



# JUSTICE WITHOUT BORDERS

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

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## **Hong Kong's Labour Tribunal Hands Landmark Victory to Migrant Workers: Workers Can Now Apply to Testify from their Home Countries Via Video Conferencing**

19 February, 2019

Hong Kong -- A groundbreaking decision represented a victory for all of Hong Kong's migrant workers today, bridging an enormous gap in their access to the city's justice system. The Labour Tribunal allowed a former domestic worker, Ms. Joenalyn Mallorca, to testify from the Philippines via video conferencing facilities, enabling her to pursue her claim from abroad.

**This is the first time the Labour Tribunal has allowed a claimant to give testimony via video conferencing. Before today, workers had to physically visit the Labour Tribunal in order to pursue their cases.**

Ms. Mallorca can now seek redress for wrongful dismissal without having to travel to Hong Kong. The small salary she earns combined with the possibility that she will lose her current job if she misses work means that such travel is impossible.

Her case is not unique. In fact, many workers must decide whether to stay months or even years in Hong Kong to pursue their cases, or give up their claims and go home.

Coordinating this landmark test litigation is Justice Without Borders (JWB), a regional charity providing access to justice for migrant workers who have returned home, through cross-border civil action.

"Until now, migrant workers who have been victimised by bad employers have had to remain in Hong Kong, living in shelters and staying unemployed while pursuing their cases. Many have had to make the difficult choice of missing out on salary while pursuing claims, or returning home and giving up their rights altogether," said Mr. Douglas MacLean, Executive Director of Justice Without Borders, the organisation that led coordination efforts for the case.

"Now, going home does not need to mean going without," he added.

Victory today was a group effort. Justice Without Borders was founded to address this gap by pioneering landmark test cases and strategic litigation, to end the exploitation and abuse of low-wage migrant workers. JWB took up the case on referral from HELP for Domestic Workers (HELP), a Hong Kong-based frontline organisation. Working with HELP and partners that included the Hong Kong Confederation of Trade Unions (HKCTU), Hong Kong Federation of Asian Domestic Workers Unions (FADWU), Philippines-based International Pro Bono Alliance, Senior Partner Ms. Kareena

Teh and her team of pro bono lawyers at EY Law, the group helped Ms. Domingo apply for video link in 2017.

## **SECOND LANDMARK VICTORY: UNION REPRESENTATION**

In another key victory for local labour unions, the Tribunal's Presiding Officer, Mr. Timon Shum Kei-Leong approved Ms. Mallorca's request to have a union officer represent her for her trial.<sup>1</sup> This is the first time such a request has been approved.<sup>2</sup> With lawyers not allowed at the Tribunal, a union officer is essential to handling court proceedings in the worker's absence.

Ms. Shiella Grace Estrada, the union officer representing Ms. Mallorca, said, "I am really happy. From the first hearing to the Technology Court, it has been amazing. I am thinking about the many migrant workers who will go to Justice Without Borders and FADWU and request for help like this in the future. There are a lot of migrant workers seeking fair justice."

## **LASTING IMPACT FOR ALL WORKERS**

Today's outcome sets a clear precedent for future cases. It follows an earlier [landmark High Court judgment](#) in Ms. Mallorca's case, which affirmed the right of workers to request video conferencing access at the Tribunal. The High Court judgment also laid out clear guidelines for using video conferencing. The Tribunal had previously thrown out Ms. Mallorca's case, but the High Court reinstated it with instructions to re-hear the case. Today's decision confirms for all migrant workers that video conference testimony can be achieved in reality.

"This is indeed a long awaited and just outcome, and a testament to Justice Without Borders and its pro bono partners' vision and hard work in fighting for access to justice for all. My team and I are privileged and proud to be part of this significant team effort, and we look forward to the next milestone in this case and cause," said Ms. Kareena Teh, Partner at EY Law. Ms. Teh leads the legal team that won the High Court judgment and continues to advise Ms. Mallorca pro bono.

## **ENDING THE CYCLE OF ABUSE**

Today's landmark decision gives workers real hope that they can pursue justice for common employment violations, even after they leave the city. This includes unfair dismissal, nonpayment of wages and illegal deductions. This allows workers to potentially avoid the often months-long process of pursuing their claims at the Labour Tribunal. Claimants can now go on with their lives without giving up their right to access justice. It also means bad employers cannot escape responsibility by dragging their feet until their former employees go home.

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<sup>1</sup> A union officer is needed to handle case procedures at the Tribunal itself. In this case, the Presiding Officer had originally directed five (5) full days of hearings for the trial. Ms. Mallorca cannot take off an entire week off without losing her job, so she has requested to join the hearing for one day of trial via video conference. Her union representative would handle the entire proceedings during the remaining days.

<sup>2</sup> While union members have frequently assisted workers at the Tribunal, none have ever represented workers without the worker also being there in person.

## ***About Justice Without Borders***

Justice Without Borders (JWB) is a regional charity that supports victims of labour exploitation and human trafficking in seeking civil compensation against their abusers, even after returning home. Our offices in Hong Kong, Singapore and Indonesia are developing the networks, knowledge and know-how needed for cross-border civil litigation, so that migrant workers can access justice wherever they are. JWB is a Hong Kong registered charity with section 88 charitable status (CR 91/15108).

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## **BACKGROUND: HISTORY OF THE CASE**

The case, *Mallorca Joenelyn Domingo v Ng Mei Shuen* (HCLA 8/2017), concerns a former domestic worker, Ms. Domingo, seeking compensation against her employer for unfair dismissal. When her parent suddenly fell gravely ill, she was forced to return to the Philippines to care for her family, leaving her case in limbo. With a return to Hong Kong well beyond her family's means, Ms. Domingo had only one route back to her case: appearing in court via video link.

Hong Kong's courts allow applications for video link when a participant in the trial cannot return to the city. While the system is used at the District Court and High Court, Ms. Domingo's request is the first ever at the Labour Tribunal, the most common venue for migrant workers to bring claims ranging from unpaid wages to unfair dismissal.

Unlike the District Court and High Court, the Labour Tribunal does not allow lawyers to represent claimants. Workers must come in person or risk losing their case. However, many migrant workers cannot afford to stay in Hong Kong for court, as they are often unable to find work and/or stay on in Hong Kong while their case is ongoing. For those who go home, returning to Hong Kong for trial is usually far beyond most migrant workers' means. Access to video conferencing solves this problem, but without court precedent, it was an open question of when, or even if, the Labour Tribunal would grant a request.

When the Tribunal rejected Ms. Domingo's application for video link and threw out her case, Dechert took her case to the High Court. In a strong reversal, the High Court confirmed that obtaining video link should not be a high bar, and overturned the decision to dismiss Ms Domingo's claims without

a trial. The High Court ordered Ms. Domingo's case to be restored and her application be heard again by the Labour Tribunal, in front of a different Presiding Officer.

### **Today's Proceedings**

The Labour Tribunal heard Ms. Domingo's requests to appear via video conferencing facilities and to be represented by a union officer. The Tribunal also considered her updated claim amount of about \$85,900 against her former employer for unfair dismissal, including her loss of earnings during the period of unemployment following the dismissal.

This was the third hearing since the High Court handed down its judgement and reinstated the case for the Labour Tribunal's reconsideration. Among other orders from the Presiding Officer, the Tribunal granted all of Ms. Domingo's requests above and fixed the dates for the upcoming trial.