

“You Must Speak Chinese”

Non-ethnic Chinese make up around 8% of the Hong Kong population. Some were born and raised in the city; others came from other parts of the world. The language a person feels most comfortable speaking is not necessarily linked to his or her race and skin colour; the linguistic environment of one’s upbringing and schooling plays a vital part. In any event, we should avoid making assumptions and engaging in discriminatory and offensive behaviour.

The Complaint

John is a Chinese Australian living and working in Hong Kong. He mostly speaks English in his daily life. One day, when he was shopping in a supermarket, he asked a cashier, a Caucasian, if there was any discount for the toilet paper he was buying. He asked the question twice in English but the cashier didn’t respond on both counts. When he asked it the third time, again in English, the cashier said yes in Putonghua and added in English, “You’re Asian. You don’t deserve to speak to me in English. Talk to me in Chinese or else I won’t serve you.”

John immediately sent to a complaint email to the company that managed the supermarket. The customer service department later got in touch with John, saying that the cashier acted the way he did because he was occupied with scanning goods and affected by the noise in the surroundings.

What the EOC did

Unconvinced, John lodged a complaint with the EOC, alleging that the cashier had racially harassed him with an insult about him being Asian and discriminated against him on the ground of his race by refusing to serve him unless he spoke Chinese. He added that the cashier’s employer (the Respondent) was vicariously liable for the alleged acts.

John and the Respondent agreed to early conciliation and settled their dispute after the Respondent undertook to issue a letter of apology and make a donation to a non-profit organisation specified by John.

Points to Note:

- Under the Race Discrimination Ordinance (RDO), it is unlawful for a service provider to treat a customer less favourably by refusing to serve the customer on the ground of his/her race, or by refusing to serve the customer in the same manner or on the same terms as with other customers on account of his/her race.
- Here, assuming that the cashier normally wouldn't require customers to speak Chinese and that, because John was Asian, he required John to do so or else he wouldn't serve him, then this may constitute unlawful racial discrimination.
- Further, if a service provider engages in any unwelcome conduct (including oral and written statements) towards a customer on the ground of his/her race, where a reasonable person, having regard to all the circumstances, would have anticipated that the customer would be offended, humiliated or intimidated, the conduct would amount to unlawful racial harassment under the RDO. (Note: Conversely, it is also unlawful for a customer to racially harass a service provider.)
- Where an employee commits an unlawful act under the RDO in the course of his/her employment, the employer will be held vicariously liable for the act (whether or not it was done with the employer's knowledge or approval), unless the employer can prove that reasonably practicable steps were taken to prevent the employee from doing the act. Examples of preventive measures may include establishing a comprehensive anti-racial discrimination policy and providing relevant training to employees on a periodic basis.