

Sexual Harassment

L v David Roy Burton

DCEO 15/2009

Background

The Plaintiff was offered a position with a marketing firm, of which the Defendant was the general manager. Before the Plaintiff commenced her employment and during her employment, the Defendant made numerous sexual advances towards her and twice touched her inappropriately. The Plaintiff rejected the Defendant's advances every time. The Defendant's attitude towards the Plaintiff deteriorated and finally he dismissed her. When informing her of the dismissal, he forcefully grabbed and bruised the Plaintiff's wrist. The Plaintiff lodged a complaint to the EOC, but attempts of conciliation were not successful. With the EOC's assistance, the Plaintiff brought proceedings against the Defendant under the Sex Discrimination Ordinance (SDO).

The Court's decision

The Court found that there was a clear case of sexual harassment under the SDO based on the Plaintiff's undisputed evidence. The Court awarded damages to the Plaintiff for injury to feelings, loss of earnings, and exemplary damages.

Injury to feelings	HK\$ 100,000
Loss of earnings	HK\$ 77,039
Exemplary damages	HK\$ 20,000
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	HK\$ 197,039

The Court awarded HK\$100,000 in damages for injury to feelings flowing from both the acts of sexual harassment and the dismissal.

In assessing the award, the Court considered the fact that the offensive behaviour of the Defendant persisted for over a month, and that the eventual dismissal of the Plaintiff was high-handed and abusive to the Plaintiff's personal dignity. As a result of the sexual harassment, the Plaintiff suffered anxiety, stress, humiliation, physical injury, and insomnia.

For loss of earnings, the Court awarded an amount equal to five months and 14 days' income, as the Plaintiff was unemployed for that period before finding other employment.

The Court further awarded HK\$20,000 in exemplary damages. The objective of exemplary damages is to punish the Defendant for his conduct and to mark the Court's disapproval of such conduct as the compensatory award was insufficient to punish the Defendant in the present case.

The Court also awarded legal costs to the Plaintiff, which it found to be warranted by the circumstances of the case. The Plaintiff had conducted the proceedings in a reasonable manner, whereas the Defendant refused to settle or to apologise for his wrongful conduct. Furthermore, the Court was of the view that the Defendant should have known from the outset that his conduct was wrong, as every adult should know that it is wrong to make unwelcome sexual advances on another person.