Pushed Beyond the Contract: Civil Claims for Foreign Domestic Workers Compelled to Work Outside the Home

STRATEGIC LEGAL RESEARCH SERIES

Justice Without Borders

AN INTRODUCTORY NOTE

It is well-known to all employers of foreign domestic workers (FDWs) in Singapore that the FDW's deployment must comply with her Work Permit conditions. Unfortunately, there have been many reported cases of FDWs illegally deployed – either made to work for someone other than her employer, or to perform non-domestic chores, and often with no additional remuneration.

While the Singapore Government takes such exploitative practices seriously by fining errant employers up to S$10,000, there is no actor or agency in charge of ensuring that the victim – i.e., the FDW – gets fairly compensated for the work she was made to do in these instances. However, FDWs may access the justice system as private individuals to seek compensation for the additional work she was made to do. There is, however, very little case law addressing when and how such a claim would be valid under the law. Statutory law, such as the Employment of Foreign Manpower Act, also does not prescribe any form of recourse for those forced to work beyond their work permit for the benefit of their employer.

This paper thus seeks to help readers understand the current state of the law and provide pro bono lawyers who may take on such illegal deployment cases with a useful roadmap for developing appropriate case-specific strategies. Strategically, this paper focuses on potential causes of action in contract and remedies that lie in restitution that may be available in illegal deployment cases. These areas offer what we and our partners believe are the strongest foundations for proper legal arguments at this early stage and will hopefully encourage both pro bono lawyers to take on such cases and guide frontline caseworkers in collecting the evidence needed to support such claims. Together, these frontline workers and legal practitioners will be better placed to assist FDW clients who wish to obtain civil redress for work that was out of scope, and that they had no choice but to perform.

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PUSHED BEYOND THE CONTRACT: CIVIL CLAIMS FOR FOREIGN DOMESTIC WORKERS COMPELLED TO WORK OUTSIDE THE HOME

Strategic Legal Research Series by Justice Without Borders

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I. Introduction – Illegal Deployment of Foreign Workers in Singapore

In 1990, the Singapore Parliament enacted the Employment of Foreign Workers Act (as it was then known) to address issues relating to the employment of illegal foreign workers, and curb the illegal deployment of FDWs without valid permits.[1] Dr Lee Boon Yang, the former Minister of Manpower, spoke to the latter in 2002 that his office "*take[s] a serious view of such breaches of the work permit conditions and will continue to take enforcement actions against such employers*".[2]

Even though the Government takes a serious stance against the illegal deployment of FDWs, there is a dearth of case law regarding FDWs' rights against a former employer who has deployed them illegally. This paper thus seeks to provide guidance on this issue by identifying and discussing potential civil remedies available to FDWs against their former employers who have deployed them illegally.

This paper focuses on common scenarios arising in Singapore – claims for payment or compensation for work done during the course of the FDW's employment where work was performed pursuant to illegal deployment. In particular, this paper will centre on the following three (3) claims and potential causes of action:

[1] *Choy Tuck Sum v Public Prosecutor* [2000] 3 SLR(R) 456 at [14].
[2] *Singapore Parliamentary Debates, Official Report* (5 December 2002) vol 75 at cols 1902-1903 (Dr Lee Boon Yang, Minister for Manpower).

(A) Contractual recovery of unpaid wages for work performed during an FDW's illegal deployment pursuant to a valid employment contract;[3]

(B) Restitutionary recovery of unpaid wages for work performed during an FDW's illegal deployment through an independent cause of action in unjust enrichment where a contractual claim based on an FDW's employment contract is unavailable because the contract is void for illegality;[4] and

(C) Restitutionary recovery of unpaid wages for work performed during an FDW's illegal deployment during the period that she was illegally deployed independent of whether a contractual claim is available.[5]

Depending on how the court decides on the legality of the underlying employment contract between FDWs and their employers, the cause of action in (C) may be brought together with a claim for (A) or (B).

II. Illegal Deployment under the Employment of Foreign Manpower Act

We first provide an overview of the legislative backdrop on the employment of FDWs before considering the available remedies.

Section 5(3) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("**EFMA**") states that employers are required to comply with the regulatory conditions set out in clause 3 Part II of the Fourth Schedule of the Employment of Foreign Manpower (Work Passes) Regulations.[6] The conditions are set out below:

> *"3. The employer must employ the foreign employee to perform only household and domestic duties at one or more of the following addresses;*

[3] See pp. 5-7 of this paper.
[4] See pp. 7-13 of this paper.
[5] See pp. 7-13 of this paper.
[6] Employment of Foreign Manpower (Work Passes) Regulation 2012 (Cap 91A) s 4(2).

(A) The residential address stated in the work permit;

(B) Any other residential address approved in writing by the Controller."

FDWs would be illegally deployed if they are working at an unauthorised address, and/or performing non-domestic chores (e.g. part-time work at the employer's business). The maximum penalty for the contravention of s 5(3) EFMA is a fine of S$10,000.[7] However, the EFMA lacks an avenue for illegally-deployed FDWs to claim compensation for services rendered pursuant to their illegal deployment.

The subject of FDWs claiming civil compensation for work performed pursuant to illegal deployment will thus be the focal point of this paper.

III. Claiming for Unpaid Wages for work performed illegally

The employment contract between FDWs and their employers typically states the FDW's place of work. The question thus arises as to whether FDWs can still claim for their unpaid wages for work performed under their employment contract when work is done while they are illegally deployed. Such situations might arise when for instance employers require or force FDWs to work some place other than that stipulated in the contract. Legally, such work constitutes illegal performance of the employment contract.

We will address the three (3) scenarios raised at page 4 in sequence in the next few sections.

IV. Contractual Claim for Unpaid Wages (Claim A)

Where no illegality is involved, case law suggests that if FDWs have a legally valid employment contract, they are generally likely to succeed in a contractual claim for unpaid wages. However, where illegal deployment takes place and work is performed by FDWs pursuant to such illegal deployment, the court has the discretion to prohibit FDWs from claiming monies for work performed. Nevertheless, the court is likely to exercise its discretion in favour of FDWs for the reasons that follow.

[7] Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) s 5(7A).

The Court of Appeal has held that where a contract is entered into with the object of committing an illegal act (this includes contracts which involve the commission of a legal wrong either in their formation, purpose or manner of performance), it has the discretion to prohibit monetary recovery if that is the appropriate and proportional response.[8]

A factor to be considered in the analysis is whether either of the parties (or both) knew of the illegality.[9] Therefore, employers may conceivably raise allegations that FDWs were complicit by being willing to work even though they knew of their illegal deployment. In such cases, whether FDWs knew of the illegal deployment may be a relevant factor that the court may take into account in exercising its discretion. This is particularly so if the arrangement that the FDW was to do work going beyond the scope of her work permit was made at the start of her employment period.[10]

Nevertheless, case law indicates that the court is likely to exercise its discretion in the FDW's favour – cases show that the court has refused to impute knowledge of illegal performance of a contract to an FDW even where the evidence might suggest otherwise.[11] Such cases indicate that even if FDWs knew that they were being illegally deployed, the court will still be likely to allow them their contractual remedies as to deny FDWs their contractual remedies is hardly a proportionate response to the illegality for the following reasons:[12]

(a) The legislative intent of the EFMA is to prohibit employers from illegally deploying FDWs. The object of the EFMA is the protection of foreign workers, including FDWs. Denying FDWs their contractual remedies would go against the object of the EFMA.

(b) The FDWs will likely be deprived of their sole source of income, which potentially results in serious financial difficulties.

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[8] *Ting Siew May v Boon Lay Choo* [2014] 3 SLR 609 at [66].
[9] *Ting Siew May v Boon Lay Choo* [2014] 3 SLR 609 at [69]; *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 at [31], [32], [36].
[10] *Ting Siew May v Boon Lay Choo* [2014] 3 SLR 609 at [69]–[71].
[11] See for instance *Public Prosecutor v Lim Hong Kheng* [2006] SGMC 7, where the court refused to impute knowledge of illegal performance of a contract even though the FDW had run away on the arrival of MOM officers at the place of her illegal deployment to arrest her for her illegal deployment.
[12] *Ting Siew May v Boon Lay Choo* [2014] 3 SLR 609 at [66], affirmed in *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 at [38].

(c) The employer-FDW relationship may be found to be one in which FDWs have little bargaining power against their employer such that they cannot refuse orders, even if they were aware of their illegal deployment.

Thus while the knowledge of the FDWs of their illegal deployment may be a relevant factor to be considered by the court in the exercise of its discretion whether to allow FDWs to a contractual claim for work performed during their illegal deployment, this is unlikely to preclude them from making such claims.

Remedies

If the court compensates the FDW for the work done during her illegal deployment, such compensation will seek to place the FDW in the same position as if the contract had been performed. Therefore, in summary, if employers breach their contracts with FDWs by failing to pay them their wages, FDWs are likely to successfully claim for their unpaid wages under the employment contract even if they are alleged to know of the illegal deployment.

V. Restitutionary Claim for Work Done (Claims B & C)

As mentioned above, the availability of contractual remedies is at the discretion of the court where FDWs have been illegally deployed by their employers. Therefore, there is a chance that the contract may be found to be illegal and void because of the conduct of employers and/or FDWs.

In such a scenario, FDWs would not be able to avail themselves of a contractual claim for work done while being illegally deployed. However, they may still be able to bring a claim for restitution in respect of the work they did perform, on the premise of the employer being unjustly enriched. Claims (B) and (C) are addressed together below as the analysis is identical to both scenarios.

Broadly, FDWs may be illegally deployed to perform work which may yield economic benefits to the employer, for example working at the employer's flower shop, and/or work which may not yield direct economic benefits to the employer, such as doing chores at the employer's relative's house. In both situations, a restitutionary claim may entitle FDWs to restitution on a

quantum meruit basis,[13] enabling them to get paid a reasonable amount for the work done during the illegal deployment.

On this note, while there is no Singapore case law on point, reference to Hong Kong cases is useful. Like Singapore, Hong Kong is a common law jurisdiction with a similar significant FDW presence. In *De Nicolas, Nenita Cientos v Lee Fung Lan*,[14] the appellant, an FDW, was made to work full-time at her employer's restaurant in addition to doing all the domestic work at her employer's home.[15] In the context of a contract which an employer had entered into in bad faith, the Hong Kong Court of First Instance took the view that "*damages should be assessed in such a way that they put the FDW in the position she would have been if the contract had been performed*"[16] and would include, "*payment on a* quantum meruit *basis for the services that were actually performed i.e. the domestic duties and the restaurant duties*".[17]

Even though this case is ultimately one premised on breach of contract, the point is that the Hong Kong Court was willing to compensate the FDW for the work done outside the domestic sphere when she was illegally deployed. This favours restitution on a *quantum meruit* basis if the FDW succeeds in establishing liability against her employer.

A. *The requirement of "clean hands"*

First, it should be noted that to bring a claim for restitution, FDWs must approach the court with "clean hands".[18] In other words, FDWs must normally not have known of their illegal deployment. However, given the unequal bargaining power between FDWs and their employers, *an FDW's knowledge of the illegal deployment* may not prevent *her* from bringing a restitutionary claim for unjust enrichment. In such situations, FDWs would likely have little choice but to comply with her employers' instructions, as discussed above.

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[13] *Eng Chiet Shoong v Cheong Soh Chin* [2016] 4 SLR 728 at [32].
[14] *De Nicolas, Nenita Cientos v Lee Fung Lan* [1977] HKCFI 15.
[15] *De Nicolas, Nenita Cientos v Lee Fung Lan* [1977] HKCFI 15 at [7].
[16] *De Nicolas, Nenita Cientos v Lee Fung Lan* [1977] HKCFI 15 at [43].
[17] *De Nicolas, Nenita Cientos v Lee Fung Lan* [1977] HKCFI 15 at [44].
[18] *Ong Lu Ling v Tan Ho Seng* [2018] SGHC 65 at [11]; see also *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd* [2011] 2 SLR 232 at [113].

On balance, it is likely that in such situations the court will find that FDWs come to court with "clean hands." In most situations of illegal deployment, FDWs exist in vulnerable positions vis-à-vis their employer, who is likely to be at fault for directing the FDW to perform illegal work in the first place and thus more blameworthy.

B. *The requirement of unjust enrichment in a claim for restitution*

(1) *Introduction*

The FDW must prove the following elements in a claim for restitution:[19]

(i) The defendant, i.e. the employer, has been enriched;

(ii) The enrichment is unjust; and

(iii) The enrichment is at the expense of the plaintiff, i.e. the FDW.

We will only focus on the second element, unjust enrichment, as the other factors are relatively uncontroversial. For this requirement, FDWs must show that an unjust factor exists to prove that there was unjust enrichment. Doing so requires examining whether such an unjust factor exists, two of which are undue influence and exploitation of weakness. We will focus on both in this paper.

(2) *Unjust factors*

(a) Undue influence

Undue influence arises when one party is in a position to exercise influence over the other,[20] to the extent that the weaker party is consequently unable to exercise "full and free judgment" independent of the stronger party.[21] This frequently exists in FDW-employer relationships.

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[19] *Info-communications Development Authority of Singapore v Singapore Telecommunications Ltd (No 2)* [2002] 2 SLR (R) 136 at [136]; see also *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve* [2013] 3 SLR 801 at [98].
[20] Andrew S Burrows, *A Restatement of the English Law of Unjust Enrichment* (Oxford University Press, 2012) at p 76.
[21] Andrew S Burrows, *A Restatement of the English Law of Unjust Enrichment* (Oxford University Press, 2012) at p 76.

Employers are often the dominant party in cases where FDWs are illegally deployed, as the latter tend to lack bargaining power. Testament to this is *Public Prosecutor v Lim Hong Kheng,* where there was "*no doubt that [the FDW] had to do what it takes to keep her employers happy and not complain about her*".[22] In other words, when employers exercise undue influence, FDWs may have no free will to reject their employer's demands.

In this connection, undue influence can be based on either actual or presumed acts, or both. However, only actual undue influence is likely to be found in FDW-employer relationships as employer-employee relationships fall outside of the legally recognised categories of relationships where undue influence is presumed.[23] The elements of actual undue influence are as follows:[24]

(i) The defendant had the capacity to influence the claimant;

(ii) The influence was exercised; and

(iii) The exercise of influence was undue and the exercise brought about the transaction.

The court has held that the defendant has the capacity to influence the claimant where the defendant is more educated and/or more experienced than the claimant.[25] Unsurprisingly, it is likely that an employer would have the capacity to influence an FDW given the structures in place which place the employer in a far stronger bargaining position than the FDW, such as the employers' ability to repatriate their FDW if the latter does not comply with the employer's instructions. Some employers have also threatened to make unjustified complaints against their FDW to her agency and/or the MOM, knowing full well that such acts, if carried out, would make it infinitely more difficult for their FDW to return to work in Singapore.

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[22] *Public Prosecutor v Lim Hong Kheng* [2006] SGMC 7 at [82].
[23] *Credit Lyonnais Bank Nederland NV v Burch* [1997] C.L.C. 95 at 103. "In the present case the only relationship between Mr Pelosi (and his company) on the one hand and the respondent on the other which has been proved … was that of employer and junior employee. That is not a relationship within Class 2A" (i.e. not a legal relationship that gives rise to a rebuttable presumption of undue influence). Aside from Class 2A, there is also Class 2B, which is that of an actual relationship of trust and confidence (See *Overseas-Chinese Banking Corp Ltd v Tan Teck Khong* [2005] 2 SLR(R) 694 at [34]). While the FDW-employer relationship might fall under Class 2B, the second element of 2B, a "transaction that calls for explanation", is difficult to prove. Therefore, a presumption would still not be raised under this category.
[24] *Pek Nam Kee v Peh Lam Kong* [1994] 2 SLR(R) 750 at [120].
[25] *Pek Nam Kee v Peh Lam Kong* [1994] 2 SLR(R) 750 at [122].

The court has also found that undue influence was present where the stronger party blatantly preferred its own interests over the weaker party's interests.[26] Where employers do not pay FDWs an extra sum for doing work beyond the scope of work they are legally permitted to perform, it may be argued that there has been a blatant preference of self-interest—the employer wants *the FDW to* work for free, regardless of the potential penalties the worker may face if caught.

(b) Exploitation of weaknesses

Exploitation of weakness is a second unjust factor that may be raised by an FDW against her employer.[27] Such weakness may be mental (e.g. inexperience, confusion, emotional strain) or circumstantial (in the sense that it is premised on the FDW's circumstances).[28] A claimant's weakness has been exploited by a defendant if:

(i) The transaction in question was disadvantageous to the claimant in the sense that it cannot be readily explained; and

(ii) The defendant knew of the claimant's weakness and that the terms of the transaction were disadvantageous to the claimant.[29]

Here, circumstantial weakness is likely to exist in the form of the FDWs' unfamiliarity with the laws and regulations in Singapore and inexperience in working there. This is coupled with the employers' ability to repatriate their FDW if the latter does not comply with the employer's instructions. Unaware of their legal rights against the employer, FDWs may consequently be compelled to take on jobs which are beyond the scope of their work permit without knowing that such conduct is illegal.

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[26] *Tan Teck Khong v Tan Pian Meng* [2002] 2 SLR(R) 490.
[27] Andrew S Burrows, *A Restatement of the English Law of Unjust Enrichment* (Oxford University Press, 2012) at p 79.
[28] Andrew S Burrows, *A Restatement of the English Law of Unjust Enrichment* (Oxford University Press, 2012) at p 79-81.
[29] Andrew S Burrows, *A Restatement of the English Law of Unjust Enrichment* (Oxford University Press, 2012) at p 79-80.

C. *Defences to claims of unjust enrichment*

We next consider whether any defences exist to negate an unjust enrichment claim if a claim succeeds. Such defences are likely to be premised on illegality and public policy.

Doctrine of stultification

The Court of Appeal held in *Ochroid Trading Ltd v Chua Siok Lui*[30] that the defences of illegality and public policy are premised on the doctrine of stultification,[31] which essentially centres on whether allowing a claim in unjust enrichment would *undermine the fundamental policy* that rendered the underlying contract void and unenforceable in the first place. The relevant question is as follows:[32]

> Whether allowing the claim in unjust enrichment would make nonsense of the law's condemnation of the illegal contract in question and of its refusal to enforce the illegal contract.

If the answer to the above question is in the affirmative, the claim should be dismissed on the basis of the defence of illegality and public policy in unjust enrichment.[33]

Here, it is likely that allowing FDWs to claim for unjust enrichment would not stultify policy objectives of the EFMA,[34] given that Parliament takes a strong stance against illegal deployment.[35] Allowing such claims would in fact further the aim of penalising employers who attempt to benefit from the illegal deployment, as they could face both administrative penalties *and* be liable to their FDW for compensation. This argument also underscores that it is almost always the employer who initiates the illegal deployment, and who thus bears ultimate responsibility for the illegality.

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[30] *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 at [147].
[31] *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 at [145].
[32] *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 at [147], citing "Recovering Value Transferred Under an Illegal Contract" (2000) 1 Theoretical Inquiries in Law 155, at p 202.
[33] *Ochroid Trading Ltd v Chua Siok Lui* [2018] 1 SLR 363 at [159],
[34] Under which the rule against illegal deployment can be found, as discussed above.
[35] *Singapore Parliamentary Debates, Official Report* (5 December 2002) vol 75 at cols 1902-1903 (Dr Lee Boon Yang, Minister for Manpower); see also *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 at cols 1194-1195 (Mr Hawazi Daipi, for the Minister of Manpower).

Conversely, the unequal bargaining power between FDWs and their employers means that FDWs would not be in a position to prevent or reject their employer's orders, regardless of whether the FDW knew what they were asked to do constituted illegal deployment. Hence, allowing the claim could in fact have a deterrent effect, giving FDWs an opportunity to hold their employers accountable for work they often cannot refuse.

D. *Remedies available in a claim for restitution based on unjust enrichment*

The starting principle in determining the amount of compensation due is that FDWs are entitled to be paid the objective market value of the services rendered, i.e. the price which a reasonable person in the employer's position would pay for the services.[36] The factors taken into account in assessing the quantum at this stage include the (i) availability and cost of similar services, (ii) the rates and practices in the relevant market, and (iii) the relevant characteristics of the defendant, i.e. credit rating, age, occupation and state of health.

Conditions which might affect this objective value for a reasonable person in the same position as the employer are also considered – a court can take into account "conditions increasing or decreasing the objective value of the benefit to any reasonable person in the same (unusual) position" as the defendant.[37] One such condition could be the employer's "buying power in a market".[38]

In deciding the amount to claim for by way of restitution, the value of the work done by FDWs should be referenced to the market rate for the part-time services – domestic or non-domestic – that the worker was made to perform at her employer's business and/or another location. The employer should have to compensate the worker the same amount he or she would have had to pay to hire someone from the market to perform those tasks.

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[36] *Benedetti v Sawiris* [2014] AC 938 at 956.
[37] *Benedetti v Sawiris* [2014] AC 938 at 957.
[38] *Benedetti v Sawiris* [2014] AC 938 at 957, citing Goff and Jones, The Law of Unjust Enrichment, 8th ed (2011). An employer "who can invariably negotiate a better price for a product than any other buyer will be allowed to say that this price reflects the 'objective' value of the product to him". In *Benedetti v Sawiris*, the applicant's claim that the respondent should be required to pay him more than the objective market value of the services he provided led the Supreme Court to consider whether the objective market value could be altered depending on whether the respondent subjectively valued the services to be worth more or less than this figure. The Supreme Court held that it may be possible to decrease the objective market value of the services if it could be shown that the respondent subjectively thought that they were worth less.

VI. Conclusion on avenues of civil redress for FDWs made to perform work under illegal deployments

In summary, it is likely that FDWs would be able to seek compensation based on their underlying employment contract for work performed pursuant to legal and illegal deployment. Alternatively, it is likely that they would be able to get paid for work performed pursuant to illegal deployment through a claim in unjust enrichment.

VII. Compensation Order in Criminal Cases Against the Employer for Illegal Deployment

We now examine the potential remedy of a compensation order which may be available to an FDW if her employer has been charged with a criminal offence which has some nexus to her employment.

FDWs may also find compensation as victims in criminal cases brought against their employers for illegal deployment. A compensation order may be granted at the court's discretion under Section 359(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), which states:

> ***359.***—*(1) The court before which a person is convicted of any offence shall, after the conviction, consider whether or not to make an order for the payment by that person of a sum to be fixed by the court by way of compensation to the person injured, or his representative, in respect of his person, character or property by —*
>
> *(a) the offence or offences for which the sentence is passed; and*
>
> *(b) any offence that has been taken into consideration for the purposes of sentencing only.*
>
> *(2) If the court is of the view that it is appropriate to make such an order referred to in subsection (1), it must do so.*

Presently, there are no cases where a compensation order has been awarded for the illegal deployment of FDWs. However, compensation orders have been awarded to FDWs in

other cases, and these cases may serve as useful guides in subsequent compensation order claims for illegal deployment.

One such case is *Public Prosecutor v Donohue Enilia*,[39] where an FDW was illegally employed due to her employer's breach of certain employment regulations, which led to her work permit being revoked. However, the FDW was unaware of the breach. Thus, the court granted a compensation order for wages that were unpaid for the illegal work.

In cases of illegal deployment where the worker was similarly unaware of the illegality, the above case may be cited to demonstrate how courts may be open to granting a compensation order for a worker's unpaid wages, despite the work performed being in breach of regulations. The following guidelines should be noted:[40]

(1) Compensation should not be used as further punishment of a convicted person, and the amount of compensation should not exceed the amount of damage caused.

(2) The personal injury, loss or damage compensated must be caused by the offence that the accused was convicted of. Courts should adopt a broad common-sense approach when awarding compensation.

(3) Compensation orders are awarded only in clear cases where the damage is either proved or agreed.[41]

(4) Compensation orders are only made in cases where the amount can be readily and easily ascertained.

(5) Compensation order must not be oppressive – the court must be satisfied that the accused has the necessary means to pay in a reasonable time.

Importantly, a compensation order is "*not aimed at castigating an accused, but at providing redress to a victim of crime*".[42]

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[39] *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220.
[40] *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220 at [20]–[26].
[41] *R v Vivian* [1979] 1 WLR 291 at 293.
[42] *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220 at [61].

The High Court in *Tay Wee Kiat v Public Prosecutor*[43] laid down guidelines in respect to criminal compensation orders for abuse cases. Notably, the court highlighted that the purpose of such a compensation order is to allow injured victims or their representatives to recover compensation where a civil suit is an inadequate or impractical remedy. It held that "*the paradigmatic example of this is where the victim is impecunious*".[44]

Since FDWs invariably have extremely limited funds[45] and it would rarely be feasible for FDWs to pursue civil proceedings while working full-time in their employers' homes (especially since they are unfamiliar with the legal system here),[46] a compensation order is likely to be available as a remedy to FDWs if the criminal proceedings being brought against her employer that has a nexus with her employment.

VIII. Conclusion

This paper highlights potential steps towards making out a claim for compensation in illegal deployment, whether as a civil claim or as part of a compensation order in criminal cases, However, there has yet to be any case law squarely on this issue.

In light of these circumstances, the analysis here serves as a starting point for attempting fresh litigation in this area. The development of the law in this respect will ultimately depend on the pronouncements of future court judgments.

This paper has suggested several avenues through which FDWs can pursue such a claim. Where illegally deployed FDWs are seeking unpaid wages for work done while illegally deployed, they may explore the possibility of a contractual claim for the wages owed to them. Alternatively, they may also bring a claim for unjust enrichment which grants them the remedy of restitution. Finally, should the employer be criminally charged for illegal deployment, the FDW may also consider seeking a compensation order in her favour when appropriate to do so.

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[43] *Tay Wee Kiat v Public Prosecutor* [2018] SGHC 114.
[44] *Tay Wee Kiat v Public Prosecutor* [2018] SGHC 114 at [7].
[45] The court in *Public Prosecutor v Donohue Enilia* observed that the vulnerability of FDWs extended to financial exploitation by errant employers who default on the payment of their salaries. The court also observed that domestic workers ("maids", per [57]) often hold an "impecunious status".
[46] *Tay Wee Kiat v Public Prosecutor* [2018] SGHC 114 at [15].

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