

Sexual Harassment

A v Chan Wai Tong

DCEO 7/2009

Background

The Plaintiff worked with the Defendant in the Food and Environmental Hygiene Department (FEHD) as an Assistant Hawker Control Officer. In the workplace, the Defendant sexually harassed the Plaintiff by making sexual remarks, physical contacts and other unwelcome conducts of a sexual nature against her. The Plaintiff complained to the FEHD which conducted an internal investigation. However, the Plaintiff's complaint was found to be unsubstantiated.

Despite the result of her internal complaint, the Plaintiff persisted and lodged a complaint with the EOC. The Defendant denied the allegation and claimed that the Plaintiff's complaint was a revenge for his gossiping with other colleagues about the Plaintiff's relationship with one of her supervisors. The Plaintiff brought her claim against the Defendant to the Court under the Sex Discrimination Ordinance.

The Court's decision

The Court accepted the Plaintiff's claims, whose timeline and details were corroborated by witnesses and supported by her own notes of the acts. It found that the Defendant committed unlawful sexual harassment, and rejected his defence that the Plaintiff's claim was in retaliation for his gossiping.

The Court indicated that the result of the internal investigation did not affect its ruling in the present case, because the internal investigation adopted the criminal standard of proof of "beyond all reasonable doubt", which is more stringent than the "balance of probability" standard used by the Court.

The Court made an order that the Defendant should give a written apology to the Plaintiff. It also awarded costs and monetary compensation to the Plaintiff as below:

Injury to feelings	HK\$ 50,000
Exemplary damages	HK\$ 10,000
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	HK\$ 60,000
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The Court awarded HK\$50,000 in damages for injury to feelings. It further awarded HK\$10,000 in exemplary damages to punish the Defendant for his conduct in inflicting harm as he completely fabricated his defence that the Plaintiff's claim was in retaliation for his gossiping.

The Court also awarded costs to the Plaintiff because the Defendant refused to attempt conciliation arranged by the EOC and made a totally fabricated defence.