



Human Resource Case Studies

Martin Gabriel

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Foreword

Human resource case studies in Singapore are rarely published, probably due to the sensitive and complex nature of labour-management relations, issues, problems or disputes. Parties and organisations involved may also have reservations and concerns over the likely repercussions should others have misgivings over the conflicts, disputes, outcomes and the settlements reached.

However, all that has not deterred Martin Gabriel from publishing this book—a compilation of over 15 cases he personally handled as a HR consultant.

It was back in 1991 when I got to know Martin, who was one of my young junior investigation officers in the then Labour Inspectorate, at the Ministry of Manpower. At that time, I could not have imagined him producing this book. This fruition was triggered by his leaving the civil service in 1994 for the private sector. Starting out as a HR executive, he worked his way up to senior HR positions in many organisations, and along the way, he earned a degree from the University of Tasmania in 2002. In June 2002 he started his own HR consultancy firm, HRmatters21, which until now, is still enjoying a growing clientele.

Each case in this book emphatically mirrors the thoughts and strategies employed by Martin, demonstrating his flexibility in dealing with complex situations. Human resource issues are not cut-and-dry. Very often, there are numerous ways to address and resolve human resource issues or problems. Let Martin's case studies spur you into thinking and acting in new ways that you might not have considered or thought was possible or feasible before.

Enjoy the stories!

Peter C.H. Lum

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Presently HR Advisor to Golden Village Multiplex Pte Ltd*

How It All Started

I began my career as an Employment Inspector at the Ministry of Manpower (MOM) (formerly the Ministry of Labour), enforcing the Employment of Foreign Manpower Act, which involved field-work and investigations. I suppose I ended up at MOM as I wasn't quite sure what else to do after completing school and National Service. Back in school, I was often complimented on my drawings and paintings. Many told me that I had the potential to become an artist. Even though I could draw very well, I had my doubts about pursuing my interest in the arts, as I did not think it paid well. Most artists became famous posthumously, and I did not want to embark on a journey where the fruits of my hard work would be realised only after death.

At MOM, I took each day as it came. Field-work at MOM was fun and dangerous at the same time, as we had to apprehend illegal workers, and some of them put up violent struggles. Once, in a struggle with suspected illegal workers along Kitchener road, I was manhandled and pushed into the drain. My trousers were torn and I sustained bruises along my thigh. On a few occasions, those who were caught also tried to bribe me; usually

it was the employers who would do this. Somehow, I managed to resist temptation as I knew of colleagues who got caught and I figured it wasn't worth the risk.

I have always had excellent organisational skills and was thus often seen as an informal leader. I knew that I had leadership skills when I managed to get my colleagues to form a soccer team. We used to play soccer at Hong Lim Park just to get some exercise and I often persuaded my colleagues to join in the game by telling them that exercise reduced stress. "You sleep better after a good work-out" I would tell them. We did raids with the police and after making friends with one of their inspectors, we even organised a friendly, informal soccer challenge between the Police and the MOM Labour Inspectorate department!

My Director at MOM influenced my decision in making Human Resources (HR) my career. I remember we had small chats in his office. He would often tell me, "Martin, you have the gift of the gab, and I can see that you are a people-person. You can do better than what you are doing here at MOM. Imagine that you're still doing the same thing at 30, isn't that frightening?" His advice was partly why I left MOM and went into HR. I spent my early days in HR as an HR Assistant in the Hospitality and F&B industry. I also had a short stint at the Singapore National Employers Federation (SNEF). As an employee, I was an HR Assistant, HR Executive and Assistant HR Manager. My last full-time employment

was in a SembCorp subsidiary before striking out on my own as Director of HRmatters21. I have to say that when I was an employee, I felt that my ideas were never valued. Most of the time, the Chief Executive Officer (CEO) didn't really think much of HR and the salary I was earning wasn't much either. Deep down inside, I always harboured the thought of striking out on my own. I wanted to travel the path that was least taken. As the saying goes, if you do what everybody else does, you will get what everybody else gets. I felt that I had the potential to do more and to go further, so I was not willing to settle for a regular-type job that paid a regular salary. I began learning extensively about HR issues and employment legislations. I did much reading and when the Internet was in its infancy, I formed the HRmatters21 HR online forum. This platform enabled HR professionals to speak and share their knowledge with each other. Junior HR practitioners could ask questions and the more senior ones could offer advice. As social media was rather new at that time (1997), most people were hesitant to disclose their identity so I allowed HR professionals to use anonymous names in the forum. My boss would often caution me, "Hey, you better be careful, the big boss could be reading all this". My boss was not a risk-taker and often too careful about matters. I shared with him my desire to be an entrepreneur, but I could tell that he was dismissive about it. However, I was clear about what I wanted and nobody could change my mind and so I soldiered on in my plan to become an entrepreneur. My

HRmatters21 HR online forum began to grow, from just 15 persons in the beginning to a massive base of 2,500 members. As the founder and moderator, I was deeply involved in the forum. I would offer my advice pertaining to employment legislations and along the way, I was learning more and more about employment legislation. If there were questions that I was unfamiliar with, I would conduct research till I obtained the answer. A good way of learning was to actually teach and I discovered that a teacher learned faster than a student. The more intense forum discussions became, the more I would learn, being the moderator. Reading all the questions and answers on the forum would prove to be the start of my journey to learn all that I could about HR. It was also the catalyst in helping me set up my own HR consultancy firm and allowed me to prove all the naysayers wrong.

I spent about one year at SNEF, during which I learned how their training programmes were marketed. Flyers were sent to all their members and non-members in the hope that they would sign up for the training course. They also had Industrial Relation Consultants to offer advice to their members through industry group meetings and through the phone when individuals needed quick ad-hoc advice to resolve daily HR issues. It was a simple communication process, and I knew then that it would be replaced by technology soon. E-mails at that time were already replacing hard-copy letters. I wanted to create conversations about HR that would be more intense and that were delivered faster; something that was engaging

to all, not just a few. I also knew that everyone wanted to voice out their concerns, and that these people came from diverse industries with issues that might be specifically unique to the industry. I started my HR forum using the Yahoo groups, and during the first year after its launch, it was intense, with quick heated exchanges. Even issues which most people would consider small, were being discussed. It was as if an intense energy that had been pent-up for many years was being released. I contributed whenever I could, and I knew that this was the first step in promoting my profile before I could become a recognised expert in the HR field.

The HR online forum was started in May 2001, but by early 2002, I was getting calls from various companies asking me to help them with their HR matters. Mind you, some of the callers were HR Directors who had many more years of experience than I had. I was flattered and nervous at the same time. It meant that I had to learn and I had to learn everything quickly. Alone, I couldn't possibly know everything, so what was the best way to learn as much as I could? I quickly surrounded myself with experts from different HR fields: there was someone who was good in compensation and benefits, another was an expert in Malaysian employment law, and another was a recruitment expert. As for myself, I read up everything there was to know about employment legislations and tried to merge it with HR practices. I tried to understand the issues where employers or organisations were unable to conform to employment legislations, the tight labour

market, what employers were risking when they hired illegal workers and how employers motivated their staff to stay on in the face of lucrative offers from other companies. One company even made me their HR advisor on a retainer fee; they would later go on to terminate their own HR Manager. I felt very bad about this situation, as it was the HR Manager who had introduced me to the CEO. All this was happening when I was still gainfully employed as a full-time staff. In other words, I was earning a side income. And guess what? Before long, my side income was slowly matching my full-time pay. It was like getting two salaries every month. I was receiving retainer fees for my consulting work and working as a full-time employee. I started to market the Employment Act workshop, which could bring in about eight to twelve participants for each run, and I even had payroll software companies as my sponsors. All these happened within two years of starting the forum.

Things were looking bright for me, but my Financial Controller wasn't quite pleased. The HR forum grew so fast that my name became well known even among the HR practitioners within the SembCorp group of companies. The Financial Controller began picking on me over small issues and wasn't pleased that I was running a HR interest group. He made it quite clear to me that he wanted me to leave. There were numerous acrimonious issues that led to my departure. I have decided not to go into such details, as I believe it is best to focus on my work and its positive impact on the HR fraternity than to look back

at unpleasant moments in memory. I left my full-time job and was on my own. I was now an entrepreneur! I quickly learned that starting a business on your own was not an easy task. There is a quote in the bible (Luke 4, verse 24): Jesus said, "But I tell you the truth, no prophet is accepted in his own hometown." I have found this to be true, for over the years, I have come to realise that, very often, support for your business do not come from those closest to you but from complete strangers, and that you had to work very hard to get people to notice you. Anyway I have come to accept all that as just part and parcel of being an entrepreneur.

This book is a collection of real-life cases that I have handled through the years. Expressed permission to publish the stories were granted by individuals involved in the respective cases. All names mentioned have been changed to protect the privacy of the individuals concerned. There are 15 cases, each with a lesson to learn. I hope that you find the different cases interesting, regardless whether you are a HR professional or simply someone who is interested in learning about HR issues that affect management.

A Lost Eye

A former client, who was a participant from one of my training workshops, called me and asked if I could assist her husband's nephew. She said that it was a work injury case. According to her, her nephew, whom we shall refer to as Mr. M, had been terminated from his job after he had suffered an unfortunate accident at the workplace. Mr. M's job scope had encompassed the checking of valves that were attached to gas cylinders. During an inspection, one of the valves had exploded in his face. He sustained injuries to both eyes. He became blind in one eye and partially blind in the other. Both eyes contained shrapnel that had to be removed.

In accordance to the Work Injury Compensation Act (WICA), an employer must file an accident report within ten days. Mr. M's employer filed the report and Mr. M was sent to the National University Hospital (NUH) for a medical evaluation. The evaluation process for workplace accidents that fall within the ambit of the WICA is as follows: the hospital submits a medical report to the Ministry of Manpower (MOM), after which an evaluation is done to ascertain the level of compensation, should there be permanent incapacity.

After the evaluation is complete, the MOM will send a notice of assessment (NA) to all the parties that are involved; in this case, the claimant (Mr. M), the employer and the insurance company. The NA determines how much Mr. M is compensated based on permanent injury. Mr. M has about 14 days to decide whether to accept the compensation or to take his case to the civil court. He could also opt for a reassessment.

As it turned out, Mr. M was considering taking his case to the civil court, which was why my client contacted me. I contacted my partner (who is a lawyer), briefed him on the case and set a date for an appointment with Mr. M and his uncle. During the meeting, we found out that Mr. M had been terminated by his employer for expressing his displeasure in being injured at work. It was for this reason that he was engaging the help of a lawyer. After much discussion, we came to the conclusion that compensation for a termination case would not be as substantial as one for work injury. Thus we decided to focus on getting adequate compensation for his permanent injury (blind eye). As we began harvesting information from Mr. M, we discovered that his accident had occurred about seven months ago. This meant that the NA could soon be sent to all parties, as it would usually take the MOM anywhere between five to eight months to calculate the compensation for permanent incapacity. When the NA finally arrives, Mr. M would have about slightly more than three weeks to decide whether to accept the payout or to bring his

case to the civil court. It was unfortunate Mr. M did not meet with us earlier as it would have given us more time to assess all available options and the strength of the case before deciding whether to proceed with a civil case or stay with the WICA process. There was now pressure on Mr. M to make a decision within a short time span. One of the biggest hurdles facing us was getting Mr. M examined by a medical specialist within this period. Usually, MOM would refer injured workers to a government-affiliated hospital and the doctor examining the worker would usually be a generalist, as was the case for Mr. M. In contrast, when a lawyer takes up a work injury case, the injured worker would usually be sent to a specialist. The problem was, making an appointment with a specialist would take several weeks, and we did not have the luxury of time. It was vital that Mr. M be examined by a specialist: it would allow us to better scrutinise the report and give us a clearer picture of the strengths of our case. As we had predicted, just one week after our initial meeting, Mr. M received the NA. He now had to make a decision whether to accept the compensation or reject it and pursue a civil case. The compensation offered in the NA was S\$90,000, based on one eye being permanently blind. The other eye was diagnosed to recover with time.

What happens when an accident occurs at the work place in the course of employment? The chart below shows what has to be done by the employee and employer, followed by the process administered by the MOM.

	Employees' responsibility	Employers' responsibility
1	The employee informs the employer that an accident had taken place.	The employer should immediately conduct an investigation to determine if the accident was genuine or staged. If genuine, the employer would have to file an accident report and ensure all safety measures are undertaken.
2	The employee would have to subject himself to a medical evaluation and could file a claim with the MOM.	The employer has to file an accident report with the MOM within ten days of the occurrence.
3	Employee undergoes a medical evaluation and report will be submitted to the MOM.	Employer would have to refer and allow the employee to be evaluated by a qualified medical practitioner.

Assessing Compensation Payable would be calculated by MOM

Upon receipt of the completed medical report, the commissioner in MOM issues a NA, which states the amount of compensation if any.

Any objection must be made within 2 weeks from the date of the NA. Grounds of the objection/s must be submitted.

Making an Election to Claim for Work Injury Compensation

There is a 14-day grace period for any objections. If there are no objections, payment to the employee would be made within 21 days.

If there are objections raised by the employee, he could either withdraw or claim under common law or request for a reassessment.

The employee would have to decide within one year from the date of the accident whether to proceed and accept the claim or withdraw and pursue under common law. After one year, he may not be able to claim under the WICA process.

Resolving and Adjudicating Disputes

Mediation followed by Labour Court hearing for matters that cannot be resolved.

and involved a very vital organ that would affect the quality of his life, he ought to file a civil claim. However, in filing a civil case, we would need to prove negligence on the part of the employer. If we failed to do this, Mr. M might receive nothing. This completely spooked Mr. M who then decided to ask MOM for a re-assessment. He thought that a re-assessment would buy him more time (anyone who disagrees with the assessment in the NA has up to 14 days from the date of NA to lodge an objection with MOM). Mr. M was hoping to use this extra time during the re-assessment to decide whether to proceed with civil action or to take the S\$90,000.

I accompanied Mr. M to the MOM to lodge the objection and to ask for a re-assessment on his behalf. Based on the MOM officer's experience, he estimated that a re-assessment could result in either a slightly lower or higher quantum of about one to two thousand dollars, or he could be offered S\$90,000 again. Once again, Mr. M could not decide and did not proceed with the re-assessment. During one of our subsequent meetings, we discovered that MOM had earlier investigated the accident and fined the company for not taking necessary safety precautions. There was an obvious breach staring us in the face: goggles had not been issued to Mr. M and the rest of his colleagues when the accident occurred. It turned out that after the accident, the company panicked, began issuing the goggles and made all the employees sign an acknowledgement form, which was back-dated to a time before the accident occurred. Therefore, there was overwhelming evidence to suggest

that there was negligence on the part of the employer, but the decision to proceed with civil action was not ours but Mr. M's to make. I could sense that Mr. M was worried about going through a lengthy trial and that if he filed a civil claim, it could take more than a year for the case to conclude. He would have to wait for quite some time before he could receive a payout. However, if he were to accept the compensation of S\$90,000, he would be paid as early as within a month. The temptation to hold the money in his hands was strong, and I believe it clouded his judgement. He was thinking of all the things he could do with the S\$90,000. He told me he was thinking of buying a house. Mr. M was from Malacca, Malaysia, and with that amount of money, he could easily buy a house there. After much deliberation Mr. M told us that he would take the S\$90,000. Once compensation was officially accepted, he would no longer be able to proceed with a civil lawsuit.

We were disappointed as we felt that he stood a good chance in court, but as his advisors, we had to respect whatever decision he made. I spoke to his uncle about it and he agreed that we should make one last attempt to negotiate for compensation directly with the employer. The first time I went there and spoke to the employer, I was snubbed and blamed for putting thoughts into Mr. M's mind. I had to remind the employer that Mr. M only had two choices: either to claim through the Act or through civil action. The Managing Director, who was accompanied by the HR Manager, was very angry and said that MOM was already administering the claim. They, of

course, preferred the claims to be administered through MOM as payment would come from their insurance and ugly details concerning their negligence and cover-up would not be aired in the courts.

Prior to my second meeting with Mr. M's employer, I advised Mr. M not to take any calls from them. I then met with the Managing Director and the HR Manager again. Immediately, as we sat, I fired the first salvo and said, "We are proceeding to file under common law (although Mr. M did not want to) and will not accept the S\$90,000." The MD was stunned for a moment and asked why. He said, "You lawyers always make trouble. I don't believe this is Mr. M's decision but you guys go and put things in his head". I replied, "Firstly, I am not a lawyer. Secondly, S\$90,000 for a blind eye is a paltry sum. He is a young man of 26 years, yet for the rest of his life, he has to rely on one eye. Do you think that is fair?" The MD did not like the way I was speaking to him. However, he knew I had a point and began masking his emotions by speaking loudly and aggressively. I told him, "Let's try to avoid a civil lawsuit. If you pay him an additional \$25,000, perhaps he may reconsider." The S\$90,000 with an additional S\$25,000 would total up to S\$115,000. I wanted to ask for more but I also took into consideration that Mr. M was earning just slightly more than a thousand dollars. Usually, for WICA cases, one's salary is used to calculate the compensation for permanent incapacity. However, this rule may or may not apply for civil cases. For WICA cases, there is a maximum cap of S\$180,000 (this was the

maximum cap during the time Mr. M's accident occurred). I excused myself from the meeting room and called Mr. M and told him what I was doing. When I returned to the table, I decided to up the amount to S\$30,000, thinking that the MD might try to bargain the price down. I said, "Let us avoid a confrontation in court and settle it with the added compensation." The MD asked for three days to think it over and I agreed. Three days later, I received a call from the MD and was relieved to hear that he had agreed to the proposal. Mr. M would be paid an additional S\$30,000 from the company. On top of the S\$90,000 compensation, Mr. M would now have S\$120,000 in total. Mr. M was delighted that he was getting more. It had not crossed his mind that we could negotiate for additional compensation from his employer, on top of what was being offered in the NA. We had managed to put his employer under pressure by playing bluff, and secured Mr. M a level of compensation beyond his expectation.

They Are Always On Medical Leave

Once again, I received the usual call for help. I asked the HR Manager of the company, "What seems to be the problem?" The HR Manager replied, "Too many MC (Medical Certificate) Kings and Queens." He was referring to employees who were frequently on medical leave but who may not be genuinely sick. The employees' medical leave seemed to follow a certain pattern. They were usually on Mondays and taken by employees who had exhausted all of their annual leave entitlement. Of particular note was that the annual leave entitlement of new employees was just seven days—the bare minimum enforced by the Employment Act. I told the HR Manager that one of the possible reasons contributing to the high incidence of MCs could be that the annual leave entitlement was insufficient and uncompetitive compared to what other companies were offering. Most companies gave between 10 days for the first year of service and up to 18 days maximum per annum. My client was in the food and beverage (F&B) industry, which is a labour intensive industry. The job was also physically demanding. When employees are given insufficient leave, they tend to look for alternatives to get away from work and a popular option is to doctor-shop to obtain an MC even though they may not be genuinely ill. Another possible reason contributing to the