

# A TRIUMPH OF JUSTICE

A CHINA LABOUR BULLETIN BRIEF

In a stunning reversal, a Dongguan criminal appeal court on December 31, 2004 freed seven shoe factory workers who originally been sentenced to up to three and a half years' imprisonment for their participation in mass protests at factories operated by the Taiwanese company Stella International. The court reduced the workers' sentences to nine months, suspended for one year, and also released and dropped the suspended prison sentences of three 16-year-old workers. All of the workers had been in jail since April 2004. This brief examines the sequence of events behind this case, which represents a landmark in the history of the modern labor movement in China.

On April 21, 2004, more than 4,000 workers staged a mass protest at the Xing Xiong Shoe Factory in Dongguan, Guangdong Province, owned by the Taiwanese company Stella International. The workers were protesting low wages, long working hours, wages in arrears and poor meals provided at the factory's canteen. The problem that directly sparked the protest was the factory's decision to shift the workers' overtime hours from the weekend to weekdays, resulting in substantially lower overtime rates. In the course of the protest, some machinery and other items of factory property were damaged.

The local government, acting as the guardian of foreign investors' rights, immediately detained the protesters without any investigation into the causes of the protest. Liu Jufei, 29, Ding Kui, 19, Liu Rongneng, 19, and under-age laborers Geng Chunfei and Liu Haiyang, both 16, were detained as criminal suspects.

Just two days after the Xing Xiong protest, around 1,000 workers staged a similar protest at Stella's Xing Ang Shoe Factory, also located in Dongguan. The Dongguan police author-

ized the Bureau of Commodity Prices to estimate the loss of property, calculated at 153,534.44 yuan. At least eight workers were reported to have been detained in secret arrests in late April. Wan Jiafeng, 19, Qu Mingtao, 21, Ma Zhangwei, 18, Chen Nanliu, 23, and Chen Suo, 16, were detained for "leading and instigating the workers' riot and causing collective destruction" and were later charged with "intentional destruction of property" along with the five workers from Xing Xiong Factory. Guo Zhengling and Gao Xiaoduo were released on bail after becoming critically ill in detention, while Yang Hao was placed under administrative detention for 15 days for security reasons.

Subsequent inquiries by China Labour Bulletin (CLB) into the matter supported the workers' allegations of abusive employment practices. Employees worked six days a week: 11 hours a day (excluding mealtimes) on four days, and eight hours a day on two days. During the peak season they had to work even longer hours, and their days off were cancelled.

To take one of the detained workers as an example: In March 2004 his monthly income was 450 yuan, of which 400 yuan paid for his rent. This meager wage was seldom paid on time. These practices, which are serious violations of China's labor laws, never caught the attention of the Dongguan Municipal Government. With neither government protection nor an independent trade union to fight for their rights, workers were helpless against their powerful employer, and with no channel to express discontent, their resentment grew.

CLB decided to provide legal assistance to the detained workers. According to Criminal Procedure Law, only the suspect himself or his family members are allowed to hire lawyers. It was subsequently learned that the police never informed the detainees of their rights to legal representation. Since the detainees had come to Dongguan as "migrant workers," and their families were located in different provinces, it was difficult for CLB to contact the families, especially given lack of direct contact with the detained workers themselves. Nevertheless, through numerous inquiries, including contacting police stations and village committees in the workers' hometowns, CLB managed to contact seven families of the ten detainees, and six of them agreed to accept assistance.

Upon being briefed on the case, lawyer Gao Zhisheng, the director of Beijing's Shengzhi Law Firm, and his colleagues

agreed to represent the six workers free of charge, asking only for transportation costs. Gao Zhisheng is well known in China for his courage and integrity, and as the case progressed, he and his colleagues proved their reputation well-deserved.

On May 24, 2004, the Dongguan Municipal Public Security Bureau applied for a warrant to arrest Wan Jiafeng, Qu Pengtao, Ma Changwei, Chen Nanliu and Chen Suo, five workers from Xing Ang Shoe Factory, on charges of “intentional destruction of property.” Upon approval of the arrest warrant, the bureau also applied for public prosecution at Dongguan Municipal’s District People’s Procuratorate, which immediately forwarded the application to the Dongguan Municipal People’s Court. A trial was held on August 25, 2004, but was closed to the public on the grounds that Chen Suo was a minor.

Gao Zhisheng’s defense speech eloquently explained why the workers were driven to stage such a massive protest on April 23, and why it eventually turned violent. While acknowledging that some of the Xing Ang workers had damaged company property (according to the court, totaling around 150,000 yuan, or \$20,000) and that the mass protest therefore qualified as an “inappropriate collective action,” Gao nonetheless boldly argued that the mass protest action by the Xing Ang workers “was the result of certain clear and pressing social causes: namely, the fact that our society today permits and encourages the most naked forms of social injustice, together with an unrestrained level of gross and inhuman exploitation of the workers that has reached truly reactionary proportions.”

On September 8, 2004, a trial for a worker from the Xing Xiong Shoe Factory, Liu Haiyang, was also held *in camera*, as the defendant was underage. In both trials, defense lawyers argued that there was no evidence to show that the defendants were guilty. Firstly, although workers had engaged in “inappropriate behavior,” there was not a shred of evidence to show that they had “instigated” or “led” the riot. According to the testimonies of numerous witnesses, the protest started when a few drunken workers began to express their discontent. More workers then joined in spontaneously, prompted by their intense anger and resentment towards the Stella management; the protest had not been planned or organized. Secondly, the prosecution had failed to provide any actual evidence linking any of the five defendants to specific acts of property damage or to any other form of criminal behavior on the night of April 23.

On October 22, 2004, the court sentenced the Xing Ang Shoe Factory workers as follows: Wan Jiafeng was sentenced to three and a half years’ imprisonment; Chen Nanliu, Ma Changwei and Qu Pengtao were each jailed for three years; and an under-aged female worker, Chen Suo, was given a two-year prison sentence, suspended for three years.

The Dongguan Municipal People’s Court, however, did not immediately inform lawyers of the judgment (as required by law), and the first the lawyers knew of the outcome was from the families of the defendants on October 25. They complained to the court and were promised that a copy of the verdict would be mailed to them on October 26. As the appeal deadline for a criminal case is ten days after the verdict, the lawyers made a point to be in Dongguan to talk with the detained workers on October 27, regardless of the arrival of the judg-

ment. Chen Nanliu, Chen Suo and Ma Changwei then authorized the lawyers to appeal for them.

On November 10, 2004, the Dongguan Municipal People’s Court convicted all five workers of the Xing Xiong Shoe Factory of “intentional destruction of property” and sentenced Liu Jufei, Ding Kui and Liu Rongneng to three years’ imprisonment, while Geng Chunfei and Liu Haiyang were each sentenced to two years’ imprisonment, suspended for three years. Once again, the lawyers only learned of the verdict from the defendants’ families days later, and on November 19 rushed to Dongguan to discuss the appeal. Liu Rongneng and Liu Haiyang authorized the lawyers to appeal.

Prior to sentencing, Stella International submitted a plea for leniency, and on October 23, several of Stella’s major foreign customers, including Nike, Reebok, New Balance, Sears, Timberland, Cole Hann and Jones Apparel Group, endorsed the plea by adding their companies’ names to a letter addressed to the court. Following the verdict, Stella sent out a public letter on October 30 saying it was “saddened” by the sentences, and two Stella founders personally promised to pay the Xing Ang workers’ families financial assistance equivalent to the local minimum wages during the workers’ imprisonment. However, the workers from the Xing Xiong Shoe Factory were not offered similar treatment.

The workers’ case was taken up in an unusually forthright article in *China News Weekly* (Zhongguo Xinwen Zhoukan), a magazine run by the semi-official China News Service. The article published on October 25, “An Analysis of the Labor Unrest at Xing Ang Shoe Factory,” conveyed the official government line on the incident, while at the same time providing a fairly bold and independent analysis of the underlying social and economic reasons for the protests. The article highlighted the defense argument that the prosecuting authorities had failed to prove that the workers’ action was in any way “planned, organized or led by anybody,” and quoted a Guangdong labor expert as saying that “workers should be allowed to organize themselves and to have a legal channel to express their grievances.”<sup>1</sup>

International support quickly rallied around the convicted workers. On October 29, less than a week after the sentencing of the Xing Ang workers, the International Confederation of Free Trade Unions (ICFTU) sent a letter to President Hu Jintao protesting the sentences. ICFTU also issued a press release on November 2. The Netherlands-based Clean Clothes Campaign sent letters to Stella International’s buyers, including Reebok and Nike, urging them to write to the Dongguan Court and the Stella management to request leniency in the sentencing. At CLB’s request, the CEO of Reebok himself wrote to the Dongguan Court requesting leniency for the Stella Ten, and it is believed that Clark’s shoe company did likewise.

On December 31, 2004, the Dongguan Intermediate People’s Court handed down its appeal verdict and reduced sentences, which resulted in the immediate release of the jailed defendants.

Although the ten Stella workers have been freed, the appeal court still maintains that they are guilty of their alleged offenses. Clearly, the Chinese authorities still need to address

the real issue of why labor unrest has become so widespread, and there is a real need for independent trade unions that can adequately represent the workers in voicing their grievances and negotiating with employers over working conditions. Nevertheless, the Stella case marks a milestone on the journey towards workers' rights. Much of the credit for the outcome must be attributed to the significant press and international support for the defendants, as well as the eloquence and persuasive power of their defense counsel.

### Gao Zhisheng's defense statement

Gao's defense statement is an extraordinarily bold and impassioned document, which constitutes a landmark in modern Chinese legal history by turning the focus of the case away from the workers who (as Gao frankly admits) engaged in "inappropriate behavior" during the mass protest at the Stella factory, and towards the abusive and unfair employment practices of the Stella company management. In effect, Gao placed the Stella management in the dock, rather than the workers.

The defense statement consists of two parts: The first part presents technical legal arguments as to why the court should find Defendant Chen Nanliu and his co-defendants innocent of the specific charges. The arguments can be summarized as follows:

- The mass protest action by Stella workers on the night of April 23 got out of hand, and acts of violence did occur that involved "inappropriate behavior." However, none of the prosecution's evidence contains anything to indicate that this "inappropriate behavior" had been premeditated in any way—that is, that the workers involved had started out with the "subjective intent" to damage or destroy property.)
- The protest was a spontaneous mass action by the workers, prompted by their intense anger and resentment towards the Stella management for having withheld or seriously underpaid their wages over a period of several months; for the allegedly poor quality of the food provided in the factory's canteen; and for the excessively long hours that workers had to put in at the factory.
- None of the copious witness statements assembled by the police and prosecution authorities in preparing for the trial contained any actual evidence linking Chen Nanliu personally or directly to any of the specific acts of violence or property damage that occurred at the Stella Xing Ang Factory on the night of April 23. For the court to simply to state arbitrarily and without any evidence that Chen had committed acts of property destruction was tantamount, the lawyer argued, to unlawfully singling him out as a scapegoat for the mass protest action.
- Similarly, the police and prosecution had failed to provide any witness testimony or other evidence to support the charge that Chen Nanliu had in fact "instigated" or "led" the protest and the ensuing violence. On the contrary, Gao noted, many of the police witness statements—and even one of the Stella factory managers—had specifically stated that the entire incident had clearly been a spontaneous action carried out by the discontented workers without any prior planning, forethought or coordination at all. So here

again, Chen Nanliu was clearly being unfairly scapegoated by the police and prosecution authorities.

- The entire trial had evidently been pre-planned and pre-decided upon, since "It lasted only one hour and six minutes in all, in a case involving five separate defendants, five lawyers and several hundred pages of case records"; and, "The most prominent feature of the trial has been the court's complete lack of interest either in the facts or in issues of law." It was also noted that "Any speech lasting more than three minutes was simply cut off in mid-course by the judges."

Following is a full translation of the introduction and second part of the defense statement:

### Defense Statement on Behalf of Hired Laborer Chen Nanliu, Charged with Intentional Destruction of Property, at his Trial of First Instance

Chief Judge and other members of the judicial bench:

Defendant Chen Nanliu has been charged with committing the crime of intentionally destroying property and has been held in custody for the past four months on this account. As Chen Nanliu's defense lawyer, I have looked into all the objective facts and circumstances of this case and have gained a comprehensive understanding of it, including the nature of the defendant's actions and behavior and also the nature of the legal consequences thereby produced. Just as in all other types of criminal proceedings, I, as the defense lawyer in this case,



**Social insecurity: workers protest layoffs at Beijing's Friendship Store.**

Photo: AP World Wide Photos

and as a legal worker for society, have had to acquire a thorough knowledge of all aspects, and every single detail, of the present case. After reading through all the evidence, however, I must confess that a sense of anxiety and sadness has overwhelmed me. The case before us today is one that would cause anyone holding respect for the dignity and freedom of our citizens to ask the question: has the prosecution on criminal charges of the various defendants in this case been motivated by the requirements of China's Criminal Law and the need to punish wrong-doers—or has it, by contrast, been motivated by the particular needs and requirements of those who have brought this prosecution? Furthermore, we must ask the question: was this prosecution an inevitable result of the actions and behavior of the various defendants—or was it, by contrast, prompted by certain extra-legal considerations and values—a characteristic of the traditional mindset that says: “Whenever such a big social incident as this occurs, a group of people has to be caught and sent to jail to set an example to the others”? . . .

## II. On the Question of the Social Factors Leading Up to the Defendant's Actions

Your Honor, the defendant Chen Nanliu did indeed take part in the inappropriate action taken against the [Stella] company on April 23 by around 1,000 people; the action taken was inappropriate and it objectively resulted in a certain amount of damage to property. The accused has already paid a very high price for this: he has lost his freedom and his job, and given current Chinese social attitudes towards those who have been jailed for any reason (irrespective of whether or not the detention by the police was justified or not), this fact will probably have an adverse affect upon his working opportunities for the rest of his life. Moreover, the inappropriate collective action taken at the Xing Ang Shoe Factory was the result of certain clear and pressing social causes: namely, the fact that our society today permits and encourages the most naked forms of social injustice, together with an unrestrained level of gross and inhuman exploitation of the workers that has reached truly reactionary proportions.

Our extensive inquiries into the circumstances of this case have revealed that the Xing Ang Shoe Factory workers have only one day off a week, and they are required to work for no less than 11 hours each day on Mondays, Tuesdays, Thursdays and Fridays—not including time taken for meal breaks—and for this they are paid a wage that cannot even support normal life. On top of all this, the factory sometimes simply doesn't pay them their wages at all. Indeed, the immediate cause of the collective incident staged by the workers on 23 April was that even the miserably insufficient wages that they were due had not been paid to them on time. As the following facts clearly illustrate, this left the workers facing a genuine crisis of survival:

1. According to the statement of Wan XX, given at 8.00 PM on April 24, Wan stated that the reason for the riot was that the wages paid to the workers were both too low and also not paid regularly and on time. The analysis offered by witness Cai XX was identical to this. The appalling thing was that Wan XX's monthly wage came to only 450 yuan, and out of this he had to

pay no less than 400 yuan in rent for his accommodation—leaving him only 50 yuan in hand per month, which was hardly enough to pay for 10 days of basic living expenses. From this example we can see that the problem facing the young workers at the shoe factory was not just one of wages; rather, it is no exaggeration to say that it was a fundamental problem affecting the workers' very survival.

2. At 9.00 PM on April 24, the interrogation record of Chen Nanliu clearly and unequivocally reveals that the already miserly wages paid to the workers had recently been lowered still further by the factory management—this was the immediate and direct causal factor that sparked off the inappropriate collective action by the workers. And at 10.00 PM on 24 April, the witness record of Wan XX states that a view held universally by the factory workers was that “our boss is not a real human being—he always owes us money and even after we had worked at the factory for two whole months, all we got out of him was 100 yuan.”

3. At 8.00 PM on April 24, the interrogation record of Qu XX states that the reason for the so-called disturbance at the factory was that “the wages are too low and the meals are dreadful.”

4. On July 16, the defendant Chen Nanliu again replied to questioning from the prosecutor by stressing: “Our wages were too low and the food was lousy, so we wanted to create an incident that would make the boss take concrete action to improve our living conditions.”

5. At 5.00 PM on April 24, the witness record of Jiang XX states that the employees were all unhappy with the company because of the wages issue.

6. At 2.00 PM on April, 27 the witness record of Liu X notes that around 1,000 people took part in the inappropriate action, and it was all because of the wages issue.

7. At 10.00 AM on April 27, the witness statement of the factory's chief personnel manager, Liu XX, records him as denying that wages were too low or that the food was bad; however, his own statements reveal that what he regarded as minor issues were nonetheless ones that had a sharp and direct adverse bearing upon the lives of the workers—for example, he testifies clearly that on four days of the working week, the workforce had to put in 11 hours of time on the shop floor.

Your Honor, the defining hallmark of a crime lies in criminal wrongdoing, that is to say, in what is commonly referred to as guilt. What took place on the night of April 23—the inappropriate mass action that is being judicially examined here today—is not something that should in any way be viewed in terms of guilt; and if any guilt is to be apportioned in this matter, then it should not be the various defendants who are on trial here today, Chen Nanliu among them, who should have to bear that guilt. Where the real fault—or perhaps one should say the real guilt—lies, is both in the broader social environment and also in the more specific micro-environment of the shoe factory that served to spark off the inappropriate collective action by the workers in the first place.

With regard to the broader social environment, the unfair and unequal relations between employers and workers is a worldwide phenomenon, but one of the most extreme and

abusive examples of this generalized unfairness in labor relations is nowadays to be found right here in China. The inequity of workers within our current system of labor relations is absolute; the channels for resolution of labor conflicts of all kinds in our society are either totally blocked or non-existent, and judicial protections for the rights and interests of the laborer are functionally absent.

When on top of all this, my fellow defense lawyers and I read through the case files and saw the urgent and immediate crisis of survival that confronts the workers in this case, together with the appalling conditions of labor that have been imposed on them by the company, we said to ourselves: This is just like the [pre-1949] situation of cold-blooded and ruthless exploitation of the workers by the capitalists that was depicted by Mao Dun in his famous novels of that period—the very same situation that caused the workers then to rise up in revolutionary rebellion! What distinguishes the present situation, however, is that in those days the Communist Party stood alongside the workers in their fight against capitalist exploitation, whereas today the Communist Party is fighting shoulder-to-shoulder with the cold-blooded capitalists in their struggle against the workers! So we can see clearly what kind of a tragic future lies ahead for the workers struggle in our country.

Take the example of Wan XX: after working like a brute animal all month long, he received a salary of only around 450 yuan, of which 400 yuan went to pay his accommodation, leaving him only 50 yuan to support himself on for the entire month. I defy anyone, no matter if one thinks of every money-saving trick and device known to man, to explain how a person can possibly be expected to maintain his basic health and livelihood on such a pitiful sum of money as this. To have only 50 yuan left to survive on for a month places a person in a psychologically terrifying situation. But what is even more unimaginable and disturbing is that in the cases of Wan XX, Chen Nanliu and all the other workers, for the two months of March and April the company paid them all only 50 yuan per month in wages. And there was absolutely no transparency as to why the company had seen fit to act like this towards the workers: first, the company made no effort to explain the situation; and second, no actual channels of communication existed through which any such explanation could have been made. The net result was that not one of the factory's workers had even the slightest idea as to why they were suddenly only being paid only 50 yuan a month.

Another very serious problem can be seen from this state of affairs: the functional absence of any channels for dialogue or communication between employers and workers. The company is entirely accustomed to following the Chinese pattern of thinking about such issues; but coming as it does from a democratic society with rule of law, it should be well aware of the socially dangerous consequences that can ensue from a corporate attitude of despising and disregarding the rights and interests of the workforce, and instead pursuing a policy of absolute gain for itself and absolute harm to the workers. Such behavior is not simply unlawful and immoral, it is also, in a very real practical sense, highly dangerous.

During my meetings with the defendant Chen Nanliu, my

client, I learned that not once during his two years of working at the Xing Ang Shoe Factory did the company ever tell him that he was entitled to sign a labor contract with the company. Moreover, when I asked him whether there was a trade union branch [at the factory], even after repeated attempts to explain to him what a trade union was, he still had not the slightest idea of what such an organization consisted of or what it did. I am reasonably confident that this was not solely due to my lack of explanatory skills.

Having an effective institutional channel of communication between workers and company is the basic systemic safeguard and guarantee for stable labor relations, for safety in the workplace, and also for peace and stability in society as a whole. In China, however, this fact has been openly neglected and disregarded throughout the past half century and more. The Xing Ang Shoe Factory is a large enterprise employing several thousand workers, but it does not even have a trade union branch (in China, of course, there is little difference in terms of workers' rights protection whether or not a trade union organization is present.) Meanwhile, the almost complete scarcity of any judicial protections for workers' rights and interests leaves Chinese workers without any defense against the predations of their employers, such that so long as they have a breath left in their bodies, they will endure almost any indignity and injustice, simply to survive. The pathological greed for profits on the part of the factory owners, together with the absolute protection afforded to corrupt capitalists by our judicial system—these, and these alone, are the real main reasons why this incident [on 23 April] erupted in the first place.

Your Honor, when I met with my client Chen Nanliu [in jail] on 18 August, I saw before me an extremely thin and poorly looking young man just over 20 years of age; three times during our meeting he had to rest his head on the table out of sheer exhaustion and ill-health. Frankly speaking, I was utterly shocked by his general condition. I appeal to this Court to take full notice of the social factors I have outlined in my statement here today, and to show sympathy toward my client for the high spiritual and psychological price that he has already had to pay. I ask you—on the basis of law, humanity and conscience—to find the defendant Chen Nanliu innocent of all charges, in order that the judgment of this Court may stand the test of history.

Lawyer Gao Zhisheng  
Shengzhi Law Firm, Beijing  
At the Dongguan Municipal People's Court,  
Guangdong Province  
28 August 2004

1. An English translation of the *China News Weekly* article can be accessed on the Web site of China Labour Bulletin at: [http://www.china-labour.org/hk/iso/article\\_pv.adp?article\\_id=6072](http://www.china-labour.org/hk/iso/article_pv.adp?article_id=6072).