

Court Case

L v David Roy Burton

DCEO 15/2009

BACKGROUND FACTS

The Plaintiff interviewed for and was offered a position with a marketing firm, for 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 discharged her, at which time he also forcefully grabbed and bruised the Plaintiff's wrist. The Plaintiff brought proceedings against the Defendant under the SDO.

COURT'S DECISION

The Court found that there was a clear sense 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
	<hr/>
	HK\$197,039

The Court awarded \$100,000 in damages for injury to feelings flowing from both the acts of sexual harassment and the dismissal, which falls within the middle band of the Vento guidelines. The offensive behaviour of the Defendant persisted for over a month, and the eventual dismissal of the Plaintiff was high-handed and abusive of 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 \$20,000 in exemplary damages as the compensatory award was insufficient to punish the Defendant in the present case.

The Court also awarded 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 apologize for his wrongful conduct. Furthermore, this was a sexual harassment case where the Defendant should have known from the outset that his conduct was wrong.

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法庭案例

L 訴 David Roy Burton

DCEO 15/2009

案情背景

原告人到一間市場營銷公司面試後獲聘用，被告人是該公司的總經理。原告人尚未開始上班前和在受僱期間，被告人曾多次向她提出性要求，並兩度不當地觸碰她的身體。原告人每次都拒絕被告人的要求。被告人對原告人的態度轉差，最後更解僱她。當時他用力捉住原告人的手腕，把她弄傷。原告人根據《性別歧視條例》向被告提出訴訟。

法庭的裁決

根據原告人提出的沒有爭議的證據，這明顯是《性別歧視條例》下的性騷擾案件。法庭判原告人獲得感情損害、收入損失及懲罰性損害賠償。

感情損害賠償	港幣 100,000 元
收入損失	港幣 77,039 元
懲罰性損害賠償	港幣 20,000 元
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	港幣 197,039 元

法庭判原告人獲得港幣 100,000 元感情損害賠償(屬 Vento 賠償指引的中等級別)，以補償因性騷擾行為和解僱所造成的感情損害。被告人的冒犯行為持續超過一個月，最終解僱原告人時所用的手法不但專橫，而且有辱原告人的個人尊嚴。這性騷擾令原告人受到憂慮、壓力、羞辱、身體損傷和失眠等問題困擾。

至於收入損失，法庭判原告人獲得相等於五個月零十四天薪金的賠償額，因為原告人失業了這樣一段時間才找到另一份工作。法庭判原告人額外得到 20,000 元懲罰性損害賠償，因為本案的補償額不足以懲罰被告人。

法庭同時判原告人可取回訟費，因為法庭認為本案的情況值得這樣做。原告人以合理的方式提出法律程序，而被告人卻拒絕為他所作的錯誤行為道歉或提供解決辦法。再者，案中被告人應該從一開始便知道他的行為是錯誤的。

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法庭案例

L 诉 David Roy Burton

DCEO 15/2009

案情背景

原告人到一间市场营销公司面试后获聘用，被告人是该公司的总经理。原告人尚未开始上班前和在受雇期间，被告人曾多次向她提出性要求，并两度不当地触碰她的身体。原告人每次都拒绝被告人的要求。被告人对原告人的态度转差，最后更解雇她。当时他用力捉住原告人的手腕，把她弄伤。原告人根据《性别歧视条例》向被告入提出诉讼。

法庭的裁决

根据原告人提出的没有争议的证据，这明显是《性别歧视条例》下的性骚扰案件。法庭判原告人获得感情损害、收入损失及惩罚性损害赔偿。

感情损害赔偿	港币 100,000 元
收入损失	港币 77,039 元
惩罚性损害赔偿	港币 20,000 元
	<hr/>
	港币 197,039 元

法庭判原告人获得港币 100,000 元感情损害赔偿(属 Vento 赔偿指引的中等级别)，以补偿因性骚扰行为和解雇所造成的感情损害。被告人的冒犯行为持续超过一个月，最终解雇原告人时所用的手法不但专横，而且有辱原告人的个人尊严。这次性骚扰令原告人受到忧虑、压力、羞辱、身体损伤和失眠等问题困扰。

至于收入损失，法庭判原告人获得相等于五个月零十四天薪金的赔偿额，因为原告人失业了这样一段时间才找到另一份工作。法庭判原告人额外得到 20,000 元惩罚性损害赔偿，因为本案的补偿额不足以惩罚被告人。

法庭同时判原告人可取回讼费，因为法庭认为本案的情况值得这样做。原告人以合理的方式提出法律程序，而被告人却拒绝为他所作的错误行为道歉或提供解决办法。再者，案中被告人应该从一开始便知道自己是错误的。

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