropic must be paid at Classification OS1. Machinists that operate one machine are not the same as a machinist that can operate multiple machines and therefore the more skilled you are, the higher your classification. Salary benchmarking is done in two ways. Firstly, when an employee is recruited, they will be asked what their classification was in their previous employment. Secondly, formal and informal discussions with the GFE. The GFE is a group of which contain many companies in the textile industry. This is how benchmarking is done with other companies in order to align with the industry norm. In Madagascar, all CIEL companies are aligned with salaries. Where there are anomalies discovered, the anomalies should be rectified.

## CONFIDENTIALITY AND BIAS

All staff members were informed prior to the commencement of the interviews that the investigator and the two translators are neutral parties and that the information the staff members provide will be confidential. About 30% of staff members interviewed specifically requested that their names do not appear on the report. Certain interviewees had questions about confidentiality of the process. The investigator spent extra time with those individuals prior to the interviews commencing in order to explain the confidentiality of the process. The interviews would only continue if staff had indicated that their questions regarding confidentiality and bias had been answered and had no problem continuing with the process.

Two interviewees questioned the relationship between the factory and the investigator as well as the relationship between the factory and the translators.

The investigator assured the staff member that neither he, nor the translators, are affiliated in any way with the factory. The staff member was comfortable to proceed with the interview. Furthermore, the investigator stated that there had been no past or present relationship of any nature between himself and the factory. That translators also confirmed that there had been no past or present relationship between the factory and the translators.

The interviewees were comfortable with the responses received and elected to continue their respective interviews.

## EVALUATION OF ALLEGATIONS

- A. Wage discrimination due to an absence of an objective wage, job classification system and discrimination in Tropic's hiring policies and supporting procedures. Unfair dismissal of workers in relation to strike action that took place in May 2022.

This section will deal with both the allegations relating to wage discrimination and the dismissal of workers that took place in May 2022 due to the fact that the information gathered for these two points overlaps. As stated under the methodology, the bullet points highlights information gathered from the interviewees and are not the conclusions of the investigator.

### *The demand from workers and events leading up to the strike*

- An interviewee stated that during the latter part of 2021, workers requested that management promote the machinists in the factory from OS1 to OS2. In essence, the workers had requested that their classification of work be changed for a better compensation. The issue of classification of wages was raised by staff in 2021. The assessment only came up in June 2022. The staff and staff representatives could not understand why it took so long to finalise the matter. This is one of the key reasons that led to the strike action. One of the other main causes of the problems were that there were new recruits getting paid the same as employees that have worked at the factory for a long time.

- In November 2021, management did not accept workers' request for jobs to be reclassified and they were told that workers' individual performance need to be assessed first.
- Workers were upset about the fact that they needed to be assessed first to decide their classification as they have been doing their job for years. They were told that part of the assessment would be how many different stitching machines the staff can operate.
- An interviewee stated that management released a notice around 17 March 2022 stating that they were investigating the matter in order to improve the lifestyle of the employees and that they have completed the investigation. They mentioned however in the notice that for the machinists, the investigation is ongoing. The machinists took that as discrimination. They were also angry about the fact that the machinists asked for this process; however, everyone else got a raise except them. They questioned how it was possible that someone who made the request does not get the desired result yet someone who did not make the request gets the desired result. This is the root cause of the strike in May 2022 and this is what caused the workers to conduct themselves in the way they did during the strike.
- There were many machinists that had an issue regarding their salary yet the factory decided to address their issue last. With regards to the machinists, factory management are having a skill assessment to assess employees. It may result in a change of the worker's classification. Both senior and new workers are part of the assessment. Some interviewees stated that the assessment of the other departments have been completed; however, it is only the machinists that are left.
- One of the interviewees stated that the root cause for the wage discrimination issue at the factory is the labor law in Madagascar. It was stated that according to Article 53 of the Malagasy Labor Code, the machinists that are on the OS1 pay grade must be promoted to a higher pay class. An example was given that there are three machinists that have the same job but one has 15 years' service and one has five years' service.

The compromise made by the employees is a skill assessment with workers and that will determine who will be promoted. When it was first proposed, the workers did not accept it but they did accept it afterwards. They accepted it because the law favours factory management's position.

- As recently as 3-4 years ago, Tropic Mad SA had two factories. One factory was situated in Talatamaty and one factory in Andraharo. The factory in Talatamaty closed down and the factory in Andraharo is the factory still in operation. The terms and conditions of employment were not the same at the two factories. They had a system where they were classified as OS1 and after three years they would move to OS2 and thereafter to OS3. When the staff of the two factories had merged, they noticed their difference in salary. The machinists from Talamaty were paid on OS2 while the machinists from Andraharo were being paid at OS1.
- At the time, a promise was allegedly made to staff that their salary will increase in about five years' time. They started to complain in April or May 2022. They negotiated with management and tried to convince them to increase the other machinist's salary accordingly. It eventually became a collective dispute. According to one of the staff representatives, the law states that if more than one worker is employed in the same position, they should have the same salary. He states that this is what the law says. The reason that there was a strike was because the company knew the law, yet they aligned all the machinists to OS1.
- Another department that works next to them namely, the finishing department, received a raise in their salaries and the machinists did not. The difference however between the machinists and the finishing department is that the employees in the finishing department did the same work while the employees that are employed as machinists have varied skills and conduct different work. Therefore, factory management stated to the employees that the finishing department did not need an assessment because they do the same work such as ironing while the machinists work is more complicated. Some machinists do work that other machinists do not do and therefore the assessment is needed.

- With regards to the finishing department, management state that there are different jobs in the factory and each job has a different context. The six-month period corresponds to a probationary period. The person would be paid lower than the job classification during the probationary period but once they have completed their probation, they will receive a salary in line with their classification.
- With regards to the wages, there is a schedule that determines wages. It is a salary grid and it shows the salary for the different categories of work. Workers can be paid at pay class OS1 ,OS2 or OS3. The pay class that you are paid is dependent on the job the worker does and the skills that the worker has.
- The factory management and the workers could not settle the matter regarding the classification of wages internally and therefore the matter had to be referred to court where they are awaiting a decision since May 2022.
- One interviewee stated that the reason why the staff went on strike was because of the report that the staff representative provided to them. The report was that some sections got a salary increase and the machinists did not due to the fact that the machinists had to get assessed first.
- An interviewee stated that the strike started when a notice was published stating that workers should wait for their salary increase. The finishing department got their salary increase but the machinists were told that they need to wait.
- The initial claim was framed by staff who were assisted by the staff representative. Management, in response to their claims, stated that they need an extra 3 months. This angered the staff who proceeded to strike.
- Interviewees stated that the request made by staff to rectify the classification of staff and increase wages was made in November 2021. There was a delay and they were told that it would happen in February 2022. There were further delays and they were told that it would happen in May 2022. The staff became upset because they viewed

the delays as unfair. They realised in January 2022 that they were being lied to. They expected to be paid in April 2022. An interviewee stated that when they asked the staff representatives to follow up with management, they did not do so.

- An interviewee stated that workers were requesting their rights in a peaceful manner however, when management took long, the staff started to strike.
- With regards to the assessment, an interviewee stated that if you can work on multiple machines, your salary could be moved to OS2.
- Some staff thinks that only new employees got increases in salary.
- When the notice was released stating that management finished the assessment for the other departments but not for the machinists, the machinists felt humiliated and this led to the strike. One interviewee stated that there was an increase in production yet they did not get a raise.
- The three classifications of staff relevant to the machinists are OS1, OS2 and OS3. They are doing the same jobs even though they are classified differently. Staff raised this with management and more than a year was passed where nothing was done. Management made an announcement that it is ready to resolve the request of staff. Management issued a notice that stated that went against what was said in that certain staff got reclassified but this would not be applied to the machinists as yet.
- When the staff saw the notice, they stated that they will not be working. The 12 staff representatives went to meet with management to discuss this. Management told them that they will discuss it that afternoon however they should inform staff to continue working. The machinists were disappointed because they were not reclassified as requested. The next day the machinists did not work.
- When management was asked about the assessment relating to the machinists, it was stated that when they started the assessment, they named it the classification

alignment project. It was meant for all occupations in the factory. They did it per occupation. There were discrepancies in classification. They needed to complete the assessment for all positions before they communicated it.

- By March 2022, they announced that they finished the assessment for all positions and the outcome will be communicated by the end of April 2022. The outcome was communicated by end of April to staff representatives. The outcome was that the majority of the positions did not change. Machinists' positions did not change. The initial demand from staff was to address the classification of staff and that is why they initiated the analysis.

There were three scenarios. The first was that if there were no anomalies, there will be no change. The second scenario was that if it is found that the classification of the job should be higher than the current grade, the staff member would be upgraded. The third scenario was that there were some exceptions in the factory where there were employees with a higher classification compared to their colleagues who are doing the same job. They cannot simply be downgraded as it would affect their salaries. Therefore, their title would change or they will be given additional responsibilities. The existence of positions where some staff were classified higher than others were considered anomalies.

- Staff complained about there being no change. There was a miscommunication because staff thought that the machinist's assessment was not done. There was a problem at the factory because there was a situation where the machinists were not happy with their situation and they are important to the factory. Management needed to think of alternatives.
- Management agreed with employee representatives' options that were considered to motivate machinists. In order to motivate them and resolve the issues, management has set up a project to differentiate the machinists by their skills. One operator that handles two machines must be differentiated from the person that is able to work with six machines. This project was put on the table. The project is for all machinists. It is an ongoing project.

- There were various criteria used for the assessment. If you have more than five years' service, it was added to the consideration. If, for example, you operate two machines and work in two operations, you will be classified as OS1 but if you can operate six machines and work in six operations, you will be classified as OS2 and then OS3. When the staff of the Talatamaty factory were transferred to the Andraharo factory in 2011, the machinists at the Talatamaty factory were classified as OS2 as opposed to the Andraharo factory where machinists were on OS1 and therefore there was an alignment issue.
- Communication about this project was done through the staff representative and then via the notice board. The finishing department got their salary increases because the assessment was done. The result of the assessment went to the management and they would decide on the increases based on the completed assessment. It must be noted that nobody can approve a promotion in the factory other than the General Manager.
- The project is complicated and has a lot of variables to consider. The project needs to consider the financial impact and it involves liaising with their Mauritius office. The project is in its final stages of approval. Management expected that it would be implemented in September. However, the Mauritius office had a lot of questions about the project and management needed to provide a lot of data. Employees were informed that they will get backpay from May so staff are not losing out.

*The request for the termination of John and the HOD.*

- During the May strike, requests were made that certain managers must be terminated from the factory. They brought this forward because they were of the view that the managers were holding back the progress of the assessment. The other reason was that staff accused a member of staff of sexual harassment and demanded that he be removed.

***\*The name of the staff member accused of sexual harassment will be given an alias in order to protect his identity as the allegations against him were not proven. His name, for the purposes of this report will be John.\****



- When staff said that John should be removed, they also stated that they would not work until it happened. The labor inspectorate however educated the staff and the representatives that they cannot conduct themselves in that manner and they cannot just stop working if they are unhappy.
- With regards to John, one interviewee stated that staff were angry after he hired some people that played soccer with him yet they did not know how to do the job for which they were hired. They do not perform well in terms of quantity yet they had a higher salary. The interviewee state that John use to give the green light to hire the people. He was dismissed because staff did not want him in that position and refused to work if he is not gone. He was suspended and thereafter he was dismissed.
- It was stated by one interviewee that there was discrimination in the factory because there were newly recruited staff at OS3. Staff that were there for long were still at OS1. John was responsible for recruitment at the time and he was the one responsible for discrimination. That is why the staff wanted his dismissal due to the fact that he created problems at work by allowing certain newly appointed staff to go straight to OS3. It was stated that John had the authority to be in charge of all the recruitment. If there was a beautiful woman, he would try and bribe her for sexual favours and he would position her in OS3.
- HR is still above him but he determines who is recruited and HR would just accept what he says. John gave jobs to people he liked or worked with before. The interviewee stated that there were many that got placed on pay grade OS3, however, she could not provide the investigator with names. They were given machinists jobs but they were soccer players. They were not qualified to be machinists. They worked for less than one year yet they were given OS3 contracts. He said to those in the chain of production that nobody can do anything to him and if he does not like someone, they will be terminated. The company had to dismiss him because there was no peace in the workplace. The interviewee stated that John's position was a manager in administration and that he supervised processes.

- John was a supervisor and consultant. He hired people and gave them a higher salary. Newly recruited people were paid on the OS3 pay grade.
- With regards to the allegation that part of the reason why staff did not get an increase in salary or an upgrade in their classification is due to John deciding that they cannot because they need to be assessed first, management stated that the assessment that management did with regards to the classification of staff had no link to John. The machinists do not report to John. He was employed as an Industrial Engineer Co-Ordinator who was in charge of line balancing. The assessment was done by the head of the department, the manager of the department, the human resources manager, the human resources head of operation and the general manager. The general manager approves the final assessment.
- Therefore, John had nothing to do with the impact of the job assessment. John was not informed by management whether or not there was an upgrade on the classification of workers. This decision was communicated by HR directly to staff and not through the line management. John was responsible for line balancing in the factory and this created the perception that he has power within the factory. John was allowed, within his employment, to dictate line changes in the factory and this adds to the perception that John had authority and power.
- Before John was employed, they would get a bonus. They would get about 40,000 Malagasy Ariary hereafter “MGA”) or 80,000MGA and when John was employed, they got 400MGA bonus only. John raised the target and set it to an impossible level. Management stated that Production data came from the Industrial Engineering team. They gather the information from the various lines and they would give the information to line management daily. Management would then use the information to for purposes of awarding a bonus. This information is validated by the head of the department, thereafter the factory manager and then the general manager. Therefore, there is no way John could change this information. Employees may have

perceived John to have power and authority however in reality, he did not have power and authority to change the information or change the targets.

- This complaint was never raised with management prior to the FLA investigation and they have never received a grievance about this issue. This was not even raised during the strike action. Bonuses are related to production. Production is not only managed by the IE. The production data is produced in the daily report. It is not possible to change individual data of staff. Production bonuses are linked directly to the production data. Production data is captured by the supervisor in a particular line and inserted on the dashboard. The data is then captured by the production clerk and uploaded for management's viewing. The IE will deal with compliance of the data. The head of IE will also check the data. The data that is captured is the collective data of each line. Therefore, John cannot simply set his own targets. There is always compliance with standards. The targets that are set for the factory never goes beyond the standard target that is aligned with Tropic in Mauritius.
- With regards to John's involvement in recruitment processes, management stated that HR facilitates the recruitment process for Heads of Department. For employees on fixed-term contracts, HR is involved in every level of recruitment. There are also many steps in recruitment. The department where an employee is employed or will be placed, that department is responsible for testing the employee's competency. The results are sent to the HR department. HR has limited input with regards to the competency assessment because it is too technical.
- There may be a situation where the production team takes the wrong decision in some recruitment processes however management does not have any evidence of this. Previously, for recruitment processes of temporary employees, HR was not involved in the process. The Heads of Department or the industrial engineer would have a list and simply offer the employee a job. However, that process has changed a long time ago in that HR is involved in every recruitment process which includes processes for permanent or temporary employees. The change in the process took place before John was employed.

- Every promotion must be approved by the General Manager. Management has never received any complaint about this issue before the FLA investigation because if they did, they would have investigated it. During the recruitment process for a machinist, John would only be involved in the technical part of the process. With regards to signing off the competency tests, there are three individuals. The individuals are the IE, the trainer responsible for the test and the individual responsible for production side of the process such as the production co-ordinator or HOD.
- There are 41 OS3 workers at the factory. There are currently no machinists classified as OS3. Some OS3 workers have job titles called "Commando". Commandos are classified on level OS3 due to the fact that they are able to operate multiple machines and can be placed in various positions at the factory when the need arises. Out of the 41 OS3 workers, 12 are Commandos. One Commando was recruited externally and 11 were promoted internally.
- The interviewee also mentioned that John caused a lot of problems. There were no issues before he worked at the factory. One of the unions stated that the issues leading to the strike were partly John's fault due to the fact that he was employed as a manager and some newly recruited workers receiving a higher salary. Prior to John, there were no issues at the factory.
- The striking workers had a sign that also said that the head of the make-up department ("HOD") must also be removed. It must be made very clear that there were no allegations of sexual harassment or any form of corruption against the HOD.
- One interviewee stated that staff did not have a good relationship with the HOD and that was not good and he believes it is because the HOD did not deal with the salary issue in the way they wanted him to. Another interviewee states that when John was investigated for any wrongdoing, there was no evidence.
- With regards to the HOD, there issue with him was that he increased productivity targets and it made it hard for staff. Management took care of the matter and the

issues were resolved. Staff relationships are much better now with the HOD. There are no complaints about him.

- The HOD was interviewed who stated that his name was brought up during the May strike because he was a bit tough with staff according to them and he was limiting their overtime. He was asked to save costs for the factory by limiting overtime. He does not feel that he was tough with the workers. Before the strike, he was listening to staff problems and he was trying to assist them where he could. He admits that he was hard when it came to production targets. They are using industrial engineers to check timing and capacity of staff members. He stated that staff are not complaining now. His relationship with them is much better.
- The machinists report to the HOD of the make-up department. The Complaint against him was that the employees had alleged that he was preventing them from getting a higher classification and they had also complained that he had bad management skills. When this was discussed with management, it was clear that what was being complained about did not rest with his area of responsibility. The decisions regarding classification of employees and any other management decisions rests with the General Manager of the factory and not the HOD. The HOD is more operational.
- When the complaint was received from staff against John and the HOD during the May strike, John was immediately suspended due to the serious nature of the allegations. The HOD was accused of being responsible for bad management and not developing staff for higher pay. He was blamed for staff remaining at OS1. They may have blamed the HOD but the HOD was not responsible for any decisions taken regarding the classification of positions or an increase in salary. This perception led to the complaint against the HOD. The staff representatives understood this and did not support the complaint against the HOD. This was also explained to staff. After about 2 or 3 days, the HOD's name was removed from the Placards. Management stated that they had to manage the strike in parallel with the complaints against John and the HOD. The complaints against both John and the HOD were investigated by the HR department however there were no formal written reports for either of them.

*The strike action and the conduct of workers*

- There were about 40 – 60 striking employees and some were making noises and telling other workers to go on strike. They went on a tour around the factory and some were forcing others to follow them. The striking employees were mixed ages but most were senior workers.
- 20% of interviewees stated that workers made a mistake of putting up boards/signs and blew whistles. 20% of interviewees stated that during the May strike, there may have been an issue whereby strikers were bullying non-striking workers by forcing them to strike. 20% of staff members interviewed only heard the claims of violence or bullying during the strike, but they did not see it. 80% of staff members interviewed never heard about these issues at all.
- One staff representative stated that he did not see staff holding the signs with writing but he heard that staff had these signs. He also saw the signs when the strike was over. He heard that the striking employees were blowing whistles and making noise however he never heard it himself.
- The building is split into two segments, the one side where they employees were working and the other side that came to disturb people. Factory management checked the CCTV footage. They saw people that were not willing to work.
- During the strike, Line 1 to 20 stopped working. The strike lasted for about five days. Dismissed workers claimed that they did not disturb the factory, they just stopped working.
- Another interviewee stated that the strike lasted 5-7 days. The strike was not violent however on one of the days, the factory management took precaution and brought police with police dogs. The police were called because management thought there would be a lot of damage at the workplace. The strike happened around 22 May 2022

and at the beginning of June 2022 the process started in order to have the strike authorised.

- During the strike, the staff representatives tried to gather the staff but they continued to strike. Management decided to dismiss them because they were not working anymore. Management gave them an option that if they preferred to work then they should work but if they want to sit at their chair and not work, then they should do that and wait for the answer as to whether management would accept their demands. Staff did not want to wait and they got agitated. They wanted to disturb other workers that were working. Management addressed the strikers again to say that they can stay at work but if they want to disturb workers that are working, then they should go home.
- One interviewee stated that some workers were not working because their work depended on the striking workers work to be completed. Therefore, it may have seemed that they had stopped working however this was not true. They only stopped because there was no work to do due to the striking.
- The employees were impatient and could not wait. While the parties (management representatives, staff representatives and union representatives) were at the labor inspector, the strike was ongoing. Part of the discussions was the fact that the strike was illegal. The factory called the police in the interim to assist. Staff were not allowed to return to work due to the fact that the strikers were making a noise and disturbing workers that wanted to work.
- SVS indicated that about 100 members complained to them about what was happening. The union official attended the factory and had a meeting with factory management and human resources. They were informed that management decided to leave employees outside the factory because they were noisy and caused a disturbance to other workers. There were two different sanctions at the end of the disciplinary hearings. Some staff were dismissed and other staff were given a three-

day suspension without pay. There were 28 people dismissed according to the interviewee.

- Certain factory workers that were interviewed worked on the other side of the factory and they stated that when the strike commenced, they continued to work.
- During the strike, the striking workers turned off all the machines and they were all just sitting. They were shouting and whistling and screaming. They held up a sign for the dismissal of John. The staff representative told them to sit down if they do not want to work.
- The supervisor of other departments accepted the raise for their staff however, John did not accept the raise and said that his staff needed to be assessed first. In essence, staff had the perception that John was the decision maker of these decisions however their perception is false. Older staff were not happy because they are not as fast at working now as they were at age 25. Therefore, an assessment might not be good for them where speed is being tested. Staff were sad that they spent their youth in the factory and now that they are older, they are going to get assessed and because they will not do well due to their age, the factory will most likely not grant their request.
- During the May strike, there was shouting and blowing of vuvuzelas. The strike lasted three days and on the third day they were given a note to say that they cannot enter the factory anymore. They were issued with a notice to provide an explanation for their conduct.

#### *The legality of the strike*

- According to some of the interviewees, workers should give 72 hours' notice before strike action has commenced which is in line with the Malagasy Labor Code. The employees did not do this. The 72-hour rule was implemented for staff and management to negotiate and try and resolve the issues in order to avoid a strike. It



was stated that new workers were working and only the senior workers were on strike.

- After the 72 hours, a further 48 hours' notice must be given before strike action commences. The matter was referred to the 'Ministry of Labor' whereby a labor inspector would be appointed to the matter during this time. The factory's representative, the inspectorate and the trade union would be present at the inspection. If the issues are not resolved during the labor inspection, then the strike may commence. Interviewees stated that the workers went on strike 5 days before the May strike was authorised.
- When they went to the court, the decision was made that they should force the employer to apply Article 53 of the Malagasy Labor Code and that they cannot impede the employer from conducting their assessment project. The decision was made verbally and they do not have the decision in writing as yet. Therefore, the Court sided with the factory however the Court acknowledged that there is a problem with machinists in that there is an abnormality because some staff were in the same position but did not have the same salary. Some machinists were paid according to classification OS1 and some were paid according to classification OS2.
- There were interviewees that were of the view that the dismissals for the conduct during the May strike were fair. Interviewees stated that from the first day, the employees were explained the procedure for the strike action by staff representatives and it was even explained to them on the microphone. They were informed that they need to wait 72 hours and the staff representatives went line by line in case some staff did not get the message.
- According to one of the interviewees, there were three categories of staff that went on strike. One category was the staff who were senior workers and had the same salary for many years. Another category was the staff that tried to take advantage of the situation by getting a bigger pay out when they resign. The third category of staff that was on strike used the strike action in a political manner in order obtain a better

position within the union. An example of this that was provided was that two workers were about to go to Mauritius and they pushed for the strike because they wanted a bigger pay-out. The strategy was that the employees wanted to be dismissed as they were under the impression that if they were dismissed, they would be paid out their notice pay.

- One of the staff representatives stated that the factory management's idea of conducting the assessment did not settle the dispute and he alleges that the Court commented that that staff that do the same job and are in the same position must get the same salary. After management has conducted their assessment, it is possible that their salary can increase by moving to OS2. He mentioned that the staff representatives, when they see staff capable of doing more, they will suggest to management that those staff be promoted.
- An example of this was during the May strike. The staff representative stated that staff were shown the paper that indicates that the strike was not validated however they did not care about it. Some staff understood the situation but others did not.
- During the 72-hour period, the staff were striking when they were not authorised to. 25% of staff members interviewed stated that they were shown a paper by certain staff representatives which, according to them, indicated that they may now go on strike. It turned out that the strike was not authorised and some people were fired. One of the issues after the dismissal of staff was that they did not get any notice pay when they were dismissed, only leave and salary.
- When the interviewees were asked who allegedly showed them the paper and informed them that they could strike, they mentioned that it was the staff representatives. Some staff named two representatives and some named three representatives. In one of the interviews, it was stated that the staff representatives gathered the staff, showed them the paper, and said they could strike and in the same interview contradicted herself by later stating that the staff representatives stated

that they were progressing with the matter; however, staff needed to wait another 48 hours before going on strike.

- The interviewee stated that on first day they showed staff the paper, they stated that they are going to hand it over to management. On the second occasion that they were shown the paper, they showed the staff that they had a stamp on it and on the third day they stated that they can go on strike. It was said that the three staff representatives were there and then they disappeared. It was also stated that the three staff representatives helped staff that were suspended but did not assist the dismissed workers.
- One interviewee stated that they did not know they were on strike and that the strike was illegal. She stated that strikers were immediately dismissed without notice and then they asked SVS to fight for their rights. The interviewee still did not know if the strike was legal.
- It was stated by many interviewees that the problem started when management decided to raise the finishing department's wages and did not raise the wages of the machinists. The staff and staff representatives were angry. The staff representatives allegedly informed the staff that they could go on strike because they have already referred the matter to the labor inspector. They went on strike. When they wanted to go back to work, they were left outside of the factory.
- The staff representatives brought the paper and told the staff they may now strike. They started the strike however; they were informed that an additional 72 hours were needed. There was no outcome with regards to the labor inspection yet the staff decided to strike.
- One interviewee stated that the only matter addressed at the labor inspection was the issue relating to employee's job classification. The interviewee stated that the staff felt as if they were fooled due to the fact that they were initially provided the paper that they were told authorises the strike and thereafter they were no longer shown

the paper. The employees did not know the law but they realise afterwards that they made a mistake.

- Management tried to convince the staff to wait before striking however staff did not want to listen. They went to strike immediately even though they knew that the strike was illegal. The staff representative mentioned to the staff that they require 72 hours to try and resolve the matter and then a further 48 hours before they are allowed to strike. The reason was that there were discussions taking place between management and the staff representatives. The staff refused to wait and proceeded to strike.
- The external union official of FISEMA stated that there are 3 steps to consider when strike action is contemplated. Firstly, there should be a preparation of the minutes of the negotiation which indicates that there was a failure to resolve the dispute. This is filed with the labor inspector who takes 48 hours to respond to them. Thereafter, mediation will take place after a further 48 hours.
- An interviewee stated that staff became angry as they later found out that the paper provided to them was fake and did not authorise the strike.
- The striking workers were striking for a week. The striking workers got a letter before the disciplinary hearing. The letter stated that the employee did not work for a certain period of time and that they took part in the strike. The new recruits were working and the strikers were disturbing them however the interviewee stated that it was simply requests to them to join the strike.
- What made this situation worse was that the staff representatives told them that their request was taken to management however it was not. It was also alleged that the labor inspector threatened the strikers instead of resolving the matter. The threat was that the workers needed to go back to work because the strike was illegal.
- According to one interviewee, Article 13 of the Malagasy Constitution states that a person cannot be punished or sanction twice for one mistake. Article 20 of the

Malagasy Labor Code states that if there is a defect in the procedure, it will be deemed to be abusive.

- Staff went on strike even though they knew it was illegal to strike, they felt so desperate that they went on strike anyway. They viewed the strike as a last resort.
- An interviewee stated that management told them the strike was illegal and they need to go back to work however they did not listen and they continued. Some staff did go back to work however some staff were stubborn according to the interviewee and just followed those staff that did not go back to work.
- One interviewee stated that for the first two days of the strike, it was not legal but thereafter they had authorisation.
- One interviewee stated that the staff representatives and management did not tell them it was an illegal strike. According to the interviewee, a staff representative stated that they could go on strike. Management requested an external legal professional to explain to them that the strike is not legal and that they need to obtain authorisation first before embarking on strike action. When the investigator asked the interviewee if the legal person was an internal employee and the interviewee state that the legal person was external to the factory but they were not sure if the person was the labor inspector.
- Factory management called the legal person to come to the factory and thereafter, the legal person asked for volunteer from the members of staff to explain the issues directly to staff. The staff members explained to their colleagues that the strike is not legal. The interviewee stated that a staff representative went to the staff member and said it is not his job to tell them that they need authorisation to strike.
- Within 72 hours of the referral, management received them and informed them that machinists will be subjected to a project where they will be tested on all the machines. This will be used as part of the criteria to decide whether to change their classification

or not. They did not agree because they said when they were already tested during their recruitment process for that position. After meeting with management, they spoke to the staff about it. Management asked staff to please continue working because it is not legal to strike as yet.

- On the morning of the strike, the staff representatives met with staff stating that they must continue work while they continue to negotiate with management. Staff did not listen to them and they continued striking. On the second day, they filed their documents at the labor inspection and tried to authorize the strike because staff did not want to listen.
- The procedure is that 72 hours is provided to the parties to try and resolve the matter. After the 72-hour period, the result of the inspection will be released which will state whether the dispute has been resolved in whole or in part. After this, the labor inspector will receive them again and they will summon the employer as well to discuss the matter. At this point, the staff is authorized; however, the staff were already striking illegally. The interviewee stated that the court mentioned that the employer must still enforce Article 53 of the Labor Code while the matter is being resolved. At the time of the interview, the court did not give them the outcome however the court had sent them the minutes of the session. The interviewee reiterated the process by stating that the first waiting period is 72 hours, then 48 hours and thereafter a meeting is convened with the labor inspector. If the matter remains unresolved, the employee may go on strike.
- The staff representatives stated that there were no fake authorization papers shown to staff and they never stated that staff may go on strike. The paper that is being spoken about is that they showed staff a document showing that the procedure is being followed. They told staff that management has signed it and that is what they will bring to the inspection.
- Prior to the strike in May, when the matter was referred to the labor inspector, The staff representatives returned from the inspection and showed them the stamp which

indicates that it is now at the inspection. They told staff that the employer has 72 hours to discuss the matter and that they should go back to work. The staff did not follow the staff representative's advice.

- After 72 hours, the matter was not resolved. They brought the minutes to the inspection. They informed staff that the matter will be at the inspection for the next 48 hours and therefore they have to work. After 72 hours staff were told that they have to go back to work and if they do, there will be no sanction. They tried to convince staff to go back to work. During the 72 hours they tried to convey the same message that management was conveying which is that the strike was not legal. They tried to warn staff that there will be a sanction if they do not go back to work. They could not control staff during 72-hour period.

#### *The process that followed as a result of the strike action*

- Some interviewees knew there were dismissals however they did not know how many dismissals there were. Those that were suspended were given letters requesting the employees to explain their conduct during the illegal strike. The explanatory letter states that they did not work on a particular day or at a particular time and asked for their response. This happened during the strike. Some staff members resigned because they got new jobs. When staff members received explanatory letters, they were not dismissed yet. Some workers that had to come back to work and provide their explanation in order for factory management to make a decision going forward. The staff representatives defended many staff who received letters at disciplinary hearings.
- According to a staff representative, there is no collective case pending at court. There might be individual cases; however, he does not know. He stated that after a dismissal, an employee has one year to take further legal action.
- One staff representative stated that dismissal was too harsh from a human perspective because the dismissed staff have to provide for families. A lighter sanction

could maybe have been considered. He did however state that the law says that certain types of misconduct can be considered as serious misconduct. The illegal strike was one instance that the company considered as serious misconduct. The staff representatives would try to mitigate the situation; however, the company takes the decision.

- There were some employees that went on strike even though staff representatives requested them to follow the rules. They tried to authorise the strike and they would let staff know when they have authorisation however some staff proceeded to strike illegally. It was stated that some staff members attitudes were that one day they do not like an aspect of their working conditions and they would strike even though the representatives would try to get them to follow the rules.
- An interviewee stated that the dismissals were not fair. Everyone was there and wanted the strike however not everyone was dismissed. The correct decision would have been that either everyone was dismissed or nobody was dismissed because they fought together.
- Some staff stated that management chose who will be dismissed and who will be suspended and therefore, in their view, the dismissals were not fair because they were not treated the same.
- One interviewee stated that, previously, management would always try to resolve the problem. Now it seems that management will just dismiss the strikers. This particular interviewee had been working at the factory for 12 years and this is the first-time staff were striking and ended up being dismissed. She stated that previously the staff representatives would do their job which meant that anyone who is striking would be fine. The interviewee felt that the current staff representatives did not do their job due to the fact that workers were dismissed. She stated that, currently, workers perception is that the representatives are on the side of management.



- The staff were prevented from entering the factory. They tried to negotiate as representatives as to why they were being kept outside. They were informed that the matter is still under discussion. Management gave them a paper. Some staff got a dismissal notice and some got a letter of warning. Some were dismissed immediately. Some staff received a suspension without pay. There were about 30 employees that were dismissed. One interviewee stated that all staff were on strike but they selected who will receive suspension letters and who will receive dismissal letters. After stating that 30 employees received dismissal letters, the investigator was informed later in that same interview that 45 people received dismissal letters. When they were dismissed, they never received their notice pay . The camera was used to determine who got dismissed during the strike action.
- An interviewee stated that it is possible that one may be dismissed without notice pay in circumstances where gross misconduct has taken place. A union official of FISEMA Mifanampy stated that they have attended the labor inspection and are now planning to go to the Labor court.
- An external union official of FISEMA commented that one of the general problems with Malagasy employees is they are driven by anger. He has represented staff in many different industries, such as mining, services, textiles, energy, public service and more. The main problem related to factory workers is that they get angry, impatient and they do not listen to the union's advice.
- 15% of staff interviewed felt that there was discrimination within the factory and cited the example of the dismissal of employees for the strike in May 2022. The interviewees stated that some staff were dismissed and some staff were not. They stated that management dismissed employees that were shouting and disturbing others however, they feel that management should have taken the same approach with all workers that were striking.

- Part of the struggle for the dismissed workers are that since they have been dismissed, most of them cannot find jobs due to their age. Some have taken loans to survive because they have no source of income.
- The striking workers were machinists; however, employees within the department dealing with small tasks were disciplined in the same way that machinists were disciplined.
- Randrana Sendikaly lodged the complaint of what had taken place to IndustriALL, ETUC Afrika, the International Labour Organisation and the Labor Ministry of Madagascar. An employee of IndustriALL conducted an investigation. He did the investigation from the office of Randrana Sendikaly and he also visited the factory in Andraharo to conduct interviews. He met with employees at the factory who were also part of the strike action. The interviewee stated that management did not show the dismissed employee the camera footage. They just told them that they were seen on the camera.
- Part of the sanction for the striking workers were that they need to sign a letter of commitment that they will follow the rules going forward.
- Even though the strike was illegal, one interviewee stated that the dismissed workers should have at least gotten notice pay.
- Staff were told that an assessment will be done and concluded in August or September; however, this was not done.
- One interviewee stated that she wanted to go on strike but she was advised by a co-worker not to because she may be dismissed. The co-worker advised that she has nothing to do with the strike. She worked as a checker and not as a machinist.
- They proceeded to a disciplinary hearing where some staff were dismissed and some received a suspension without pay.

- The staff representatives also stated that they did not promise staff that their request regarding the reclassification was granted by management. The staff representatives only gave progress updates regarding the projects based on the minutes received from management.
- Management stated that in Malagasy law, when you are guilty of illegal work stoppage, it is considered a serious misconduct and it has a huge impact on the company. Payment of notice pay is not required if the employee is dismissed for serious misconduct.
- With regards to discipline for strike action, management stated that managers and other supervisors assisted HR by identifying staff in the video. When the work stoppage started, management never thought about disciplinary action. They never intended to dismiss or take disciplinary action for the work stoppage. They wanted to sit around the table and negotiate a resolution to the issues.
- Management proposed, with regards to the issue of classification, that a project be implemented to differentiate the classification of employees within a specific department, such as the machinists. The staff representatives were happy with this proposal however the employees did not accept the proposal. Management stated that with regards to the issue of John, management would suspend him pending the outcome of the investigation. The staff representatives were happy with this; however, staff were not. Staff wanted John to be dismissed and not suspended.
- The situation became worse when the labor inspector attended the factory. The striking staff became less disciplined. Management became scared of injuries to staff and destruction to property. There was violence such as employees throwing knitting cones. This is the reason staff were prevented from entering the factory and the police was called.
- Management decided to take disciplinary action; however, they had to assess who to take disciplinary action against. The decision to take disciplinary action was not decided randomly and it was not based on the employee's performance. People were identified based on the video footage. HR and production management viewed the

footage to identify staff. The strike continued for seven days, from 18 May 2022 to 25 May 2022.

- Management stated that the difference in sanctions is based on who they could identify was part of the illegal strike. For the others, management decided to take a more lenient approach based on the reasons provided such as the fact that some staff did not know the strike was illegal and were not informed by their staff representative. It was stated that the purpose of the disciplinary hearing is to find out the facts.
- The initial suggestion was to return back to work and not issue any sanction to staff. However, management decided that a sanction was required because there were staff that followed the rules and worked normally. They needed to be consistent in the way that rules were applied and employees that committed serious misconduct could not simply get away with it by not having a sanction imposed on them. This is why the other workers received a 3-day suspension.
- There were 57 employees that were dismissed and it was a very difficult decision. There were 314 employees that received unpaid suspensions. The sanction of dismissal was decided due to the fact that these staff were identified on the video footage and they were seen to be encouraging the strike. There were staff that also admitted during the process that they were part of the strike. Management does not think they will have a problem with the dismissal cases in court because they are confident in their evidence and reasoning for their decision.
- Management stated that the union official that came to the factory stated that when an employee is formally identified taking part in the strike, the employer would be allowed to dismiss the employee. Management also stated that SVS requested that management minimises the impact and number of dismissals. Management stated that it was a very difficult decision to dismiss an employee because you cannot help but think about the humanitarian perspective. However, one has to consider equity and what is best for the factory going forward.

- From management's perspective, they just made sure that they took the best decision and made sure that they have maximum compliance with the law. They informed the labor inspector about the decision. If there was a problem, the labor inspector would have informed them that there is a breach of law. The labor inspector said it is a disciplinary matter and apply what is correct within process. The inspector did state as a general rule that an employer may terminate an employee if they are formally identified as taking part in an illegal strike however the labor inspector asked generally that termination of staff be minimised.
- Some staff attempted to appeal the decision of dismissal and asked management to reconsider the sanction. Only one case was successfully reconsidered where it was discovered that the employee was not part of the strike and the person was wrongly identified as part of the striking workers. The decision to dismiss was overturned by management and resolved with the employee.
- Management stated that there may be instances where the department next to the machinists were disciplined for striking however that would only have happened if they joined the strike action.
- Management considered the argument that some employees such as those doing small tasks stopped working due to the fact that when machinists stop working, there is no work to be passed on. Management stated that this was not the case because there is always work. They could have simply asked the supervisor to allocate them work because there is always work to be done. There were other lines that were working during the strike. Therefore, in management's view, such an argument is not credible.
- Management had considered the argument of the employees where they have stated that with regards to their assessment, they cannot perform at the same speed as they did when they were younger and therefore the assessment is unfair. This point was discussed in courts.

- The machinist's job is not a job where seniority will be a great criterion to distinguish you from another. The project that was introduced to assess machinists is called the People Value Management (hereafter "PVM") project. The PVM project assesses the machinists' skills. It is not about whether or not you performed the job correctly. This was raised in the collective grievance. Therefore, there are legal steps involved. The first step is the internal negotiations with the unions. The second step is that the matter is referred to a labor inspector. If the grievance is not settled at the labor inspection, it will automatically be referred to court.
- At the moment, the parties are awaiting the final decision to be signed by the Judges. The court will decide whether the request from the employee is reasonable or not. The parties have a summary of the decision already but not the official one. The summary says that they must correct the anomalies in the classification of workers. The Court stated that Tropic Mad SA must put together a committee to test the employees to resolve the differences in classification in the PVMs . The Court further stated that management must be clear about the roles and responsibilities of employees by giving them their task lists and clarifying their classification. The decision states therefore that management is not obliged to automatically upgrade staff's classification as per their request.
- The point about age was raised in the process and management stated that it is a matter of skills and not about age or seniority. If you have the skills but due to your age or your physical condition, you cannot work as fast or you cannot do the job properly, it will not influence the workers classification. Such an employee would still be considered a skilled employee and the employee's classification would be upgraded according to their skills.
- Another aspect discussed in Court was the employee's argument that they were evaluated when they had started their employment so they should not be assessed again. When they got to the factory, they were assessed for one or two operations. The aim of the testing is that the factory can see the employees' levels now in terms of their skills. An employee would have worked for a while for the factory and would

learn how to use more machines than just one or two. They would have been involved in different operations. The more skills that an employee has and the more operations that the employee is able to do, this will be taken into account when deciding whether or not to upgrade an employee's classification or not. Therefore, the test is actually to the employee's benefit.

#### Salary increase

- The President of Madagascar announced the increase of the minimum wage in May 2022. He stated that salaries would increase from 200,000MGA to 250,000MGA. This was not applied because it was just an announcement and not a decree. When this was queried with management in May, they were informed that Management apply an increase in salary if there is no issued decree by the government. The government only issued the decree in August 2022.
- An interviewee stated that in terms of the salary increase, they believe that there was a 9.9% increase in salary approved for 2022. This was the rate set by the union but not the government. However, they had only received a 5% increase in salary. The Malagasy Government stated that it would fill the gap between the 200,000MGA and the newly approved 250,000MGA.
- Upon further explanation, the interviewee stated that an organisation named GEM "*Groupement des Entreprises de Madagascar*" is an association that deals with the private sector in Madagascar. GEM stated that they are recommending 9.9% but it will be difficult to convince the Government. According to the interviewee, there was a meeting with the government and GEM however Gem did not attend. The President of Madagascar did not agree with the rate of 9.9%. This was the interviewee's understanding of what had taken place.
- At the factory, the machinist's salary increased from 216,000MGA to 222,000MGA. The new salary was paid in August and paid retrospectively to May 2022. The salary was still below the 250,000MGA set by government.

- Every year there are discussions between trade unions and employers. The process is that the two will talk and will make proposals in relation to salaries of various job categories. There was an agreement in April 2022 with the unions and the employers that there should be a 9.9% increase. For purposes of this report, it will be referred to as the “salary grid”. The grid must be validated by the government. The grid was only referred to as the 9.9% grid, which was a generic name.
- When one views the grid, certain categories received less than a 9.9% on the grid due to anomalies of previous years that needed to be corrected. It is not the company that decided this unilaterally. The grid was agreed to by unions and employers collectively. The grid was only applied for the private sector; however, the grid was not approved or validated by the government. Instead, the president announced an increase of 25% to minimum wage from 200,000MGA to 250,000MGA and that the difference between the amount on the grid and the new minimum wage will be covered by the government. This was announced in May 2022.
- Companies were waiting for the government to issue the decree because they only made an announcement in May 2022. By July there was no decree. There was no guidance on how the payment from government will work because this was a new initiative. Tropic Mad SA decided to increase salaries based on the new grid and increased salaries during July 2022; however, the employees received backpay from May 2022. Management communicated to employees that they will increase salaries; however, they will only apply the President’s announcement when an official decree is announced.
- The official decree and guidance as to how the decree will be applied was only received on 6 October 2022. Furthermore, the new salary grid was also formally announced on 6 October 2022 as the new salary grid for the private sector. Therefore, management updated employees’ salaries and backpay in October’s pay run based on the newly approved decree.



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## CONCLUSION

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### *The demand from workers and the legality of the strike in May 2022*

The machinists, through staff representatives, lodged a complaint to management on 30 June 2021 regarding the classification of jobs and requested that an analysis and review be done of the classification of jobs to address the anomalies where staff were placed on different classifications for identical positions.

One such example are the machinists who were the driving force behind the requests. The machinists complained that some machinists were classified as OS1 while others were classified as OS2, yet they did the same job. Staff representatives discussed the request with management. Management decided to implement a professional category alignment project in order to address the anomalies in the factory whereby some employees are being paid more than others for the same job.

The machinists were given updates about the progress of the project by their staff representative. The staff were growing impatient as they wanted a resolution to the matter. The outcome of the assessment showed that some workers in the finishing and cutting departments were actually classified in a lower category and necessary amendments were made. The machinists were correctly classified as OS1, but about 22 workers were wrongly over-classified in OS2.

The factory in Talatamaty merged with the factory in Andraharo. The factory in Talatamaty had better terms and conditions of employment and therefore machinists that were transferred from the factory in Talatamaty had a higher classification. A workers' category of work cannot be downgraded without their consent and there management had agreed to maintain them as OS2 however, management will provide them with extra responsibilities to justify the classification of OS2. Article 53 of the Code is clear with regards to fair remuneration in that employees that have the same job, the same qualifications or doing work of equal value, the employees shall receive equal remuneration.

On 28 April 2022, a notice was issued by the factory to staff stating that the assessment was done and that all staff whose job classification or salary would be changing as a result of the assessment would be contacted. The notice stated further that:

*“Regarding specifically the Make UP department (Machinists), we would also like to clarify that a project concerning an assessment of their work situation / professional category in relation to their performance is underway, but this should take several months. The Management will communicate on the details of this project later.”*

The notice angered the machinists and they grew more impatient with the process. Some machinists stated that they even felt hurt by the notice. Machinists were unhappy at the fact that other departments and staff would receive an upgrade in their classification, subject to the assessment results, however, the machinists were not going to receive it as their assessment was not entirely completed.

The initial assessment for the machinists had been completed however there was a need for a further assessment due to the fact that machinists do not do the same work. Management initiated the PVM project which assessed the machinists’ skills in order to determine which workers job classification would be upgraded. The criteria includes quality, seniority, efficiency and skill.

The PVM project is complicated and has a lot of variables to consider. The project needs to consider the budgetary impact and it involves consulting with the Mauritius office. This is why the project took several months to complete. The project is in its final stages of approval. Management expected that it would be implemented in September. However, the Mauritius office had a lot of questions about the project and management needed to provide a lot of data. Employees were informed that they will get backpay from May, so according to management, staff are not losing out.

Machinists were not happy with another project to assess them. They were also unhappy at the fact that some machinists were getting older and could not work as fast as they use to in their younger days. Management stated that the employee’s age and physical condition will not prevent a worker from having their job upgraded. This argument was presented at Court as well. The Court did not make an adverse ruling against Tropic in relation to this argument.

After being angered by management’s decision, the machinists decided to strike. 80% of staff and 100% of staff representatives interviewed stated that both management and staff representatives informed them that the strike would not be legal.

Some interviewees stated that staff representative showed them a paper to indicate that the strike would now be authorised. There have however been many interviewees that have stated that even if the paper were shown to staff, staff representatives and factory management attempted to stop the potential strike and by advising staff that the strike would be illegal. The staff representatives stated that the paper was shown to staff as an update that the matter is progressing however they claim that they never informed staff that the strike action is authorised.

In consideration of this, it is clear though that this is an issue between some members of staff and their staff representatives. Notwithstanding the issues between staff and their staff representatives, management is not absolved of their conduct that led to the strike during May 2022.

In terms of chapter 2 of the Code, the process of collective bargaining is triggered by employees, or their representatives, submitting their grievances to the employer. The employer must organise a meeting to negotiate within 72 hours of receipt of the grievances. The outcome of the negotiation must be sent to the labor inspectorate. The labor inspector must, within 48 hours, note the success or failure of the negotiation. The right to strike is acquired on the day that the labor inspectorate declares the negotiation a total or partial failure. Thereafter, the striking party must provide 48 hours' notice that the strike will commence.

After the strike has commenced, the parties must engage in mediation. If mediation fails, the matter will proceed to arbitration. An agreement at mediation or an award at arbitration would deem the matter resolved and thus the strike action must cease. This report will not discuss the mediation and arbitration in-depth as it is not relevant for purposes of the findings.

Article 232 of the Code defines a strike as follows:

*“A strike is a complete, concerted and collective stoppage of work decided by employees of a company or establishment to achieve professional demands that have not been met.”*

Based on the evidence received during the interviews and upon viewing the correspondence sent to the labor inspectorate, the employees started striking on 18 May 2022. Tropic wrote

to the labor inspectorate to inform the inspectorate that a work stoppage of +-365 employees had taken place and to state that Tropic had not received the employees list of grievances which would trigger the collective bargaining process. The letter listing the grievances of staff was only sent by the staff representatives to management on 19 May 2022.

Management stated that the striking workers were demonstrating inside the factory by going around the lines with placards and with whistles, harassing employees who are working there were even complaints that the working employees were victims of threats and assault by these employees because they want to work. Management stated that on one occasion, a knitting cone was thrown at some working employees and there were machines that were damaged. Interviewees stated that they did not see violence however, there was a lot of noise in the factory as well as shouting and the blowing of vuvuzelas. 15% of employees interviewed stated that they heard that there were some incidents of violence by throwing the knotting cone however they did not see it themselves. This took place on 19, 20 and 24 May 2022.

Due to the risk of harm to the health and safety of other employees and in order to protect any further damage to property, management denied the striking workers access to the factory on 25 May 2022 due to concerns of safety and security. According to Article 232 of the Code, an employer is allowed to lock-out employees where it is justified by a safety imperative or when a strike is manifestly irregular. Therefore, the lockout of employees was justified in the circumstances.

Management had suspended the striking employees and issued them with a notice to explain their conduct. The employees were also suspended until the outcome of the disciplinary matter. The employees were subjected to disciplinary hearings. There were two sanctions provided to employees. Some were dismissed without notice and others were given a three-day suspension without pay.

In applying the Code to the strike action in May 2022, the strike proceeded prematurely and it is clear that the strike was illegal. The strike commenced the day before the official list of grievances were received. The striking workers did not allow for the negotiation process to take place within 72 hours after the list of grievances were received. The striking workers did not wait for the labor inspector to declare that the negotiation failed within 48 hours thereafter. The striking workers did not provide management a further 48 hours' notice of their intention to strike.

90% of the interviewees, which included some of the striking workers, stated that the strike was illegal. 80% of staff members interviewed and 100% of staff representatives interviewed stated that the staff representatives and factory management warned them that the strike was illegal. The staff refused to listen. 30% of interviewees stated that workers acted out of anger and frustration which is why they decided to strike knowing that the strike was illegal.

Management stated that anyone that was identified during the disciplinary hearing of via the video footage as an individual that took part in the strike was dismissed.

There were different versions as to how many workers were dismissed. Interviewees had different versions of how many staff were dismissed which ranged from 28 to 45 employees. The investigator confirmed that there were 314 staff members received three-day suspensions without pay as a sanction and 57 employees were dismissed as a result of the strike action in May 2022.

The matter proceeded to arbitration where the Court did not uphold the request of employees to upgrade the classification immediately. The Court has however ordered that Tropic complies with Article 53 of the Code by:

- ❖ Establishing an evaluation committee as provided for during the negotiation which will be composed of a representative from HR, a staff representative and a representative of each department;
- ❖ The committee will be responsible for setting up objective and verifiable evaluation criteria based on versatility, performance, diploma and seniority;
- ❖ Tropic must endeavour to correct the anomalies concerning the machinists revise their placement; and
- ❖ Tropic must strengthen the transparent communication system such as the displaying of job sheets for each category, function and department.

The arbitration award stated that the award has put an end to the dispute in line with the Code.

**Indeed, there seems to be wage discrimination. The Court found that there was a breach of Article 53 of the Code made a finding against Tropic. The Court provided guidance as to what Tropic should do to rectify the situation. The reason that Tropic finds itself in this**

**position of rectifying the anomalies regarding the classification of workers for machinists is due to the fact that they inherited the issue due to the merger of the factories. Inheriting the issue should be a lesson to Tropic that its branches in the same country should not provide different conditions of service.**

**The merger of the factory took place in 2011. There is no valid reason as to why Tropic had not sorted out the disparity in remuneration sooner regardless of whether the disparity in pay was created by a merger. This was one of the root causes of the strike action. Management has a positive duty in order to ensure compliance with the Article 53 of the Code and the FLA Code of Conduct, which states at ER.7.1 & 7.2:**

*“Employers shall have written policies and procedures with regard to performance reviews that outline the review steps and process, demonstrate linkages to job grading, prohibit discrimination, are provided in writing and seek feedback and agreement/disagreement from employees in writing, and that follow all local legal requirements.”*

*“The performance review process should be communicated to the workforce and reviewed regularly.”*

**It is clear that there is a breach of the FLA Code Benchmarks ER 7.1 & 7.2 due to the fact that certain workers were not fairly and equally compensated. Tropic has policies that address anti-discrimination broadly however it is not detailed and clear when addressing issues of remuneration and job-grading.**

#### *Dismissal of workers in relation to the strike action*

As stated above, there were 57 employees that were dismissed. Management stated that employees that were identified via the CCTV footage or identified during the disciplinary hearing as employees that took part in the strike were dismissed. The dismissals were effected without notice pay.

The internal disciplinary code of the Tropic under Article 20 contains conduct that is prohibited in the workplace such as provoking or participating in gatherings such as leading or participation in a strike. It must be noted that this specific conduct would only be prohibited where the strike was not legal. It would not be applicable generally where a strike has taken place in compliance with the law. Other forms of conduct contained in Article 20 include the abandonment of a working post, insubordination, disrespect, and disobedience to the leader.

Article 24 provides that there are two degrees of sanctions namely, a first-degree and second-degree. The first-degree of sanctions is meant for the application of progressive discipline such as warnings. The second-degree of sanctions is reserved for serious misconduct which can result in a suspension from work without pay for 3-8 days or immediate dismissal without any compensation. Included in the list of serious misconduct that can attract a second-degree sanction include insubordination, threats, voluntary reduction of production, refusal to comply with the general safety requirements of the factory and employees, refusal to assume responsibilities for the normal duties of the workstation and the deliberate deterioration of the appliances and tools belonging to the factory.

The conduct of the employees, due to the strike not being legal, falls into one or more of the prohibited forms of misconduct. The strikers conduct also falls under the ambit of a second-degree sanction which the internal disciplinary code states that it allows for dismissal without notice pay.

Article 18 of the Malagasy Labor Code stated that an employee's contract of employment may be terminated without notice in the event of gross negligence provided for in the employer's internal regulations or, failing that, the decision regarding fairness will be left to the discretion of the competent court. It is clear to that conduct of the striking workers is prohibited in the internal regulations of Tropic. The conduct is listed as serious misconduct that can attract a dismissal without notice.

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### *CONCLUSION*

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Tropic does not utilise a disciplinary council to deal with its disciplinary matters. Tropic makes the final decision regarding the sanction after having a disciplinary hearing. Article 22 of the Labor Code allows employers to follow a disciplinary process in the absence of a disciplinary council as long as the company provides the employee their right to a defence, in particular by informing the person concerned in advance of the reasons for dismissal, by providing the employee with evidence and by allowing the employee representation.

At Tropic, discipline is an HR responsibility. The final decision of disciplinary action is taken by the HR Manager in conjunction with the departmental manager of the employee that is the subject of the disciplinary hearing. The HR Manager and the departmental manager do not

always attend the disciplinary hearing. They would send a delegate from their respective departments to attend the hearing. They would have a discussion based on the minutes of the disciplinary hearing that is compiled by their delegates. This means that they would take decisions regarding a sanction of a disciplinary hearing without being present. Delegates of the HR Manager and the departmental manager were sent to the disciplinary hearings of the workers who were striking in May 2022.

If there is a dispute between the HR Manager and the departmental manager regarding a decision, the General Manager would make the final decision. The General Manager is also consulted if the cases are serious, high-profile or involves a senior member of staff. In the case regarding the dismissal of the 57 staff members, the General Manager was consulted.

The video footage relating to the strike action in May 2022 was a total of two minutes and 35 seconds. It must be stated that the video footage is not CCTV footage as stated by interviewees. It is video footage captured on a cell phone. It showed employees striking and walking around the factory. The video footage did not show any evidence of violence or property damage.

Management made the decision to dismiss staff based the video footage. If a staff member was identified on the video footage, they were dismissed. Being identified on the video footage was the only differentiating factor between receiving a sanction of dismissal and receiving a suspension without pay for three days.

The investigator concluded that this amounts to inconsistent application of discipline due to the fact that the conduct of all striking workers were the same. 314 workers were given a suspension without pay for three days as a sanction. The sanction means that management has concluded that there was misconduct committed by staff. Not all 314 workers were identified on the video footage. The staff that were identified on the video footage were not doing anything more than what the 314 staff members were found guilty of doing. As stated previously, there was no evidence of violence displayed in the video footage. The fact that staff were identified in the video footage should not have worsened their sanction.

The investigator concluded that management did not show the video footage to staff that were dismissed during the disciplinary hearing. This was admitted by management. The investigator finds that this is unfair conduct by management in that if an employee is



dismissed, the employee should be allowed to have access to the evidence that is used against him/her, especially if that evidence leads to the employee's dismissal. The fact that the dismissed workers were simply told during their disciplinary hearings that they were seen on the video footage and not shown the video footage is procedurally unfair.

Items ER 18.3 and 18.4 of the FLA Code states:

*“ER.18.3 Workplace Rules and policies, and disciplinary procedures and practices shall be clearly communicated to all workers in the language(s) spoken by workers. Any exceptions to this system (e.g. immediate termination for gross misconduct, such as theft or assault) shall also be in writing and clearly communicated to workers.*

*ER.18.4 The disciplinary system shall include a third-party witness during imposition, and an appeal process.”*

Article 168 of the Malagasy Labor Code stated that:

*“The internal regulations are a written document by which the employer lays down the general and permanent rules relating to his technical organization of the establishment and to general discipline, determining the nature and degree of sanctions likely to be imposed as well as the procedural provisions guaranteeing the rights of defence, the rules of health and safety necessary for its proper functioning”*

The FLA Code is clear in ER.18.3 where it states that disciplinary procedures and practices must be clearly communicate to all workers. Article 168 of the Malagasy Labour Code further states that the internal regulations must contain the procedural rules of discipline especially as it relates to an employee's right of defence. The disciplinary procedure followed by Tropic and the employee's right of defence is not contained in Tropic's internal regulations.

Tropic's disciplinary procedure does not include a third-party witness during an imposition and does not have an official appeal process as required by FLA Code ER.18.4.

Therefore, Tropic's conduct amounts to a violation of ER.18.3 and ER.18.4 of the FLA Code and they are not compliant with Article 168 of the Malagasy Code.

Article 22 of the Malagasy Labor Code states:

*“An employer intending to dismiss a worker, in the absence of a Disciplinary Council within the undertaking, must respect the latter's right to defence, in particular by informing the person concerned in advance of the reasons for dismissal, by communicating the file of the alleged facts if he so requests and by presenting his defences and assistance by a person of his choice.”*

Tropic had not provide the video evidence to the employees that was used to identify the dismissed employees during the disciplinary hearing. The investigator finds that this is a violation of Article 22 of the Malagasy Labor Code in that it states that employers must provide the employee the *“file of the alleged facts”* which in the view of the investigator would include the video evidence.

ER.18.1.1 of the FLA Code states:

*“The disciplinary system shall be applied in a fair and non-discriminatory manner and include a management review of the actions by someone senior to the manager who imposed the disciplinary action.”*

Tropic sanctioned 57 workers with a dismissal for the same reason that it sanctioned 314 workers with a suspension without pay for three days. The only difference in the reasoning of the sanctions is that the dismissed workers were identified on the video footage while the other workers were not. Their conduct was exactly the same.

Based on this reasoning, the investigator is of the view that the 57 dismissals are unfair due to the fact that the sanction was not applied in a fair and consistent manner. Tropic cannot provide two different sanctions for the same conduct without any justifiable reasoning. Furthermore, the Investigator found that those dismissals have been conducted in a haste, so much so that one worker who did not even participate in the industrial action, was dismissed and had to follow a lengthy process to convince management to rectify the matter.

**Therefore, Tropic has breached elements ER.18.3, ER18.4 and ER.18.1.1 of the FLA Code as well as Articles 22 and 168 of the Malagasy Labor Code.**

*Staff members whose names are written on placards*

The two staff members whose names were written on the placards were John and the HOD. These disputes came up during the strike in May and therefore it was not included in any of the labor inspection or court documents. All allegations of sexual harassment, corruption, solicitation, etc were aimed at John and not at the HOD. The allegations against John are discussed more fully below. The striking workers blamed the HOD for problems in the relationship between management and staff. Staff complained that he limits their overtime however, the evidence shows that he has a justification to do so as he was mandated to limit the costs of overtime by his superiors. Overtime is not an entitlement to employees.

Employees also blamed the HOD in that they believed that he was preventing them from receiving a higher classification and that he has bad management skills. The HOD stated that he is not hard with employees but he does admit there are times that he is tough especially when targets need to be met. The Investigator assessed this complaint as to whether this amounted to bullying or abuse. 20% of employees interviewed admitted that the toughness is needed in this environment and did not find anything wrong with the HOD. There were no interviewees that stated that the HOD's conduct amounted to bullying or abusive behaviour.

The complaint that the HOD was preventing staff from getting a higher classification was not true as this was not his area of responsibility. The decisions regarding classification of employees and any other management decisions rests with the General Manager of the factory and not the HOD. The HOD is more operational.

The factory conducted a full investigation of the issues raised against the HOD however there was no evidence to find him guilty of the allegations. Due to the seriousness of the issues raised against John, he was immediately suspended pending an investigation. There was no evidence to find John guilty of the complaints that were raised due to the fact that staff members did not want to come forward to provide information even though this was requested of them by management and the staff representatives.

The allegations against John have been elaborated under the appropriate headings throughout this report. Tropic entered into a mutual separation agreement with John in which he would no longer be working at the factory from 22 June 2021.

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### *CONCLUSION*

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**The Investigator found that Tropic acted fairly in the circumstances in dealing with the complaints raised against the HOD and John. The only problem identified that is related with this process was absence of written investigation reports, as there are no written investigation reports available for review.**

#### *Salary increase*

It is important to note for the purpose of this finding, the decision to perform the classification alignment project commenced after the staff representatives complained about equal pay on 30 June 2021. It was only in April 2022 that staff were informed that the project had been completed however, the machinists will be subjected to an additional project called the PVM project which required a few extra months to complete. The issue around the classification of workers would naturally overlap with the issue of a salary increase in that if a staff member is mover to a higher classification, their salary would also be increased.

In assessing the issues around salary increases, the President of Madagascar made an announcement in May 2022 that salaries will increase by 25% from 200,000MGA to 250,000MGA. There was no official decree until 6 October 2022. Therefore, during May and October, this contributed to the tension between workers and management as the factory could not increase the salaries of staff according to the announcement if there was no official decree.

The salary grid that was agreed to between employers and trade unions was generically called the “9.9% grid”. This gave employees the impression that they were entitled to an increase of 9.9%. This was, however, not the case as the salary grid did not increase the salary of all categories of staff by 9.9%.

Even though the machinists were going to receive payment retrospectively after the PVM project was completed, staff would be negatively impacted by the length of time that it takes for them to be correctly remunerated. During the time that it has taken to finalise the project, costs of living and inflation have increased which causes a burden on staff.

It is important to note that management could have been clearer in their notice. The way the notice has been drafted leaves room for various interpretations. Some staff thought that management made a final decision not to upgrade their classification of work when it is clear that this was not management's intention in the notice. This is one example that echoes the difficulty of proper communication between management and staff.

In spite of the confusion, Tropic increased the employee's salary in July 2022 with back pay to May 2022. After the new decree was issued by the government in October 2022, employees would receive an increase in salary in line with the decree and will be afforded backpay as well.

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#### *CONCLUSION*

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**The investigator finds that Tropic cannot be faulted for the confusion from government with regards to making the announcement in May 2021 and only issuing the official decree five months later. This created a difficult situation which was beyond the control of Tropic management.**

**The investigator does, however, find that Tropic management could have conducted themselves in a manner that would have mitigated the risk of the matter escalating to industrial action. The classification alignment project had taken too long and the announcement of the PVM project could have been communicated in a manner that is more considerate to the employees. The communication should have been drafted better as it caused confusion and because the catalyst that caused the strike action in May 2021. The PVM project, as of January 2023, has not been finalised. This creates the risk of more disharmony amongst workers.**

## B. Unpaid overtime

- 80% of the staff interviewed did not know anything about claims for unpaid overtime. The rest of the staff that were interviewed stated that the only query regarding overtime is where the amounts are incorrectly calculated. The list of overtime is forwarded to the staff before they are paid and the interviewees stated that if there are abnormalities with regards to their overtime, management fixes the issue before they are paid. It was stated that an issue could be where the workers are in a rush and do not clock in or out properly or sometimes the clocking device does not function. The interviewees stated however that where there are issues with the overtime calculation, management would sort it out.
- An interviewee stated that staff work on Saturday; however, there is a rule that stated that an employee cannot work on a Saturday. The interviewee stated that the foremen or supervisors force the staff to work on Saturday. It was, however, acknowledged that the factory cannot anticipate when breakdown of their machines will happen and therefore staff may be needed to fix the machines. He stated that the Court decreed that staff cannot be forced to work on Saturdays.
- Another interviewee stated that working Saturday is in fact allowed however it would add to the calculation of working 40 hours. The staff representatives in 2010 negotiated that staff will not work on a Saturday afternoon and this was part of a court ruling as well. There are occasions however where, by agreement, the workers agree to work longer on a Saturday.
- Malagasy law places no prohibition to work on any days of the year. There are some limitations such as the rules where an employee is not allowed to work 7 days in a row unless exceptional circumstances exist. There is, however, a Court ruling specifically for Tropic Mad SA cannot force employees to work on a Saturday afternoon however if there is work to be done, employees can work if they consent.

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*CONCLUSION*

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As per the interviews with staff, there were no complaints regarding any overtime issues. If there are any issues with overtime, management would resolve it.

The investigator perused the policy relating to internal regulations in the workplace which states that employees working hours on a Saturday is limited from 07:00am to 12:15pm.

There were no allegations from any staff that they had not been paid for overtime worked. All interviewees that stated that there were incorrect calculations of overtime on their payslip confirmed that these errors were rectified.

**Therefore, the investigator finds that Tropic did not act unfairly with regards to any issue relating to overtime and there is no evidence that they are currently not complying with the rules regarding Saturday work. There was a violation regarding Saturday work many years ago however that was resolved via a court order.**

C. Deductions of wages from worker salaries, including as a sanction for participation in a strike

- Technically speaking, a deduction of wages from workers' salaries is different from an unpaid suspension, the former being a deduction of salary by the employer after the fact while the latter is a decision that has been taken by the employer not to be paid a salary as a whole or in part. Interviewees stated that most of the employees that were found guilty of taking part in the illegal strike action received a three-day suspension without pay. Furthermore, employees that took part in the strike were not paid their salary for the days they were on strike, which is supported by the law.

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*CONCLUSION*

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As stated previously, there was technically no deduction of worker salaries due to their participation in the strike but rather, they were suspended for three days without pay. The

workers were also not paid for the days that they were striking. The employer's actions in this regard is justified in terms of the Labor Code.

The 314 staff members that received a sanction of suspension without pay for three days after being subjected to disciplinary hearings. A suspension without pay can be issued in terms of Tropic's internal regulations policy where gross misconduct exists. The employees were allowed to provide their defence to the allegations. Many staff members admitted to taking part in the strike action.

**The investigator finds that, considering the fact that the strike was illegal, that there were numerous attempts to stop the workers from continuing the illegal strike and considering the financial impact it has on Tropic, the sanction is proportionate to the misconduct that was committed.**

**Due to the fact that according to local legislation, the video footage was not required for purposes of proving the allegations against the staff, Tropic cannot be said to have conducted the procedure for these hearings in violation of the Malagasy Labor Code.**

**However, the investigator notes that the procedure followed by Tropic is in violation of ER.18.4 of the FLA Code due to the absence of a third-party witness, and notes further that Tropic also did not have an appeal process.**

**Therefore, Tropic acted in line with its internal regulations regarding discipline in that the reasons for disciplining staff were appropriate; however, it is clear that the procedure followed did not comply with the FLA Code and was not fair and consistent due to some staff being dismissed whilst other staff received three-day suspensions without pay. Furthermore, management never shared the video footage with workers and their representatives during the disciplinary process and the only video footage shared with the investigator did not show any evidence of damage to property.**

#### **D. Dismissals of workers in relation to strike actions in February 2022;**

- The work stoppage in February was a small group of employees compared to the May strike. The department that conducted the work stoppage was about 12 people according to one interviewee. Another interviewee stated that about 13 staff were



dismissed during the February strike. Their duties include verifying the production that the machinists complete.

- One staff representative stated that it was a work stoppage and not a strike. He stated that when the staff do not know the law, they act ignorantly. They had asked for a salary increase. The request was about classification of wages. He stated that there were less than 10 people involved and that it was about seven people. They stopped working from the beginning of the day. They called the staff representative who went to management. The staff representative gave them feedback and informed them to work however some staff listened while others refused to work. The staff left at 3pm, which was their end time for the day.
- A staff representative stated that the employees did not speak to the staff representatives about the issues. They simply stopped working right away and did not seek advice. When you stop working there is a gap in production. It is like they sabotaged the factory and not send out the products for delivery.
- According to the interviewee, it is always ideal to follow internal remedies first such as consulting the staff representative. The staff preferred to contact SVS directly which is their right to do. Before the strike, they already mentioned this problem to management. On the day of the strike, they were just sitting there. It was only for one day. However, another interviewee stated that the next day after the employees stopped working, the seven people refused to do overtime. They received a letter to provide reasons for their actions. After they received the letter, they were called to a disciplinary hearing. Management stated that their conduct has caused a loss due to them not working. They were dismissed without notice.
- 95% of all interviewees who were aware of the February strike stated that the dismissals of the employees were fair. The employees in this department were asking for an increase in salary. They stated that their manager promised them an increase in salary which caused them to go on strike. The promises were true according to one

of the staff representatives and it was made by the manager of the finishing department.

- One of the staff representatives mentioned that the strike was not conducted properly. The workers gave management a piece of paper that was addressed to the CEO stating that they will not come to work and they all just left their workstations.
- Many staff and some staff representatives that were interviewed did not know anything about February strike. One staff representative was bold enough to state that if there was a strike, someone would have brought it forward.
- Management stated that the finishing department plays a significant role in the last part of planning before goods are ready to be shipped. At this time, planning was new to the shipment of an important order. Half of the employees were there and half refused to work and stayed at home. Management was really surprised as to what had happened as they had not received any notice of the dispute from the workers. The staff representatives did not know what was happening. This caused work to stop and created a critical situation. Management did not have any information regarding this matter and therefore there was no way to resolve the situation. After four hours, some delegates went to management to state that that they stopped work because of their salary.
- Due to the lack of notice and the lack of information received from the employees, the only option available to management was to issue staff with a notice to explain their conduct. After the discussion between management and the employees and after considering all factors which includes the impact of their conduct on the factory's operations, they took a decision to terminate. SVS are currently taking the cases of the employees to court. Management did not know exactly where the striking workers were when they were absent from work due to their dispute about their salary.
- On the first day, some of the employees had refused to work. A decision was made by management at this point to issue the employees with a notice to explain their conduct. There were two groups of striking employees. Those who did not come to

the factory at all, they were suspended until the end of the process. The other group of employees are decided to stay at the factory but did not work. Those employees that stayed at the factory to work, some of them decided not to work overtime. Management did not see anything wrong with this because it is their right to refuse to work overtime and leave work on time. All employees that took part in the strike were terminated.

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### *CONCLUSION*

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A small group of employees stopped working during February 2022. The reasons for their work stoppage was not about classification of wages as some staff members stated. After reviewing the court documents and interviewing more staff member, the reasons for the strike was due to the fact that the finishing department wanted an increase in salary. They have alleged that they had been promised an increase; however, the promise was not kept.

The alleged promise could not be verified. Many workers and staff representatives did not know about this strike. The interviewees that mentioned this strike provided information that varied from one interviewee to the next. This strike was separate from the strike in May 2022. The work stoppage in February concerned 21 workers who stopped working and were not considered as a strike by management as per the legal term.

The investigator disagrees with management in this regard as Article 232 of the Malagasy Labor Code states that a strike is collective stoppage of work to achieve demands that have not been met. The work stoppage in the view of the investigator amounts to an illegal strike. The workers did not provide advance notice of this stoppage. There were no grievances lodged by the employees timeously in line with the provisions of the Code at the Factory or the inspectorate.

The workers were provided a notice to explain their conduct. They were charged with a refusal to work and abandonment of their post without notification. The outcome of the disciplinary hearings were that 20 employees were dismissed and one employee was suspended for eight days. The conduct of the employees fall under the ambit conduct that may attract a second-degree sanction as discussed above. Furthermore, the conduct was

detrimental to the operations of the factory in that Tropic was placed under a lot of pressure to deliver an order to its client.

Tropic's internal regulations as they relate to discipline contain the offence of "abandonment of post" under general discipline. Further in its regulations, it provides information as to which offences would incur a first-degree sanction and which offences would incur second-degree sanctions. The internal regulations further state that first-degree sanctions would be progressive discipline such as a written warning whereas a second-degree sanction would include suspension without pay up to a maximum of eight days or immediate dismissal. It must be noted that the internal regulations stated that an offence that would usually attract a first-degree sanction may in certain circumstances attract a second-degree sanction.

The investigator is of the view that the employees did not comply with the rules related to strike action as contained in the Malagasy Labor Code. The investigator has reviewed the International Labour Organisation's decisions relating to freedom of association, collective bargaining and strike action. In essence, the International Labour Organisation states that the rules relating to strike action should not be onerous to the extent that it would make it difficult for employees to embark on strike action. The ILO further stated that 48 hours' notice of strike action is reasonable.

The procedure to be followed in terms of the Malagasy Labor Code has also been discussed in this report. In consideration of this, even though the reason for striking may be credible (salary increase), the procedure followed by staff was incorrect and rendered the strike illegal. The striking workers provided no notice of the strike to management which is not reasonable.

Notwithstanding the fact that the strike was illegal, the investigator has considered that the strike itself only lasted one day. The workers did not protest or picket as was the case in the May strike. The employees were charged with "refusal to work" and "abandonment of their post without notification". "Absence without prior authorisation" and "temporary and unjustified absence from the workplace" is listed as offences that would attract first-degree sanctions. The offence of "abandonment of post" is not listed as an offence that would attract a first-degree or second-degree sanction. It is only listed under general discipline.

The investigator is of the view that abandoning one's post is the same as being absent without authorisation or being absent without a justified reason. The offence of "refusal to work" is

not listed in the internal regulations however the offence of “refusal to assume responsibilities for the normal duties of the workstation”, which is the same as a refusal to work, is listed as an offence that may attract a second-degree sanction.

**In consideration of the above, the investigator is of the view that the sanction of dismissal was not proportionate. Even though refusal to work may attract a second-degree sanction, the investigator is of the view that the context of the situation should have been taken into account. The employees did not abandon their post for malicious reasons but rather, they were utilising the strike action for purely economic reasons in order to obtain an increase in salary after their initial request was rejected and they were aggrieved. At the same time, however, their actions were wrongful.**

Item ER.18.1 of the FLA Code states that:

*“Employers shall have written disciplinary rules, procedures and practices that embody a system of progressive discipline (e.g. a system of maintaining discipline through the application of escalating disciplinary action moving from verbal warnings to written warnings to suspension and finally to termination)”*

**The investigator is of the view that dismissing the employees as a first offence does not align with the purpose of FLA Code ER 18.1 which states that Tropic should embody a system of progressive discipline. Therefore, investigator concludes that the employees should not have been dismissed and instead, the employees should have received a warning or at most, they should have received a suspension without pay instead.**

- E. Sexual harassment and gender-based violence, including through verbal threats and “bullying” by management staff directed in particular at female workers;

*Sexual harassment and gender-based violence.*

- Staff representatives have stated that there has been claims of sexual harassment however it is not reported to them by the alleged victim. It is mentioned to them through rumours on the factory floor. He approaches the staff mentioned in the

rumours however they are not willing to come forward. They are possibly afraid that their salary will be cut and they want to maintain a good reputation.

- One staff representative arranged a meeting for staff and tried to find out if there was any sexual harassment issues in the workplace. He told the workers in the meeting that if anyone is dismissed due to coming forward then he will stand with them and lose his job with them. He went to the various job lines and spoke to staff about and asked them whether they have been sexually harassed in the workplace however nobody came forward.
- Factory management is now setting up a harassment committee of which most are women. It is a platform where workers can talk openly in case they are scared of talking to Human Resources.
- There are 12 staff representatives in total. Two staff representatives out of the 12 are part of the harassment committee. The committee is currently being trained.
- One staff representative discussed complaints that he would receive. He says it is not aimed at upper management but rather the supervisors on the production floor. A pregnant employee that is standing all day would they approach the staff representative to speak to the supervisor so that she can sit. Usually, the issues are resolved.
- Another example would be a threat that an employee must work overtime however the alleged threat does not have any consequence attached to it. There have sometimes been complaints concerning leave where staff will not be allowed to go on leave and they see it as bullying. His opinion was that it is sometimes the anger of the supervisors that make them react this way because they are having a bad day. He did however state that this is not targeted specifically at female workers only.
- One staff representative stated that he does not know about sexual harassment complaints. Nobody came to him. Management asks them for the name of the

complainant but the complainant does not come forward. It is possible that the alleged complainant is upset at someone and just says that the person committed sexual harassment to get them in trouble. He knew that a committee is being set up for sexual harassment complaints however the committee is still in training.

- One staff representative mentioned that only one worker who was already dismissed has told him about being sexually harassed at the factory but he has never received complaints from any employee that was working there and that is why he has reservations because it could be rumours because the person is angry. He reiterated that sometimes it is hard to believe dismissed employees who tell them stories of sexual harassment after they have been dismissed because they are usually disgruntled employees. He did, however, try to investigate the complaints after he got the name of the alleged aggressor. He says that it is often that complaints in general can be dismissed due to lack of evidence especially when the person lodging the complaint refuses to come forward. The representative reported the matter to Human Resources.
- The staff representative stated that during the strike, staff wrote John's name on signs and asked for his dismissal. He was the manager in charge of planning and always moved machinists elsewhere. It seems that he resigned during the strike.
- Some interviewees stated that they heard about sexual harassment claims being raised during the strike only. It was not raised before the strike. The interviewees stated that the alleged victims were staff that were newly recruited however the victims did not want to stand up for themselves.
- These claims were only heard during the strike and it only related to John. Management suspended John when these claims arose and he was dismissed right away. Management investigated the matter and wanted evidence. Management asked the victims to come forward and provide proof of what had happened however the alleged victims did not come forward. Staff were happy with how management handled the matter because management was patient and really listened to staff. As

a further attempt to convince the alleged victims to come forward, management asked about four staff members that were not staff representatives to try and speak to the alleged victims and convince them to come forward.

- One interviewee stated that they only heard rumours about sexual harassment when John was employed.
- One of the union officials mentioned that there only an issue with sexual harassment when John was employed. The alleged victim of sexual harassment has left the factory already and they do not know her name.
- Before John was employed and after he left the factory, everything was fine with regards to sexual harassment. An interviewee stated that an employee would be employed on a fixed-term contract. The person would be romantically involved with John and the person would then become a permanent employee.
- There was a rumour of someone that received a sexual favour for better work but the interviewee did not know who claimed it and who the person was that allegedly received the sexual favour.
- A staff representative stated that with regards to sexual harassment, often times the victim does not come forward and it is hard to tell whether it happens or not because there are only rumours. When complainants are approached to come forward, they have said in the past that they want to go but they do not end up going. They told staff in May that if there are any problems with sexual harassment, they must come forward. Staff brought a grievance against John and the HOD (the complaints against the HOD did not relate to sexual harassment) during the May 2022 strike. There was no evidence against the HOD; however, they terminated John's employment amicably. It was done amicably due to the fact that nobody came forward to testify. People may not want to testify because they are fearful.



- A staff representative mentioned that they asked staff to come forward if they are a victim of sexual harassment. They pleaded with staff but nobody came forward.
- Had they not been on strike, the workers would have not raised the sexual harassment allegations.
- Staff members have heard rumours about providing sexual favours in return for longer term contracts. However, they have never seen this happen and a staff representative stated he has never received a complaint about it. The staff representative stated that he knows a lot about the machinists' department because he has worked at the factory for a long time. The skill of the machinist is monitored for six months and if they perform well in their role, their contract would be extended. The decision to appoint or extend the contract is not made by one person. There are three levels that this goes through: the Manager of Production, the Production Engineer, and the Manager of Quality. Their report would be based on an assessment containing percentages linked to their performance.
- One interview stated that she heard rumours that if a lady did not accept propositions put forward by John, they would be terminated from the factory. She stated, however, that John is now dismissed.
- After two days of work stoppage during the May strike, management received a letter complaining about sexual harassment which was allegedly committed by John. Staff representatives agreed that it must be dealt separately to the strike as it arose during the strike. Management interviewed John and he denied the allegations. Management suspended him until the investigation was completed. Management approached staff individually to obtain information about the complaint. No staff member formally came forward with a complaint and in the end there were no complaints against John and therefore there was no evidence against him. Management's fear was that staff were afraid to raise their sexual harassment complaints.

- Management informed John that, based on the issues that staff are raising against him, management could no longer work with him. They proposed a mutual separation agreement to John whereby he will mutually agree to terminate his contract of employment. John agreed that in the circumstances, he cannot work at the factory anymore. Accordingly, John's employment was terminated by mutual agreement.
- With regards to the committee, management stated that a committee has been set up specifically for sexual harassment in the workplace. The committee will assist HR with sexual harassment matters. The committee members will be the General Manager, the HR manager, the sustainability manager and two employee staff representatives. The committee will be trained by "Better Work".

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#### *CONCLUSION*

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In assessing the evidence provided by all interviewees related to this allegation, it is important to note that any form of rumour or allegation that was raised regarding sexual harassment, John was always the alleged perpetrator. This was one of the reasons that John's name was written on the placard during the strike. 60% of the interviewees expressly stated that there were only rumours of sexual harassment when John started working at Tropic and the rumours stopped when he left Tropic.

It is clear that Tropic acted swiftly when these allegations arose even in the middle of a strike. John was immediately suspended pending an investigation. Tropic's task was made difficult in that it did not have any evidence due to staff, despite numerous attempts, elected not to come forward with information or evidence against John. Staff representatives stated that they had also tried on numerous occasions to convince staff to come forward however this has not worked.

Management ensured that workers were safe from John and that there would be workplace harmony by entering into a mutual separation agreement with John whereby he would no longer be employed by the factory.

Tropic trains staff and management on various topics, one of which is sexual harassment. **The investigator notes that the training attendance sheets show that the various training sessions are sometimes 30 minutes or sometimes last for one hour. The investigator's concern is that one training session contains multiple topics and therefore having multiple topics in a 30-minute session would not render the training effective.**

For sexual harassment cases, the grievance process is used for all complaints relating to sexual harassment. At the factory there is a grievance box. It is used for employees to lodge grievances anonymously. The grievance box is opened jointly by HR and employee representatives. The grievance box is not used regularly by staff. No complaints have been received in the grievance box related to sexual harassment.

Management stated that staff do not have direct link to the CIEL Group with regards to lodging grievances – which is another area where Tropic should make some improvements since it is essential to have a headquarters-level anonymous complaint channel for workers as an additional safeguard. PUMA is the only brand that has a whistle-blower process via a telephone number that is displayed in the factory.

Tropic has also set up a harassment committee that will assist HR in dealing with these issues. The committee members are currently undergoing training. This is a good initiative from Tropic to ensure that workers are protected.

There is currently no allegation of sexual harassment against any worker who is currently working at Tropic. All allegations were aimed at John. Management took immediate action in the scenario and even where there was a lack of evidence to proceed with disciplinary action, management mitigated any further risk by parting ways with John via a mutual separation agreement.

**Therefore, the investigator does not conclude that Tropic acted unfairly towards its workers in this scenario.**

*Bullying and threats by staff management, particularly directed at female workers*

- With regards to bullying and threats, one representative mentioned that he is not sure if this happens because it is based on how the employee receives a situation. The

example he gave was that of a foreman. It is normal that the foreman will speak a bit loud or a bit harsher because the work needs to be done. He stated that there is no violence. He has not received complaints of this nature.

- An interviewee stated that there were no issues relating to verbal threats and bullying and in fact, management trains supervisors not to bully and threaten staff.
- With regards to bullying behaviour, one interviewee mentioned that foremen and supervisors sometimes treat staff badly in that they would speak rudely, swear at them or speak ill about their mothers. Women, however, were not the target of this as this was aimed at anyone and it was female supervisors that also conducted themselves in this manner. Another interviewee stated that even if someone wants to bully staff, they will not be able to because of workplace rules prohibiting it and the staff representatives would not allow it.
- One interviewee stated that bullying and verbal threats happens to new staff but he could not give examples or names of the employees.
- During an interview with one of the supervisors, she was asked whether she threatens or bullies staff. She admitted that she does sometimes swear at staff and talks rudely to them. She does this because she is trying to achieve the targets set for her department. She states that her superior is also hard on them achieving targets. The general manager of the factory makes sure staff are treated well and that supervisors know how to treat employees. The supervisor stated that they are learning and are being trained how to manage staff better. She states, however, that they are human and they do lose their temper at times. Previously, it would happen often but now when it does happen, they try to talk to each other about it and resolve the situation. They were trained to forgive staff. She feels bad and regrets her actions when it happens. She states that everyone is different and that some staff can handle it however some staff are sensitive. She especially regrets it where it happens with the sensitive staff.

- One interviewee stated that staff are told by their line managers that they will go to a disciplinary hearing if they do not work well or they must find another job.
- According to the HOD, there had been one verbal threat made previously from one employee to the next which resulted in a verbal warning.

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### CONCLUSION

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70% of employees interviewed stated that they do not suffer from bullying or threats at the factory, nor are they aware of anyone suffering from bullying or receiving threats.

30% of employees interviewed, however, state that certain supervisors/managers would speak rudely to them while another employee stated that speaking in a tone that is a bit harsh is fine due to the fact that the work needs to be done and the supervisor has been placed in a role of authority for a reason.

One supervisor admitted to speaking rudely and swearing staff. She stated that Tropic has provided training and that she is much better now.

It must be made clear however that even where interviewees stated that there are issues of bullying, none of them stated that these threats or instances of bullying were targeted at female employees specifically.

**The investigator finds that there are no bullying or verbal threats made exclusively towards females, but at the same time does find that it is probable that supervisors and managers may be mistreating staff by shouting or being rude to them, as one supervisor admitted she does to her staff.**

H/A.11 of the FLA Code deals with abusive workers, supervisors and managers as follows:

*“Employers shall have a system to discipline supervisors, managers or workers who engage in any physical, sexual, psychological or verbal violence, harassment or abuse, through measures such as compulsory counseling, warnings, demotions, and terminations or a combination thereof regardless of whether such action was intended as a means to maintain labor discipline with*

*a view to preventing the reoccurrence of violence and harassment, and facilitating their reintegration into work, where appropriate.”*

*H/A.5 of the FLA Code states:*

*“Employers shall not use any form of verbal violence, including screaming, yelling, or the use of threatening, demeaning, or insulting language, as a means to maintain labor discipline.”*

*ER.5 of the FLA Code states:*

*“ER.5.1 Employers shall ensure that all supervisors are trained in national laws, workplace regulations, and the FLA Code, workplace grievance systems, and the appropriate practices to ensure compliance.*

*ER.5.2 Employers shall inform supervisors that they should not use any form of harassment or abuse to maintain labor discipline.*

*ER.5.3 Trainings should be updated on a regular basis.”*

**Tropic complies with Code H/A.11 in that there is a system of discipline for all workers and management has stated that when they have received complaints of this nature before, it is usually brought informally and resolved informally.**

**Tropic should, however, consider that this type of behaviour is serious in nature and that it should be mitigated as far as possible in the factory which includes issuing formal discipline. Tropic is in breach of Code H/A.5 and ER.5 since at least one supervisor has admitted to using the abusive conduct as described in this clause with her subordinates and there is not an established specialised training plan for training supervisors on this important matter. Tropic only conducts general training on this issue. The absence of an internal monitoring program (through factory and headquarters-level audits) can also be identified as contributing factors.**

#### **F. Assignment of short-term contracts to younger female workers**

- One staff representative said there are younger females getting short term contracts but it is not limited to females only. It applies to everyone. He stated however that

fixed-term contracts are allowed in law. His view is that this is not abuse or misconduct because it is legally allowed.

- One representative stated that there are fixed-term contracts given to employees but it is in compliance with the law. The law allows contracts up to 2 years but the company can lessen it based on the terms and conditions of the contract. Some new workers obtain indefinite contracts if they do well early on their employment with the factory. He stated that not only women are targeted. Everyone receives fixed-term contracts. He stated that if it was just women being targeted, staff representatives would have acted on it.
- Some workers stated that due to John's conduct, he would give longer contracts to women as opposed to shorter contracts.
- Interviewees stated that all employees that are employed would receive a probation period between three and six months. Once you are assessed and deemed worthy, you would receive an indefinite contract.
- Interviewees stated that this was the situation with all employees, not just female employees. Interviewees mentioned that there were rumours that John would give women longer term contracts in return for sexual favours. John is, however, no longer employed at the factory.

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### *CONCLUSION*

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There is no evidence present that proves that younger female workers are given short-term contracts.

Tropic employees a total of 1,695 employees. 275 employees are on fixed-term contracts. With regards to short-term contracts in general, this contract type is mainly linked to the production order book of the factory. Tropic has limited visibility on how the production will evolve this year and next year. The situation is highly uncertain and Tropic has fix-ended

orders that are not permanent in nature and therefore it does not allow Tropic to only hire staff on permanent contracts.

**Utilising fixed-term contracts for the above reasons are not prohibited in terms of the Malagasy Labor Code or the FLA Code, which states at ER 9.3.1 that one of the reasons that temporary workers may be appointed is a situation whereby “*the permanent workforce of the enterprise is not sufficient to meet unexpected or unusually large volume of orders*”. Therefore, there is no evidence that Tropic is assigning short-term contracts to employees in breach of the FLA Code or the Malagasy Labor Code.**

G. Absence of an adequate industrial relations policy and procedures and included the process for disciplinary action.

Before stating what the interviewees had said about this issue, it is important to provide details about the policies and procedures. The interviewee comments will appear where the bullet points begin.

The investigator reviewed the grievance and disciplinary policies in detail. The grievance policy creates a system for reporting grievances which sets out the process clearly, promotes confidentiality, and promotes a system of non-retaliation. However, it is only available at the factory level, which means workers cannot share some allegations/complaints related to factory management with CIEL headquarters on a confidential and anonymous basis.

The disciplinary policy does not include the procedure to be followed when disciplinary action is taken. This is a violation of the FLA Code. To reiterate the finding earlier in this report, the FLA Code is clear in ER.18.3 where it states that disciplinary procedures and practices must be clearly communicated to all workers. Article 168 of the Malagasy Labor Code further states that the internal regulations must contain the procedural rules of discipline, especially as it relates to an employee’s right of defence.

**The disciplinary procedure followed by Tropic and the employee’s right of defence is not contained in Tropic’s internal regulations.**



Tropic has an “Anti-Bribery and Anti-Corruption” policy that is very detailed. It explains the concepts of bribery and corruption and provides a process to report any acts of bribery and corruption to one’s manager or the HR department.

Tropic has an “Anti-Discrimination” policy which states unequivocally that Tropic is against any acts of discrimination. The policy defines different forms of discrimination, indicates the reporting process for acts of discrimination, stipulates the rights of employees not to be discriminated against, and promotes non-retaliation against those who have reported acts of discrimination.

There is no Collective Bargaining Agreement in place at Tropic. This is not a requirement in terms of Malagasy law or the FLA Code; however, this issue will be discussed in investigator’s recommendations.

Tropic’s disciplinary procedure does not include a third-party witness during an imposition and does not have an official appeal process as required by FLA Code ER.18.4.

- When asked about disciplinary and grievance procedures, 45% of staff members interviewed stated that the employer follows the law; however, some note that at times it is too rigid with the law and should simply do the minimum required by law.
- One staff representative stated that there is no real problem with the factory’s procedures and they encourage staff to follow procedures.
- One interviewee stated that management is lenient with regards to discipline of staff and stated that when staff want leave, they will accommodate it.
- Some staff mentioned that they feel that the procedures are good within the organisation. An example would be where they asked for an outing to be organised. They asked for 16 October 2022; however, the factory could only accommodate 29 October 2022. This indicates that there is communication between the parties and the company is listening, but workers just had to wait a bit.

- Some staff stated that at this factory there are better grievance, disciplinary and industrial relations policies versus other companies that they worked at. They stated that the factory is not harsh with its disciplinary measures.
- An interviewee stated that management would listen to some complaints and sometimes they respond positively but this is not always the case.
- One interviewee stated that the policies are okay but management should consider the employees and respond to them quicker as they sometimes take long to respond.
- One interviewee stated that when she compares the policies between Tropic and another company, the staff at Tropic are spoiled because the rules are lenient. Tropic is the only employer that allows staff to go for a picnic every month. When staff do something wrong, they are helped and not just dismissed as a first instance.
- 25% of staff members interviewed stated that they felt that management listens to them through the staff representative and answers then through the staff representative as well – and they are fine with that.
- 25% staff that were interviewed stated that Tropic’s policies and procedures are too rigid and should be more lenient. Other interviewees were happy with the policies and procedures and stated that management listens to their issues and appreciates that the staff representatives are also another avenue to resolve issues.

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### *CONCLUSION*

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The interviewees mostly gave their opinions on the policies and procedures, but no interviewee alleged that there was an absence of a policy and procedure. This was stated by the interviewees despite the fact that the internal rules relating to discipline does not contain the process of disciplinary action, the employee’s rights to defend the allegations

himself/herself, and do not contain an appeal process as required by the FLA Code. This highlights the importance of the employer ensuring compliance with the rules. Many workers are not specialists in the area of Labor Law and would not necessarily know what would be required in terms of the law.

**Tropic's policies are not wholly inadequate, as there are a number of policies that adequately address important issues. The internal regulations related to disciplinary matters, however, are not adequate and need to be amended as soon as possible. The current internal regulations relating to discipline are in violation of ER.18.3 and ER.18.4 of the FLA Code as well as Article 168 of the Malagasy Labor Code.**

#### H. Certain questions raised in connection with pre-dismissal interview records;

- A staff representative stated that the procedures followed cannot be faulted in that where there are issues of misconduct, employees are always provided their rights to representation and the right to state their version of events during an investigation or at the disciplinary hearing. The factory's procedures are in line with labor court and in line with the legal regulations. The sanction that is applied as a result of the disciplinary hearings complies with internal rules.
- Another staff representative stated that there are no issues with pre-dismissal interviews.
- There were interviewees that had an issue with staff being dismissed due to the strike. Therefore, they had raised their issues when asked this question; however, it was clear that they did not have a problem with the procedure followed.
- One interviewee stated that there was a fault in the procedure with regards to the employees striking in May in that a collective dispute must have a collective hearing and not an individual hearing as factory management has done.

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## CONCLUSION

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The interviewees did not state that there were any issues with regards to pre-dismissal interviews. In fact, after probing, the interviewees that raised issues had concerns with the outcome of a disciplinary hearing but would admit that the procedure leading up to the hearing was fine. One interviewee stated that Tropic's procedure with regards to pre-dismissal interviews is in compliance with both its internal rules and the Labor Code.

**The investigator has raised concerns throughout this report with regards to the fact that Tropic does not have a progressive disciplinary system in place that is explicitly stated in its Internal Regulation for Discipline. However, with specific regard to pre-dismissal interviews, there was no evidence of any irregularity within the context of existing disciplinary policy.**

- I. [Soliciting workers to pay certain management personnel for better work assignments/tasks](#)
  - One staff representative stated that the current General Manager is strict about issues of harassment and corruption. The staff representative only heard rumours that it happens but never saw it happening and he had never received a complaint about it. He says that this would in any event be difficult to accomplish as there are different employees required for each step of the production process. Human Resources will do a psychometrics test as well where applicable.
  - One staff representative mentioned that a worker has previously stated that John allegedly accepted bribes for longer contracts.
  - 70% of staff interviewed stated that they do not know anything about soliciting workers to pay certain management personnel for better work assignments/tasks.
  - An interviewee states that only during the time that John was employed is when they heard rumours that he hired people and the people he hired had to pay for it.

- An interviewee stated she heard rumours of soliciting workers to pay for better work but she had not seen it happen. In fact, her opinion is that there is no corruption and they assess workers in terms of performance and then decide whether or not to promote them.
- Management stated that there was some suspicion of employees paying for jobs but there was never any evidence of that. It was just rumours at the time. Management stated that it is always trying to improve their processes and will always try to make sure there is no corruption.
- 90% of staff interviewed had not heard of or experienced this issue in the workplace. 10% of staff interviewed stated that John would solicit money from workers in exchange for better work tasks. These were all rumours and have never been proven.

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#### *CONCLUSION*

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It must be emphasised that all allegations and rumours regarding solicitation of money for better work assignments were against John.

**Tropic has an “Anti-Bribery and Anti-Corruption” policy that is very detailed, explains the concepts of bribery and corruption, and provides workers a process to report any acts of bribery and corruption to their manager or the HR Department. The policies at Tropic are reviewed once a year, which means that any trends that are discovered can be addressed in the policy.**

**On the other hand, the existence of written policies and review of policies on an annual basis does not necessarily mean they are successfully implemented throughout the workplace. The absence of an effective internal monitoring system (at both the factory and headquarters levels) as a safeguard measure is a major problem. However, the investigator did not find any evidence to show that employees at Tropic are soliciting or being solicited for money in exchange for a better contract.**

## J. Unfair dismissals based on union membership and other anti-union practices;

- All interviewees, which includes union officials, indicated that they have never been forbidden to join any union and they are not aware of any anti-union practices. They are not aware of any dismissals based on union membership. Employees are eager to be part of the union; however, because of their personal lives, they are too busy to take part in all the initiatives.
- The treatment is the same for everyone whether a worker is part of a union or not.
- It was stated that, in fact, they felt motivated to be part of a union due to other staff being dismissed.
- Interviewees stated that the factory encourages them to be a part of a union. The factory informs them about unions and about joining them. There are training sessions and everyone is informed by the company as to what the roles of the union are.
- 5% of staff members interviewed stated that staff do not want to join the union because the staff representatives are not good at their jobs.

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### CONCLUSION

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There are no interviewees stating that any anti-union practices have taken place. In fact, interviewees stated that the general sentiment given by management in meetings or in training is that workers are actually encouraged to join the union. Manager and workers are trained that everyone should respect an employee's rights to freedom of association and collective bargaining.

**The investigator has reviewed Tropic's policies in order to ascertain its position in relation to anti-union practices. The "Anti-Discrimination" policy explicitly states that workers may not be discriminated against for being part of a union. The internal regulations related to discipline state that a violation of an employee's rights to freedom of association will attract**

**a second-degree sanction, which can be immediate dismissal or suspension without pay up to a maximum of eight days. There is no evidence found or provided proving any unfair dismissals based on union membership and other anti-union practices.**

K. Issues relating to the nomination process of SEMPIZOF/ FISEMA union  
(not affiliated with IndustriALL federation)

- One interviewee mentioned that the issue around the nomination process can only be that FISEMA did not get any staff representatives elected. There were about 1,200 voters and they only got about 38 votes. There were three unions on the ballot: SEMPIZOF, FISEMA, and FISEMARE. SVS only came to the fore recently and therefore they were not part of the last election, but SVS will be part of the upcoming election.
- All but one of the staff members interviewed stated that they are not aware of any issues relating to the nomination process.

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*CONCLUSION*

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**There is no evidence to prove that there are issues of concern relating to the election process such as management interference and union favouritism. Interviewees have not raised this at any point as an issue.**

L. Relationship of factory management with SVS/RANDRANA SENDIKALY union (affiliated with IndustriALL).

- One interviewee stated that the only issue that he can think of is that SVS asked their representative to write a letter of a collective dispute. While the union representative does not have the right to do so, the elected staff representative does have that right.

- One interviewee state that SVS were well received at Tropic when they had introduced themselves to management.
- In the interview with the union official of SVS, he stated that the relationship between the union and factory management is neither good nor bad: there are days when it is good and there are days when it is bad.

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### *CONCLUSION*

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All interviewees, which included the staff representatives, did not know of any confirmed issues relating to the relationship between factory management and SVS. An interviewee stated that SVS has only recently been organising at the factory and they were well received by management. Management stated that they will work with any union and anyone who is elected a staff representative. It does not matter who you are or to which union you are affiliated.

**There is no evidence to prove that there are issues of favouritism in the relationship between management and SVS. Interviewees have not raised this at any point as an issue.**

#### M. Resignation of 100 workers due to strike action.

- This was an issue raised in the interview with IndustriALL which was conducted before the on-site interviews commenced. Therefore, the investigator requested information from interviewees as to whether there was a mass resignation as a result of the strike action. Most staff stated that they did not know anything about workers resigning due to the strike.
- One interviewee stated this occurred due to salary needs: the staff that resigned were not paid so they got other jobs. They had received only a portion of salary for that month because of the strikes.



- An interviewee also alleged that newly recruited people tried to do the job however, they do not like it and then left their job.
- 15% of interviewees stated that staff resigned during the strike and some resigned when they heard that they would have to go to a disciplinary hearing.
- A supervisor stated that staff did perhaps get impatient during the strike in May and they found other jobs while their work stopped. For her department, however, it was only one staff member out of 30 that resigned.
- The HOD stated that some staff resigned and it could be close to 100; however, they did not come back because they found other jobs.

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### *CONCLUSION*

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Some interviewees stated that the resignations took place because of the strike action and the fact that the employees were suspended without pay. Some staff allegedly resigned when they were told that they would have to attend a disciplinary hearing. An interviewee also stated that staff found other jobs during the strike action.

Between 18 May 2022 and 25 May 2022 (which was during the strike), there were four staff members that left Tropic. This was not due to a resignation but rather an abandonment of their post.

After 25 May 2022 until 31 May 2022, there were an additional 11 employees that left Tropic and all were due to abandonment of their posts. Looking at a bigger range, between 18 May 2022 and 10 July 2022, there were 70 employees that left Tropic. Only six of the 70 were due to resignations.

It is clear that were not 100 staff members that resigned as a result of the strike action, as alleged. Staff that resigned had made this decision out of their own accord.

The majority of staff that left Tropic did so during June and July, which was after the strike. **The investigator cannot fault Tropic for taking the necessary action within its legal rights. However, it would seem that Tropic's delay in addressing the demands of staff could have contributed to this situation.**

**It is for this reason that it is important to deal with official demands and grievances in a timely manner and ensure proper communication between the parties. The investigator cannot conclude that there were any resignations directly caused by the strike action.**

## GENERAL INFORMATION

This section of the report includes information gathered through the investigation that is not directly relevant to the allegations but still worth noting in the investigator's view.

- Investigator enquired from the staff representatives how often they meet with management. They stated that they meet about once a month if there are grievances and otherwise they would meet when there are exceptional circumstances. After meeting with management, they meet with workers to provide feedback.
- An interviewee stated that in her 12 years at the factory, she felt that staff could not talk directly to management and they would have the staff representatives do it for them, but they now feel that it is the staff representatives who are doing a bad job. They feel that they cannot get what they want because they always have to go through staff representatives.
- 10% of staff members interviewed mentioned that staff stated that they want to go for a picnic and factory management granted their request. There was a negotiation regarding a date that would suit the factory operations and in the end the staff and management agreed on a date.
- Interviewees noted that they are communicating better now because there is a microphone that has been set up in the factory.

- Two interviewees stated that some staff are ungrateful and that one's attitude towards management depends on the mentality of each staff. Sometimes staff will not get 100% of their requests and certain staff would have different attitudes about it. For example, staff would ask for an increase of 10,000MGA and the company would give 5,000MGA and some staff will not be happy.
- The interviewees stated that they appreciate a lot of good things given to them from the company such as picnic days, being provided bicycles, and some incentive schemes. They feel that the factory treats them well which is why they worked at the factory so long.
- The factory provides staff a salary advance of 40,000MGA. Staff are asking management to increase it to 60,000MGA and it is currently under consideration. Previously, lunch money was paid at a lower rate but it is now being paid at a higher rate, increased from 800MGA to 1,800MGA. Staff are currently requesting an increase to 3000MGA.
- One supervisor mentioned that many ex-employees that are working at other companies – who left the factory through being dismissed during the strike or through resignation – have contacted her and asked if they can return to Tropic Mad SA because they do not like it at their new company.
- One interviewee stated that after the strike, the relationship between management and staff seems to be improving. One example is that they are greeted by the door by management. The interviewee stated that Tropic Mad SA is a lot better than other companies.
- An interviewee stated that in his experience, there is less demand at this factory than at other factories. Even though they are not achieving the targets, they are not being penalised. They are given overtime so it does not impact their production as compared to other factories. Other factories stop work at 4pm and if one does not achieve their

target for the day, the employee will be made to work after hours to achieve it without being paid for those extra hours worked. That practice does not take place at Tropic.

- In November 2022, Tropic announced plans to incentivise staff with gifts for the best employee performance and line performance for all production departments.
- Interviewees stated that some employees complained that the staff representatives are 'bought or paid by management'. These accusations usually happen when the employees receive advice or news from the staff representatives that they do not like hearing.
- Some staff representatives mentioned that they try to assess and filter what to take to management. Staff will sometimes be rude with the staff representatives as well and they think that they have a better approach. They want what they have asked for because their ideas are fixed. Staff representatives have a hard job because the feedback to staff is not always what they want to hear and they cannot force the employer to accept the staff's requests. Sometimes staff are impulsive and they act out of their own accord without listening to the staff representatives.
- The factory has a roadmap for training for supervisors on the production floor to improve their management skills to avoid situations of conflict with their staff. Other types of training include health and safety, discrimination, harassment, etc.

## IMPROVEMENTS FROM AN EMPLOYEE'S PERSPECTIVE

After each interview was completed, the investigator asked the interviewee generally what can be done to improve the working conditions at the factory. Some staff took awhile to think about their answer, which may be an indication that they do not readily have any pressing issues at the factory.

- One interviewee stated that management needs to do leadership training and to enforce better leadership to get better results. His suggestion is to educate staff about the law so that they do not act ignorantly by striking illegally. Everyone needs

leadership training, which includes staff representatives and management. There should also be training on how to communicate better with workers.

- An interviewee stated that he would like for all levels of staff, management and staff representative to listen to one another – and if they do, there will not be any problems. The staff representative would report what the workers say to management and vice versa. Staff should be self-motivated to write propositions to improve their work life. Factory management should also try and improve the staff's lifestyle.
- Management was commended by an interviewee for providing bicycles to staff and this is an example of what motivates them.
- An interviewee stated that management should not look down at the people and think they can do whatever they want to do to staff.
- One interviewee stated that she loves her job and hopes the company will improve job conditions generally. She is ready to improve herself and her skills and is willing to learn when she does not know something or does something wrong.
- One interviewee asked if their lunch money can be raised higher than 1,800MGA per day, as other companies are providing this rate.
- A staff representative mentioned that the last election was in 2021 and, based on this, the government has stated that the next election of staff representatives must be done in 2023. Some staff representatives are serving for 10 years. (However, in fact there was no election in 2021. Elections usually take place every two years, but due to the COVID-19 pandemic; it did not take place at many companies. The government declared that whoever had elections last year may have it by 2024. If a company did not have elections in 2021, they should have them in 2023.)

## RECOMMENDATIONS

Before commencing with the recommendations, the investigator would like to thank all parties for their support throughout the investigation process. Investigator received all the relevant documentation without any limitations and all parties were transparent and cooperative during the investigation.

The investigator would like to stress the fact that many of the issues experienced at Tropic are due to the lack of effective communication between management, staff, and the staff representatives. The reason that the investigator included many of the interviewee comments under each allegation is to show the fact that poor communication can lead to misunderstanding -- and misunderstanding in turn can lead to disgruntled employees.

It was clear during the interviews, as highlighted throughout the report, that staff had different versions when it came to dates and details of incidents, the number of dismissals, the reasons for dismissals, the issue regarding work classification, the government's decree regarding salary increases, proper strike processes, and more.

There are certain initiatives that Tropic has implemented for its employees that are commendable, such as staff members receiving bicycles, management agreeing to send staff on a picnic, charitable giving, implementing a new incentive scheme for staff, and more.

However, based on the review of many allegations throughout the investigation, it is also clear that there are many ways in which Tropic can address its shortfalls and ensure that workers' rights are not violated -- and that Tropic is compliant with local law as well as with the FLA Code and Benchmarks.

The investigator hereby proposes the following recommendations in order to address the current issues at the factory and to mitigate risks in the future:

1. The investigator recommends the following as the most practical solution for the workers who were unfairly dismissed during the February and May strikes:

- 1.1. The dismissed workers should be reinstated or re-employed by Tropic due to the sanction of dismissal for the employees of both strikes being unfair and disproportionate to the offence committed. During the February strike, it would have been sufficient to issue all offending employees with a Final Written Warning or at most, a suspension without pay. This view is amplified by the fact that most striking employees during the May strike received a sanction of suspension without pay for 3 days for taking part in the illegal strike for multiple days. The strike in February was only for one day yet the striking employees were dismissed which is disproportionate and unfair. With regards to the May strike, 314 employees received a sanction of a suspension without pay while 57 employees were dismissed. There was no evidence provided to differentiate the actions of the 57 dismissed employees from the 314 employees that received a sanction of suspension without pay, except that the 57 employees were identified in video footage to be striking employees. Their conduct was no different to the other 314 employees. Therefore, Tropic should have applied a sanction for the 57 employees that is proportionate to the offence and consistent with the sanction given to other employees committing the same offence. Identifying employees on video footage should not be the reason that an employee receives a sanction of dismissal instead of a sanction of suspension without pay. The root cause of the employees' actions was management's failure to finalize a the classification alignment project and the PVM project in a timely manner.
  - 1.2. Where this is not possible due to the dismissed employee already being employed at another employer or where Tropic does not have capacity to employ more staff, Tropic should at the very least ensure that the dismissed workers are not blacklisted so that they will be allowed to obtain employment at Tropic and elsewhere in the future. Offering a letter of referral/recommendation to these workers would be a positive step in this direction.
2. Tropic should amend the internal regulations relating to its existing disciplinary system as soon as possible in order to comply with the FLA Code and the Malagasy Labor Code. The following amendments should be made:

- 2.1. The entire disciplinary process must be stated explicitly in the internal regulations, which would include who the decision maker will be regarding sanctions.
  - 2.2. The rights of the employee should be explicitly stated in the internal regulations.
  - 2.3. In order to comply with ER.18.4 of the FLA Code, the disciplinary process should include a third-party witness where there is an imposition of sanction, as well as the options of an appeal.
  - 2.4. All information and evidence about allegations against workers should be shared with workers during the disciplinary hearings and the process should be fully transparent. Dismissal of some workers based on “violent acts” caught on CCTV/camera recordings, but where management did not share such footage during the disciplinary hearing, is not acceptable. The wrongful dismissal and subsequent reinstatement of one worker who had not even participated in the strike clearly shows that the disciplinary process in the aftermath of the strike was conducted in haste and not properly implemented on a fair and transparent basis, including with the workers’ right to defend themselves.
  - 2.5. All disciplinary actions, including verbal warnings, need to be properly documented.
3. Article 2 of Tropic’s Internal Regulations relating to recruitment states that a staff member’s probationary period can be from three months up to a maximum of six months. C.3.1.3 of the FLA Code states that the maximum duration of a staff member’s probationary period may only be three months. The investigator therefore recommends that Article 2 of Tropic’s Internal Regulations be amended to comply with C.3.1.3 of the FLA Code. In addition to this, the investigator recommends that Tropic reduce the probationary period of all employees currently serving periods of longer than three months in order to immediately align existing contracts with C.3.1.3 of the FLA Code.



4. More generally, the investigator further recommends Tropic management review the FLA Code and Benchmark requirements to ensure that all internal policy and procedures are in line with those requirements.
5. Tropic should ensure that it improves communication with its staff immediately. The reason that the investigator has included the various versions of events under each allegation was to highlight the fact that many staff members are not receiving the correct information. It is also clear that there is a need for management to consider the manner in which it communicates important information and updates regarding projects and processes to staff. In order to improve communication, the investigator recommends that Tropic management do the following:
  - 5.1. Use social dialogue with staff instead of placing full reliance on staff representatives or notice boards only.
  - 5.2. Inform staff directly that the channels of communication with the HR office are always open should staff have any issues or grievances. This should be done through regular reminders via social dialogue and via the notice boards in the factory. It should be an initiative to build a culture of communication between staff and management.
  - 5.3. Management should continue to meet with staff representatives at least once a month and document the minutes of these meetings which should be signed by all participants. Management should ensure that this happens unless there is a justifiable operational reason or emergency that would prevent the meeting from taking place. In such a scenario, once the operational reason or emergency has been resolved, management should endeavour to meet with staff representatives as soon as possible thereafter. The staff representatives should raise concerns at this meeting that may not yet have escalated into a formal grievance in order to work together to resolve any disputes that may be manifesting.
6. Tropic should eliminate wage discrimination by:

- 6.1. Immediately complying with the Court order;
  - 6.2. Ensuring that recruitment and remuneration practices are aligned across all of its factories within Madagascar; and
  - 6.3. Completing the PVM project, announced in April 2022, immediately to determine the correct professional classification for workers. By not completing this project, management bears the risk of another potential strike should workers become disgruntled.
7. The investigator would like to underline that despite the salary increase, the minimum wage as per the presidential decree it 250,000MGA was not implemented. It was stated that the government would subsidise a portion of the increase. Tropic should ensure that staff are continued to be paid as per the government approved salary grid and that Tropic places the necessary pressure on the relevant government department/officials to ensure that any subsidies in favour of workers are paid as soon as possible so that workers are not paid below minimum wage.
  8. The investigator recommends that management take cognisance of the fact that even though salaries are increased/paid retrospectively, the length of time that it takes to resolve salary related issues (which includes the classification alignment project and the PVM project) can have a negative effect on workers as their standard of living and inflation will increase while they are waiting for their salary increases.
  9. The investigator recommends the following to avoid a repeat of management's conduct that contributed to the February and May 2022 strikes:
    - 9.1. If Tropic initiates a project as a result of a grievance in future, there should be regular and timely updates provided to staff. It would seem that part of the frustration was that staff felt that their concerns were not taken seriously. An example would be that management should have informed staff about the challenges (financial and logistical) it was experiencing with regards to the assessment and the PVM project. Management sent out a notice simply stating that its assessment was complete but

machinists would require further assessment which would take several more months to complete.

9.2. Management should be proactive in resolving important issues should they arise in the future. An example of this is that when the Talatamaty factory and the Andraharo factory merged in 2011, management should have resolved the classification anomalies promptly (instead, the anomalies were only addressed after staff had raised it ten years later). This could have prevented the workplace disharmony that caused the strike action in May 2022.

10. It would seem that there may be instances of bullying/harassment in the factory. Management should reduce the chance of this occurring by:

10.1. Meeting with its supervisors and managers and informing them that under no circumstances should they bully or threaten staff. They should be reminded of Article 19 of Tropic's internal regulations as it relates to discipline and Items H/A.5, H/A.11 and ER.5 of the FLA Code and be instructed to comply with these rules. The supervisors and managers should be informed that should anyone be found bullying or threatening members of staff, they will be subjected to disciplinary sanctions.

10.2. Management should have training sessions with the staff to refresh them on the disciplinary rules and the importance of following the rules. Management can enlist staff representatives to assist with this and be present at these sessions as well. This will ensure that staff are given a chance to understand the effect of disciplinary action.

11. The sessions where management has trained workers and management regarding matters of sexual harassment, anti-discrimination, disciplinary matters, grievances, etc have been short in duration. Some of the attendance sheets indicate that the entire training session took as little as 30 minutes. This makes the investigator question the efficiency of the training, especially where multiple important topics are being addressed. Investigator therefore recommends that an individual training session be focused on

fewer topics so that the training can be more effective. Furthermore, there should be a system in place for evaluating the efficacy of such trainings, which is currently missing.

12. Training sessions should be held with all staff and staff representatives to explain collective bargaining and the strike process. The training should include what one has to do to ensure that the strike action is fairly embarked upon. The training should also highlight the definition of a legal strike, the impact that an illegal strike has on the employer and workers and what the consequences of taking part in an illegal strike will be.
13. Tropic should attempt to minimize the “gossip culture” that has contributed to staff being misinformed about many issues within the factory. Management should emphasise that if staff need information about anything, they are more than welcome to address their query or report an issue via HR. This would avoid a situation where staff relies on false promises or false information.
14. Tropic should enter into a collective bargaining agreement with unions in order to govern the rules of bargaining. This will outline the bargaining process between the unions and Tropic and mitigate the risk of future illegal strike situations.
15. Tropic should conduct an awareness raising campaign regarding sexual harassment. This campaign should communicate Tropic’s zero-tolerance approach to sexual harassment. The campaign should promote the various ways that staff can report sexual harassment as well as the sexual harassment committee and its function. The purpose of this recommendation is to make staff more comfortable with reporting serious issues of sexual harassment.
16. Tropic and/or CIEL management should inform its business partners about any important event/activity happened in the factory in a timely manner. It was observed that none of the industrial actions were reported to the brands sourcing from the factory and brands learned about those developments through complaints filed by IndustriALL. Tropic management should prepare a procedure to inform brands not only about industrial actions but other important updates such as serious work accidents in a timely manner.

17. The CIEL Group should develop a system where there is a direct line of communication for Tropic workers to report grievances. There should also be an option for workers to report grievances confidentially. This will encourage staff to report serious worker rights violations such as sexual harassment.
18. There were no proper internal audits conducted despite two industrial actions having taken place in one year. Both factory and headquarters-level internal monitoring system should be reviewed to ensure regular and case-specific audits are conducted on a periodic basis and that these audits are documented. It is also not acceptable to see some important internal investigations -- such as allegations about sexual harassment -- conducted and concluded without any paper trail.

**Lastly, the investigator strongly recommends preparation of a time-bound corrective action plan (CAP) by Tropic management for all of the above points, in coordination and alignment with brands in order to ensure a timely and sustainable solution. Brands can share this CAP with FLA and provide updates on the implementation status on a regular basis.**

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Mr. Yaseen Moollatjie

**Investigator**

**(The Labour Hive)**

## ANNEXURE I: MALAGASY LABOR CODE EXTRACTS

The applicable law which is to be considered in this investigation is Madagascar's Labor Code (Law No. 2003-44 of 28 July 2004) The extracts included below are the relevant extracts as they appear in the Code in terms of wording and formatting. The extracts below will show the legal standing in Madagascar as it relates to:

- Strike action;
- Lock-out;
- Termination of employees without notice; and
- Equal pay for work of equal value.

The following provisions relate to termination of employment without notice:

**Article 17.** - *The fixed-term employment contract may cease before term by the will of only one of the parties, only in the cases provided for in the contract and in the cases of gross negligence provided for in the Internal Regulations or, failing that, left to the discretion of the competent court.*

**Article 18.** - *The contract of indefinite duration may terminate by the will of one of the parties. This termination is subject to notice given by the party who initiates the termination.*

*The termination of a contract of indefinite duration may occur without notice in the event of gross negligence provided for in the internal regulations or, failing that, left to the discretion of the competent court.*

*Except in cases of gross negligence, any termination of a contract of indefinite duration without full notice or without the notice period having been observed in full, entails an obligation for the party responsible for the termination to pay the other party compensation in the amount of remuneration and benefits of any kind which would have benefited the employee during the notice period which has not actually been observed.*

The following provision is relevant in relation to workers being paid equal pay for work of equal value:

**Article 53:** For the same professional qualification, the same employment and for work of equal value, wages shall be equal for all workers irrespective of their origin, colour, national origin, sex, age, trade union membership, opinion and status under the conditions laid down in this chapter.

The following provisions are relevant in relation to strike action and lock-out:

**CHAPTER II**  
**SETTLEMENT OF COLLECTIVE WORK DISPUTES**

**SECTION 1**  
***The procedures for the settlement of the various groups***

**Section 209.** - *A conflict, for it to be collective, must meet two characteristics:*

*the presence of a certain number of workers constituted in a de jure or de facto grouping;*

*the existence of a collective interest translates into specific demands.*

**Section 210.** - *The collective dispute settlement procedure consists of three stages:*

*Negotiation;*

*mediation;*

*arbitration.*

**§ 1 - Negotiation**

**Section 211.** - *The first step of the procedure that is mandatory is negotiation. Negotiation is an attempt by both parties to find common ground on points of contention, without any intervention by third parties.*

**Section 212.** - *Bargaining is based on collective bargaining:*

*at company level, within the framework of the Works Council or, failing that, between the staff delegates and the employer or his representative;*

*at a level beyond the enterprise between one or more trade union organisations represented by the inter-trade union delegates on the one hand and one or more employers' professional organisations on the other.*

*The procedure is triggered by a letter of grievances sent by the workers to the employer. The letter must be signed by the representatives of the employees, the Works Council or, failing that, by the staff delegates.*

*A copy of this letter is sent, for information, to the local labour inspectorate.*

**Section 213.** - *The employer is obliged to organise a first negotiation meeting after a period of time seventy-two (72) hours from the notification of the letter of grievances.*

**Section 214.** - At the request of a party, the negotiation meetings shall result in either:

*when the contract is finally settled, the parties then draw up a report on the results of the negotiations;*

*at the partial settlement of the conflict, the minutes drawn up by the parties distinguish the points acquired and the points on which no agreement could be reached;*

*to failure:*

*in cases where the employer has not organised the bargaining sessions within the time limit;*

*in the absence of agreement on all points of the letter of grievances; for failure to appear by one or both parties at the negotiating session.*

**Section 215.** - In all the cases provided for in the preceding article, a copy of the report shall be sent by the most diligent party to the labour inspectorate of the jurisdiction. The Labour Inspector is required, within forty-eight (48) hours of his referral, to note the success or failure of the negotiation.

**Section 216.** - The right to strike or lock-out is acquired on the date of receipt by the labour inspectorate of the declaration of total or partial failure of the negotiation, subject to the preservation of a notice period of forty-eight (48) hours sent by registered letter to the other party. A copy of this letter of notice shall be sent to the Ombudsman.

## **§2 - Mediation**

**Section 217.** - The second stage of the procedure is mediation . It is mandatory and intermediate between negotiation and arbitration.

*Mediation involves the intervention of a mediator appointed by agreement between the two parties to the dispute. In the event of disagreement between the parties, the Labour Inspector of the jurisdiction is appointed ex officio mediator. Its mission is to bridge the divergent positions of the parties to the conflict by helping them to find an honourable and mutually acceptable settlement. To this end, he has a period of forty-eight (48) hours after the finding of the failure of the negotiation to convene the parties in conflict.*

*The duration of the mediation is set at three (03) days from its beginning. It can be extended by the mediator if he considers a settlement likely within a reasonable time.*

**Section 218.** - In remote districts without labour inspection, the head of the local administrative district replaces the Labour Inspector.



*The parties may be represented by persons of their choice for the purpose of mediation.*

**Section 219.** - *If a party does not appear or is not validly represented, the mediator summons the parties again within forty-eight (48) hours.*

*Failure to appear constitutes an obstacle to the performance of the duties of labour inspectors sanctioned by Article 473 of the Penal Code.*

*The Ombudsman has a real power of investigation in order to know with maximum precision the data of the problem, in particular by means of inquiries and expertise.*

*The mediator may make a partial or comprehensive recommendation for the settlement of the dispute. This is not imposed on the parties.*

*At the end of the mediation, the mediator draws up, as the case may be, a report recording either the agreement or the total or partial disagreement of the parties and, where appropriate, the recommendation of the mediator. The parties countersign the minutes and receive amplification.*

*The points acquired by the mediator are immediately enforceable; The minutes of mediation must set the time limits for its execution.*

### **§3 - Arbitration**

**Section 220.** - *If mediation fails, the collective dispute is submitted by the Ministry of Labour and Social Laws:*

*either to the contractual arbitration procedure pursuant to a collective agreement binding the parties;*

*or to the arbitration procedure of the labour court of the jurisdiction.*

**Section 221.** - *Arbitration can only be concluded on matters which have not been agreed at the time of the mediation.*

*Any new application that has not been submitted to mediation is inadmissible.*

**Section 222.** - *The arbitration council established in each jurisdiction is composed of:*

*the President of the Court of First Instance, President of the Council;*

*the President of the Labour Court of the jurisdiction or, failing that, the one who performs its function;*

*the Labour Inspector of the jurisdiction;  
an employer assessor appointed by the employer from among the employer assessors  
in the court's annual list;  
a worker assessor appointed by the workers from among the worker assessors in the  
annual list of the court.*

**Section 223.** - *If the mediator's report contains a recommendation, the burden of proof  
before the arbitration board lies with the party rejecting it.*

**Section 224.** - *The arbitration does not suspend the current strike or lockout.*

**Section 225.** - *The arbitral award must be reasoned and notified immediately to the  
parties.*

*This decision is final and cannot be appealed. It puts an end to the dispute. Upon  
transmission of this decision to the parties, the strike or lock-out must end.*

**Section 226.** - *Mediation agreements and arbitral awards are immediately inserted in the  
Official Gazette and posted in the offices of the labour inspectorate of the jurisdiction.*

*The minutes of agreements and arbitral awards shall be filed with the Registry of the  
Labour Court of the place of dispute.*

**Section 227.** - *The mediation and arbitration procedure is free of charge.*

## **SECTION 2**

### **The strike**

**Section 228.** *The right to strike, recognized and guaranteed by the Constitution, shall be  
exercised within the framework of the texts in force and after exhaustion of the procedure for  
settling collective disputes provided for in Articles 203 et seq. of this Code.*

*A strike is a complete, concerted and collective stoppage of work decided by employees of  
a company or establishment to achieve professional demands that have not been met.*

*The right to strike of employees subject to this Code may be limited by requisition only in  
the event of a disturbance of public order or in the event that the strike endangers the life, safety or  
health of all or part of the population.*

**Section 229.** - *The strike suspends the employment contract; the employee is exempted from  
performing his usual work; he recovers his job at the end of the strike and cannot be sanctioned  
because of his participation in the strike. The employer is exempted from paying the employee his  
usual remuneration.*

*Control end-of-strike agreements between the employer and the workers may, however,  
provide for compensation to compensate in whole or in part for the loss of wages due to the strike.*

*They may also provide for the use of either overtime or recovery hours to compensate in whole or in part for the consequences of the strike.*

*Employees may claim damages from the competent court for the damage they have suffered as a result of the strike.*

**Section 230.** - *The strike does not suspend the mandate of trade union delegates or staff representatives.*

**Section 231.** - *The strikers must, under their responsibility, ensure the essential safety measures of goods and people and respect the work tool.*

*Even during a strike, it is forbidden for any person to object, by force or under the threat to the free exercise of the professional activity of employees or employers.*

### **SECTION 3** **The lock-out**

**Section 232.** - *Lockout is the closure of all or part of a business or establishment by the employer on the occasion of a strike by the employees of his company.*

*The lock-out is lawful when it is justified by a safety imperative or when the strike is manifestly irregular.*

*If the lock-out is lawful, its duration ends as soon as the causes that caused it disappear.*

**Section 233.** - *The lawful lock-out leads to the suspension of the employment contract and exempts the employer to pay the employee the remuneration usually due for the period concerned.*

*Where the lock-out is declared unlawfully, the employer must pay to each worker concerned the wages and allowances which he would have received if he had been able to provide his usual work.*

## ANNEXURE II: PICTURES OF THE FACTORY FLOOR





