

Chan Choi Yin v Toppan Forms (Hong Kong) Ltd

DCEO 6/2002

Background

The Plaintiff began her employment as an account manager with the Defendant in 1997. Around a year later, she became pregnant. After giving pregnancy notice to the Defendant, the Plaintiff faced a series of less favourable treatments by the Defendant. These included derogatory remarks made by the senior management about her pregnancy, repeated demands by her supervisor ordering her to return to work during sick leave and black rainstorm warnings, and transfer to a new team which resulted in a substantial reduction of her income and difficult working conditions.

The less favourable treatments continued when the Plaintiff resumed duty upon the completion of her maternity leave in 1999. Particularly, she was transferred to another division against her will, resulting in a further reduction of her income as well as a demotion.

As a result, the Plaintiff lodged a complaint with the EOC. Later, the Defendant informed her that she would be made redundant due to the closing of her division. She was further told to withdraw her complaint or she would be dismissed. Eventually she was dismissed in 2000.

The Plaintiff brought proceedings against the Defendant under the Sex Discrimination Ordinance (SDO).

The Court's decision

The Court found that the Plaintiff had established the relevant facts so that inferences could be drawn to support her claims of pregnancy discrimination and victimisation, whereas the Defendant had failed to offer a reasonable explanation for the Plaintiff's less favourable treatment and dismissal. The Court found

that the Defendant discriminated against the Plaintiff on the ground of pregnancy and by way of victimisation under the SDO.

As a result, the Plaintiff was awarded a total of HK\$544,156.15, with the breakdown of the damages as follows:

Loss of earnings	HK\$ 164,505.20
Future loss of earnings	HK\$ 179,650.95
Injury to feelings	HK\$ 200,000.00
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	HK\$ 544,156.15
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The loss of earnings was calculated based on the amount that the Plaintiff could have earned if she had not been transferred.

For the future loss of earnings, the Court decided that the Plaintiff should recover six months' loss of income because the Court viewed that she should be able to find alternative employment with a similar salary within that period.

For injury to feelings, the Court viewed that a substantial amount should be awarded to the Plaintiff to reflect the long period of injury she suffered. While the Defendant's unfair treatment towards the Plaintiff since her pregnancy had lasted for two years until her dismissal, the Plaintiff was further deprived of a favourable reference from the Defendant for more than three years while the legal proceedings were going on.