

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

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Malaysia: Japanese Firm Must Drop Defamation Charges Against Human Rights Defender, and Respect the Rights of Migrant Workers

Brussels, 14 August 2011 (ITUC OnLine): On February 14, 2011, the Malaysian subsidiary of Japanese electronics firm Asahi Kosei filed a \$3.2 million defamation suit against human rights defender Charles Hector after he posted on his blog reports he received from Burmese migrant workers detailing violations of their labour and human rights at the company. The International Trade Union Confederation (ITUC) calls on the company to drop the charges, which appear to have no purpose other than to silence critics by threat of financial ruin. Further, the lawsuit has the potential to chill the speech of other workers and worker advocates who would otherwise speak out against violations of fundamental rights committed by other domestic and multinational corporations in Malaysia. The ITUC also calls upon Asahi Kosei (M) Sdn Bhd to hire its workers directly, rather than through an outsourcing agency, and to respect Malaysian and international standards on both labour and migration.

Thirty-one Burmese migrants working at Asahi Kosei (M) Sdn Bhd alleged being paid wages lower than what was promised when they agreed to migrate to Malaysia; numerous illegal (and large) wage deductions; loss of cooking utensils, electricity and even accommodation for raising employment-related grievances; and being threatened with termination and deportation of workers when they lodged complaints about these violations. Hearing this, Mr. Hector intervened on the workers' behalf, seeking additional information and a reply to the workers' allegations from the company. Hearing no reply, Mr. Hector posted the allegations to his blog on 8 February to pressure the company to address workers' complaints. The company filed suit against him six days later.

One argument that the company has put forward is that it is not responsible for the workers, as they are actually supplied to the company through a third-party. Although Asahi Kosei (M) Sdn Bhd does not pay the workers directly, the workers at the factory are under their direct control and supervision, and use the tools and equipment of the factory. There is little question that Asahi Kosei (M) Sdn Bhd is, under an objective assessment of the arrangement, the employer – regardless of the contract. Indeed, ILO Recommendation 198, which sets forth criteria for ascertaining the existence of an employment relationship, suggests that an employment relationship does exist in this case. Further, we understand that the outsourcing company through which Asahi Kosei (M) Sdn Bhd procured the migrant workers was not legally registered in Malaysia under the law regulating private employment agencies.

The court dates for Mr. Hector have been set for 23-26 August. The ITUC adds its voice to urge that the company immediately drop its defamation claim against Mr. Hector. The ITUC also calls upon the company to respect the rights of workers, regardless of their contractual status, and strongly encourages it to hire workers directly. Further, the ITUC calls upon the Malaysian authorities to investigate the labour violations alleged and to take action accordingly.

The ITUC represents 175 million workers in 151 countries and territories and has 305 national affiliates. <http://www.ituc-csi.org> and <http://www.youtube.com/ITUCCSI>

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