



JUSTICE WITHOUT BORDERS

*Because the right to just compensation shouldn't end
Even when a victim returns home*

Strategic Legal Research: Protecting Low-Wage Foreign Workers in Singapore from Bait-and-Switch Contracts

Practical Overview and Suggestions for Front-Line Partners

INTRODUCTION

Justice Without Borders (JWB) has recently published a strategic legal research paper, *Protecting Low-Wage Foreign Workers in Singapore from Bait-and-Switch Contracts* (March 2017). The paper addresses several legal strategies for challenging contract substitution, the tactic where an employer or its agent promises a foreign worker in his or her home country a certain amount of pay for work, only to pay the worker less upon arrival. We hope you and your pro bono lawyers will find the legal strategies in the paper useful in your own cases before the Labour Tribunal and other courts.

This document summarizes the paper's legal strategies and provides some practical tips for implementing them. Attachments include an **evidence checklist** for caseworkers, as well as **suggestions for workers representing themselves at court**.

THE PROBLEM: BAIT-AND-SWITCH

The paper discusses the legal remedies available in Singapore to seek redress for low-wage migrant workers who migrate to Singapore on the promise of a higher salary. We use the case of a hypothetical worker we will call "Sami":

Sami is promised a salary (\$2,000 SGD) in his home country in exchange for work in Singapore. Once in Singapore, Sami is paid less (\$750 SGD) than what he originally understood he would be paid. Sami seeks to recover the full amount of what he was promised in the home country.

Near the end of the paper, we also discuss another fictional worker, Chen, who is paid more for several months in Singapore than he was promised at home, but who then has his salary lowered.

To recover unpaid wages, both Sami and Chen will need to (a) prove the existence of the original contract amount, and (b) challenge the basis for the employer's decision to pay a lower salary.

STEP ONE: PROVING THE HIGHER-WAGE CONTRACT

Sami and Chen must first *prove* that their employers promised them a higher amount for their work. A written agreement signed by the employer and the worker, if it exists, would be excellent evidence. Oral statements may also be helpful, as would a description of the parties' conduct. The workers should collect any information and documents that make it appear more likely than not that their employer agreed to the higher wage.

The Evidentiary Value of the IPA. For Sami, a potentially excellent but often overlooked piece of evidence is the Singapore Application for a Work Permit and the In-Principle Approval (IPA) document. The Work Permit Application and the IPA are the subject of Part 1 of our research.

The Application, submitted to the Singapore Ministry of Manpower (MOM) by the employer, contains material details of the worker's employment, including salary, length of contract, and type of work. While the worker may have never seen the Application, the information it contains is included in the IPA document issued by MOM upon approval of the Application. The employer must send the IPA to the worker before he or she arrives in Singapore. MOM also requires employers to have the written consent of the worker prior to submission of the Application.

Locating the IPA. If the worker no longer has his IPA, he should attempt to locate a copy (and the Work Permit Application, if available). JWB has identified several possible avenues to try to collect a copy of the worker's IPA.¹

Reviewing the IPA. If the IPA reflects what Sami understood he would be paid in his home country, he now has an excellent piece of evidence that he can submit in a breach of contract action. However, if the IPA does not reflect what the worker believes she should be paid, then she should revert to locating evidence in support of the original promised amount. To recap, we now have several scenarios:

	Home Country Promise	IPA Amount	Singapore Salary
Sami	2000	2000	750
Chen	580	580	1900/then 580

Each of these scenarios requires obtaining different information. The IPA in Sami's case is the most helpful, while locating evidence supporting the increased wage in Chen's case will be important.

STEP TWO: CHALLENGING THE LOWER WAGE

Sami and Chen must also challenge the basis upon which their employers are paying them a lower salary.

Sub-scenario 1: lower wage is not in writing. A worker like Sami, whose IPA reflects the higher-wage, home-country contract, can take advantage of a provision in the Employment of Foreign Manpower Act (EFMA) that mandates that the employer must pay the IPA amount unless:

¹ See Justice Without Borders, *A Guide to Evidence Collection* (March 2017).

(a) the employer and the worker entered into a “written agreement” reflecting the lower amount, *and*

(b) the employer has notified MOM before reducing the salary.²

If either of these conditions is not met, the lower wage violates EFMA and cannot be enforced.

Sub-scenario 2: lower wage is in writing. What if the employer has a document that shows the lower-salary amount? Here is where the worker has the opportunity to challenge this lower-wage document as an unenforceable or invalid contract.

Courts are likely to scrutinize a later-in-time agreement that provides for a lower salary for the same work, *because most people do not usually agree to accept less pay for the same work when they have previously been promised a higher pay.* In short, the courts will question when an original agreement is modified to the benefit of only one of the parties and not the other.

Evidence surrounding the signing of this document will be critical: what did the employer say? What did the worker say? Why did the worker agree to a lower salary? All of this information may suggest that the contract is either: (a) void for lack of consideration, or (b) voidable under the duress or unconscionability doctrines. While these legal and equitable doctrines are outside the scope of this summary, you can begin to lay the groundwork for these doctrines by collecting at least some of the evidence we suggest below.

Sub-scenario 3: using the lower IPA amount against the worker. For Chen, we assume that the higher wage is not in writing, and so his employer will likely point to the IPA amount as the agreed-upon amount. While the IPA is excellent evidence of the home-country contract, it does not foreclose Chen proving a later-in-time agreement for a higher wage. Such a higher-wage contract is not required under the EFMA regulations to be in writing or to be notified to MOM.

CONCLUSION

This memorandum is meant to get caseworkers and the workers themselves started with collecting the right kind of evidence needed to challenge contract substitution. We include below an evidence collection checklist, as well as suggestions for workers representing themselves in court. Please do not hesitate to contact us for more information or if you would like to refer a case to JWB.

DISCLAIMER

This memorandum is not meant to constitute legal advice. Professional legal advice should be sought before any course of action is pursued. While the contents of this memorandum are derived from sources believed to be reliable and accurate, JWB does not make any representation or warranty as to the accuracy of the information. JWB and its representatives also do not accept any responsibility for errors or omissions in the information provided.

² Employment of Foreign Manpower (Work Passes) Regulations 2012 (S 569/2012 Sing), Fourth Schedule, Part II, Paragraph 5A and Part IV, Paragraph 6A.

ATTACHMENT 1: CASEWORKER CHECKLIST

1. Collect evidence of higher-wage contract

- The IPA
- The Work Permit Application
- Other documentary evidence
- Oral testimony

2. Collect evidence of paid (lower) wage

- Documentary evidence
- Bank statements/receipts/payslips/other documents showing fund transfers between the worker and the employer.

3. Collect worker's written consent made prior to employer's submission of work permit application (or note its non-existence)

4. Collect evidence of the circumstances in which the worker signed a document reflecting a lower wage, if the worker signed such a document.

- What did the employer say to the worker? We know from experience that employers may threaten to terminate and repatriate workers, and that this is a reason that workers “agree” to a lower salary for the same work. If this is the case, get all of the details of the threat.
- How did the worker respond to what the employer said, including to any threats?
- In the worker's own words, why did he or she agree to less salary for the same work? The narrative should address the following questions:
 - Was the worker fearful of something? What? If the worker was fearful of the employer but the employer never specifically threatened the worker, what is the basis for the fear? Be specific.
 - Did the worker have to pay any money or assume any debt to come to Singapore for work? Obtain details.
 - Does the worker's family rely on the worker for support? Get details of the number of people the worker supports and any other sources of income for the family.
 - Does the worker have other options for work in his or her home country? If yes, get details about the type of work and salary prospects.
 - What is the worker's education/literacy level? Does the worker speak and read English?
 - Why didn't the worker just refuse to sign the document reflecting the lower wage?
 - Did the worker consider going to see a lawyer before signing? Why or why not?

**ATTACHMENT 2: SAMPLE TEMPLATE FOR WORKERS APPEARING IN COURT
BY THEMSELVES**

This template provides an example of how a worker can introduce a claim for contract substitution in venues like the Labour Tribunal. It can also supplement existing templates that you may already use for your clients.

1. My name is [NAME].
2. I believe I have not been paid my promised salary for my work at [EMPLOYER'S NAME]. I started working for this employer on [DATE] and ceased work on [DATE].
3. I am from [HOME COUNTRY] and am [AGE] years old.
4. My educational background is [DESCRIBE EDUCATIONAL BACKGROUND, INCLUDE HIGHEST LEVEL ACHIEVED]
5. When I arrived in Singapore, I [SPOKE/DID NOT SPEAK] English [OR THE EMPLOYER'S LANGUAGE]. I [READ/DID NOT READ] English [OR THE EMPLOYER'S LANGUAGE].
6. My work history in [HOME COUNTRY] involves [DESCRIBE EACH PERIOD OF EMPLOYMENT/SALARY AND EACH PERIOD OF UNEMPLOYMENT].
7. I am responsible to support [#] family members, including [IDENTIFY FAMILY MEMBERS AND ANY OTHER SOURCES OF FAMILY INCOME]
8. I came to Singapore under the following circumstances: [EXPLAIN IN DETAIL HOW YOU LEARNED OF A JOB IN SINGAPORE, WHAT YOU WERE TOLD ABOUT THE JOB, IN PARTICULAR, WHAT YOU WERE TOLD ABOUT THE SALARY AND BY WHOM.] *Attach any documents showing the employment and the salary, including contracts and the IPA, and the names of any witnesses who could verify your story.*
9. I paid a total of [\$] in fees to come to Singapore (including recruitment, agency, travel, training, and placement fees). Of this amount, I still owe [\$]. Of the amount that I already paid, these funds came from [DESCRIBE HOW YOU SECURED THE FUNDS AND, IF APPLICABLE, WHETHER YOU OR YOUR FAMILY HAD TO SELL LAND OR POSSESSIONS OR UNDERTAKE OTHER HARDSHIPS].
10. I arrived in Singapore on [DATE] and was actually only paid [AMOUNT] for [DESCRIBE WORK] for the period [DESCRIBE PERIOD OF WORKING]. *Attach documents showing your payments.*
11. On [X], I signed a document that provided for a lower salary than I originally believed I would be paid before I left my home country. I signed this document because [EXPLAIN IN FULL AND INCLUDE (A) WHETHER YOU HAD TIME TO CONSIDER SIGNING THE AGREEMENT, (B) WHETHER YOU WERE FEARFUL OF ANYTHING AND IF SO, WHAT, AND (C) WHETHER YOU TALKED TO A LAWYER PRIOR TO SIGNING THE DOCUMENT AND IF NOT, WHY NOT?]