

Ref: OUA-03/002
29 April 2003

To: Confederation of Trade Unions
Attention: Secretary General, Mr. Lee Cheuk Yan
Subject: Complaints & cases brought to Labour Tribunal

General complaints:

1. Whenever we bring up any case of breach of employment contract that may not involve monetary claim but a right or benefit, we are always told that the Labour Tribunal has no jurisdiction and the only way for the employees to pursue such case is to go through High Court. This way, employer gets away with it because most employees do not wish to risk any funds to pursue, as it may not be worthwhile even if the case is strong. For example, LBTC9693/2001, LBTC1395/2002 and LBTC12076/2002 were three cases which involved concessionary travel benefit that we believe is a contractual right. However Cathay Pacific always argued that benefit can be removed from time to time at the sole discretion of the company. Their most favourite argument is always based on the fact that the benefit cannot be quantified in monetary terms, and as such the Tribunal is deemed to be an inappropriate avenue. Can they be granted legal aid without going through the means test if the case get transferred under such circumstance? Where can the average employee turn to for help?
2. Cathay can afford high power lawyers to be present in the tribunal that certainly poses intimidation to the union representatives and Claimants. In particular, we refer to one of Cathay's solicitors, Mr. Michael Downey who is also the editor of the "Employment Ordinance and Annotated

Guide”. We observe that Mr. Downey evidently has certain influence in the Labour Tribunal, as shown in item no 1 of Specific Complaints below.

3. We always find our self in a “catch 22” situation. If we lose a case and wish to appeal, we may be liable to pay for Defendant’s expensive legal costs particularly for those high power lawyers Cathay always engage. Because of this fear, Claimants have little choice but to give up appealing. If we win, Cathay will definitely appeal and this will put off a lot of Claimants for pursuing their case for the same reason.
4. As we are all laymen, we need to have someone in the public gallery to take notes and moreover, we sometimes see reporters or other people taking notes. However some PO appointed to hear our cases seem to be peculiarly harsh with us. Quite often we have been challenged why we take notes while sitting in the public gallery and we cannot do so without obtaining permission first.
5. Some PO are very short tempered and explicitly show their intolerance of our inability to effectively express our plight and / or our misconception in law. We often feel very intimidated and inhibited by this kind of admonishing conduct of the PO.
6. It seems to take much longer for cases to get heard nowadays. Besides questioning the jurisdiction of the Labour Tribunal, Cathay has the habit of asking many questions at the hearing for mention. This always lead to adjournment and further adjournment.
7. Very often, when documents are submitted by Cathay, we have to keep chasing the Tribunal officers and documents are always made available

very late and thus we are only given very short time to view documents before the next hearing.

8. We do not understand why some PO do not allow us to make copies of Cathay's submitted documents, simply because Cathay does not wish to cooperate. Sometimes these documents may come in many pages and content may be very complex for the Claimants to understand. Don't the PO have power to order both sides to take photo copies of each others' submissions so that the documents can be thoroughly examined and understood for the benefit of more smooth and productive hearings?
9. We do not understand why we are not automatically provided with the transcripts of the hearings and judgment in writing unless we specifically request for them. If the judgment is a very long and complex one, it usually takes a long time for transcripts to be made available that may surpass the time bar for filing a review or appeal. In most of the cases that our union had brought up, the judgment was actually read to us as it was prepared by the PO and contained several pages. Why can't the PO give us a copy after he reads out the judgment?

Specific complaints:

1. Re: Claim No LBTC 7799 /1999

At the hearing on 1st November 1999, the Defendant had brought along their solicitor, Mr. Michael Downey, who positioned himself next to the Defendant before the PO Mr. Josiah Lam. PO Lam even initiated a friendly greeting with Mr. Downey, " Mr. Downey, how are you? I heard

you are now the owner of your own firm.” Mr. Downey replied and a social exchange took place for a short while.

PO Josiah Lam allowed Mr. Downey to remain seated next to the Defendant and even asked the Defendant to consult Mr. Downey on how to answer his questions. Later when the Defendant was still showing difficulties in expressing himself effectively, PO Lam simply asked Mr. Downey to speak on behalf of the Defendant.

We questioned the professional conduct of PO Lam in a letter dated 1st December 1999. We enclosed copy of the letter drafted by the union for the Claimants (Attachment 1). The Tribunal should have received the original signed letter from the Claimants.

At the subsequent Mention Hearing on 26 January 1999, Mr. Downey again positioned himself next to the Defendant but this time PO Lam asked Mr. Downey to retrieve to the public gallery, probably due to our protest. However, during the hearing, PO Lam had called for stand-down a few times and asked Defendant to consult Mr. Downey. The conduct of PO Lam led us to doubt the integrity and justice of the Tribunal and we felt extremely disadvantaged in this case.

2. **RE: LBTC 9559 / 2000**

- The complaint for the above case was stated in a letter addressed to Chief Justice Andrew Li and a reply from Chief Magistrate Patrick Li was received. These are enclosed in Attachment 2.

- Our Claimant filed for unreasonable dismissal on grounds of union discrimination. After several trial hearings, we were astounded by the judgment made by the PO who stated that he believed the reason for termination was justified and as such he did not have to consider facts relating to union discrimination. (Attachment 2a)

3. **RE: LBTC 1327 / 2002**

The complaint for this case was stated in a letter addressed to Chief Justice Andrew Li and a reply from Chief Magistrate Patrick Li was received. These are enclosed in Attachment 3.

4. **RE: LBTC 2709 / 2002**

This was a case where both our union representative and Claimant were admonished on countless occasions throughout the whole trial.

Our Claimant filed for unreasonable dismissal and was successful in being awarded some of the claims she had made however the PO still ruled in favour of the Defendant company, Cathay Pacific Airways. The PO asked both Defendant and Claimant if they would ask for costs. Our Claimant, being an overseas recruited from India by Cathay, asked for living expenses for remaining in Hong Kong to pursue her case. The Defendant asked for costs of calling witnesses to the Tribunal and all their witnesses were Cathay managers of different levels and as such did not know how much to ask for. To our surprise the PO in the end decided to award HK\$5,000 to Cathay Pacific and nothing to our Claimant.

Our Claimant had since filed an appeal and this case is now pending for an appeal hearing.

5. **RE: Labour Tribunal Claim No 1395 / 2002**

Our Claimant filed for unreasonable dismissal and all except one of the monetary claims were settled. The outstanding claim was regarding a retiree concessionary travel benefit that is identical to a claim filed by Ms. Chong Cheng Lin Courtney's case (LBTC 9693 / 2002).

The PO for the captioned claim stated that the Tribunal did not have jurisdiction and the case was transferred to High Court. However for LBTC 9693 / 2002, the case was set aside for trial and was dismissed by the Tribunal because she missed the 6 year time bar.

There is clear inconsistency in the handling of two cases of same nature.

Fau's copy

The Presiding Officer
Labour Tribunal
19th Floor, Pioneer Centre
750 Nathan Road
Kowloon

1 December 1999

Dear Sirs,

Re: Labour Tribunal Claim No. LBTC 7799/1999

We are the claimant for the above captioned case and we refer to the hearing for mention listed for 26th January 2000.

As far as we understand from the Labour Tribunal Ordinance, legal presentation is not permitted in all hearings before the Labour Tribunal. However, we note that the Defendant had brought along their solicitor in the hearing on 1st November 1999. We would therefore like to confirm with the presiding Officer as to whether our understanding regarding legal representation in Labour Tribunal is wrong or the Defendant had breached the relevant provisions of the Labour Tribunal Ordinance by instructing their solicitor to attend the hearing on 1st November 1999. If legal representation is allowed, we would like to retain a lawyer to appear on our behalf at the mention hearing.

We are advised to inform the Tribunal of the documents that are relevant to our claim. We would like to inform the Tribunal that we understand the following retired flight attendants whose retirement benefits were calculated without having their approved leave of absence deducted from their total completed years of service with the Company:-

<u>Name</u>	<u>Date of Joining with the Company</u>	<u>Date of Retirement/ Resignation</u>
Udomdee S	December 1973	August 1988
Ma FK	June 1967	May 1987
Tam LCG	October 1975	January 1993

As the documents showing the calculation of their retirement benefits are in the possession of the Company, we would like the Court to make an order ordering the Company to produce all the documents in relation to the calculation of retirement benefits for these three persons.

Yours sincerely,

Lai Yoke Moi, Pauline
K134532(A)

Tan Geok Keng, Sally
G476695(3)

CATHAY PACIFIC AIRWAYS FLIGHT ATTENDANTS UNION
國泰航空公司空中服務員工會

6/F, AIRLINE STORE BUILDING, CATHAY PACIFIC AIRWAYS,
2 CHUN MING ROAD, CHEK LAP KOK, HONG KONG.
Tel: (852) 2362-6268 Fax: (852) 2764-6593
Email: cpafau@pacific.net.hk

ATTACHMENT 2

LEG - 01/002

March 2001

Honourable Mr. Andrew Li
Chief Justice
Court of Final Appeal
Mary Path, Central
Hong Kong

Your Honour,

Re: LBTC 9859/2000

We would like to bring your attention to a recent case brought before the Labour Tribunal by the Cathay Pacific Airways Flight Attendants Union on behalf of an aggrieved member who had been terminated by Cathay Pacific Airways. Below is a factual report of the Mention Hearing for the captioned case that took place on 16 Mar 2001 and we hope you would be able to draw your own conclusion to the unjust circumstances we felt.

1 - Assemble in Court No 1

It was supposed to be the third one in the morning's cases, but the Presiding Officer Mr. Peter Hui stated that he wanted to hear Cathay's case first.

It started by asking Claimant if she would pursue the retiree travel benefit. We answered no as we felt that the benefit could not be quantified in monetary terms. Then he said we could ask the court for an assessment but it might mean the claim would have to be transferred to higher courts. So we decided we would withdraw the additional claim.

Mr. Hui then asked both sides if we had further documents to submit to which we both answered no.

Mr. Hui asked if we had read each others' submitted documents. I replied by stating that we had read a Statement. Cathay Pacific's representative stated that he had not read anything at all submitted by



CATHAY PACIFIC AIRWAYS FLIGHT ATTENDANTS UNION
國泰航空公司空中服務員工會

Claimant. I said that we had only submitted the statement of claim to which they had responded with their Defense Statement.

Mr. Hui then asked us to stand down and we were both handed each others' bundle to read.

I noted that, besides the Defense Statement that we were allowed to view on 19 Feb 2001, there was only a letter from the Defendant to the Tribunal stating their reasons for objecting to disclose documents to Claimant. While we were reading, the court clerk handed an additional document to add to the file. This was a witness statement submitted by a Cathay manager Mr. Rick Lang. We recalled that Mr. Rick Lang was ordered by the PO on 22 Jan 2001 at the Call Over to submit his witness statement within 14 days. We wondered why it was not available for us to view on 19 Feb 2001.

When we finished reading, we handed back the file to the court clerk and waited for our turn to be called.

About 11:30, PO Mr. Hui indicated that he would set the case down for trial in two months time. I immediately asked if we could have a hearing today, to which he said, "I am hearing your case now. Don't you know the procedures? Are you from the union?"

I replied, "Yes, I am. I am sorry I am not familiar with the law."

Mr. Hui then asked, "Have you been to court?" When I said I had been to the Tribunal, he quickly snapped, "Then you should know! I will set another date for trial and this is done according to the court diary."

I then requested him to give consideration to the Claimant as she had been unsuccessful in seeking employment in HK and it is very expensive for her to live in uncertainty while waiting for her case to conclude. He cut me off before I could finish what I wanted to say and said, "If everyone makes the same request, what shall I do? Why should I displace other cases for yours?"

Mr. Hui then asked if we would name any witnesses. Claimant said yes and I said, "Not at the moment." as I was not sure about who and what to submit as witness and statements anymore due to this amazingly hostile treatment from Mr. Hui.

Unbelievably, Mr. Hui then said, "Give me a yes or no. Not at the moment is not a good answer!"

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at the end we named the General Secretary for the Hong Kong Aircrew Officers Association, John [redacted] as our witness. Mr. Hui asked what his statement would be. I told him that it would be in relation to [redacted] discrimination. He then said Claimant and witness would have to submit their statements in 21 [redacted]

Mr. Hui turned to Defendant and asked for the names of their witnesses. Mr. Hui's facial expression seemed notably to be relatively warm. The Defendant named the manager Mr. Rick Lang and a captain to be their witnesses. With a slight smile, Mr. Hui asked courteously, "Is 21 days sufficient for you to submit your witness statements?"

When Defendant said that they would try their best to do so, Mr. Hui still offered, "If it's not enough time, I will grant you extension."

Mr. Hui told us the exact date of trial, Defendant asked for copy of Claimant's document. Mr. Hui passed the bundle over and asked Defendant to mark the documents with the stick-and-post labels provided. After that was done, Mr. Hui looked at what Defendant had marked and passed over to us and asked if we had any objection. We said no and requested to do the same thing.

When Mr. Hui saw that we had requested the letter from the Defendant giving their reasons for objecting to use the document for Claimant's examination, he asked, "This is a letter addressed to the Tribunal, why do you want a copy?"

He replied, "We are curious about the Defendant's reasons for not giving the consent."

Mr. Hui replied, "It's addressed to the Tribunal. I don't allow it".

On that hostile note, Mr. Hui advised that both sides would be getting those copies permitted and at our own expenses.

Defendant asked Mr. Hui to clarify what sort of remedy would be awarded for the case. Mr. Hui explained that if all terminal payments have been paid, then the only remedy likely to be awarded would be under 21B.1.a.

When asked the Defendant if he knew the maximum amount, Defendant replied, "\$150,000."

(3)

CATHAY PACIFIC AIRWAYS FLIGHT ATTENDANTS UNION
國泰航空公司空中服務員工會

Hui said, "That is the maximum." Then turning to face the Claimant and me by leaning back on his vel chair, he continued, "It actually starts from one dollar. And the court will take into consideration entitlement that has already been paid."

I felt that Mr. Hui's last remarks were directly addressed to the Claimant and me, rather than to the defendant, and his demeanour, body language and facial expression were those of sarcasm and taunt.

The hearing ended at about 12 noon.

The whole process was witnessed by a South China Morning Post reporter, Ms. Heike Philips who sympathized and agreed with us that the PO Mr. Hui appeared to be hostile and discriminatory towards us.

Your Honour, we have filed a claim on unfair dismissal related to union discrimination. From the going you may deduce that the general sentiment of the Presiding Officer was one of hostility to the Claimant, the Claimant herself, and to her union representative. We cannot help feeling that there is a bias in his mindset that distinctly favours the Defendant. I must also say that we felt intimidated and threatened because of our simple lack of familiarity with Tribunal procedures. If that is the treatment received at a Mention Hearing, what chance can we expect from a trial?

I humbly request you to look into our case, and trust you will see fit to make an early intervention in order to ensure that justice is done and also seen to be done.

Yours respectfully,



Lucy Kwan
Executive Committee - Communications

FILE COPY



to BK Annie's case - 4/21

總裁判官內庭用箋

香港金鐘道 38 號

高等法院大樓

CHIEF MAGISTRATE'S CHAMBERS

HIGH COURT BUILDING

38 QUEENSWAY

HONG KONG

Your Ref. : LEG-01/002

Our Ref. : SC/140/1/5 XV

Tel. No. : 2825 4243

Fax No. : 2868 5485



Miss Becky Kwan
Executive Committee - Communications
Cathay Pacific Airways Flight Attendants Union

Dear Miss Kwan,

Thank you for your letter dated 26 March 2001. I have investigated your complaint and discussed with Mr. Hui, the Presiding Officer concerned. Our audio-recording show that there was some misunderstanding during the hearing on 16th March 2001 which needs clarification. Before I do that, let me explain briefly the procedures of the Labour Tribunal.

We adopt an informal and inexpensive approach for the resolution of labour disputes. After the preliminary investigation by the Tribunal Officer, a Presiding Officer will hold the first hearing with the parties, i.e., "call-over". In this hearing, the Presiding Officer will explain the law and analyse the issues involved in the claim to both parties. If circumstances warrant, the Presiding Officer will try to encourage settlement. In case there is no settlement, the Presiding Officer will advise both parties to prepare witness statements and other documents in support of their claim/defence. The case will then be adjourned for "mention" to allow time for preparation. During the "mention" hearing, the Presiding Officer will, after reading the documents submitted, advise further and/or set the case down for trial if parties and their witnesses are ready.

In relation to your complaint, I have the following observations:

- a) The hearing on 16 March 2001 was a "mention" hearing. The Presiding Officer was dismayed when you asked for an immediate trial. Given that you were a union representative and had previous experience in the Tribunal, he presumed that you should, as most union representatives do, know the basic procedures of the Labour Tribunal. He never meant to be hostile or sarcastic.

P.T.O./....

Annie
5/L

- b) The number of witnesses determines the length of a trial. It is also desirable to have witness statements ready before hand and let the other party have sight of them. We discourage surprise witnesses. These are probably the reasons why the Presiding Officer insisted to know precisely whether the claimant was calling any witness. According to our audio recording, the Presiding Officer did ask the claimant if 21 days was sufficient to submit witness statements. Unfortunately, you missed that part.
- c) In fixing trials, our practice is to give the earliest date available. We do appreciate the difficulties of the claimant in this case, however, the heavy workload and the interest of other claimants prevent us from too accommodating.
- d) You requested for a copy of the letter which sets out the defendant's objections for releasing their documents to the claimant. It is irrelevant to the case and was therefore refused. In any event, you must have read this letter already from the defence bundle. I do not see anything improper in the refusal.
- e) The Presiding Officer did explain to both parties the discretion in awarding compensation under s.32P. Having checked the audio recording, I have the feeling that you read too much into the Presiding Officer's remark.

The Presiding Officer has no connection or interest in relation to either parties, I cannot see any motive for him to be discriminatory or hostile. I regret that you felt the contrary. Coincidentally, Mr. Hui will be transferred to another post in June, another Presiding Officer will handle your case. I am sure there will be a fair trial.

Yours faithfully,



(Patrick Li)
Chief Magistrate

ANNIE
1/1

A which safety and security of passengers and all other people on board
B are at risk.

C In the circumstances of this case, I consider that it is
D reasonable and logical for the defendant to come to this conclusion.
E This is a reasonable conclusion. This is the -- I found as a fact
F that this is the reason operating in the mind of the defendant in
G dismissing the claimant.

H I consider Mr Lang a trustworthy witness and do not believe that
I the defendant, when arriving at the decision to dismiss the claimant,
J defendant was with a view to give the trade union a blow on the face,
K or because the claimant sought assistance or shelter from a trade
L union. I believe what Mr Lang has told the court that the reason
M for dismissal is loss of confidence.

N And therefore, I find that the dismissal is a valid reason within
O head (a) - conduct, (b) - capability of the employee, of section 32K.
P Of course, it is reasonable for the employer either to terminate her
Q or to give her a further chance. And now, the defendant choose to
R terminate the claimant and I have just said it is up to the defendant
S to opt what actions that it has to take against the claimant. So,
T that will bring the matter to an end.)

U And I consider that the reason advanced for dismissal was within
V section 32K of the Employment Ordinance and, therefore, I need not
W consider whether the second limb, that is 32A(1)(c) has been
X contravened despite the evidence of Miss Swan and Miss Findlay that
Y the defendant do have a history of struggles with the trade unions.

Z Therefore, I dismiss the claimant's claim for remedies under
AA section 32O and 32P. It will not be necessary for the court to
AB consider the issue of quantum.

AC As regard cost, I think since the burden of proof is -- or whether
AD there is a valid reason for dismissal is on the defendant and I,
AE therefore, make no order as to costs in the present case. That means,
AF even though the claimant has lost in this case, she needs not pay
AG the defendant any costs of the proceedings.

AH And that is the end of my judgment.

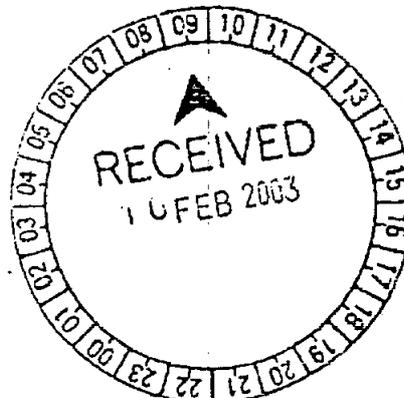
AI Court rises - 12.31 pm
AJ 12 October 2001

ATTACHMENT 3

FAX IN

To: The Honourable Mr. Andrew Li,
The Chief Justice,
Court of Final Appeal,
1, Battery Path,
Central,
Hong Kong.

From: Tania Leong,
c/o Becky Kwan, Chairman,
CPA Flight Attendants Union,
6/F Airline Store Building,
2 Chun Ming Road,
Chek Lap Kok,
Hong Kong.
Telephone number: 2383-8988-2382-8988



22nd January 2003.

Dear Sir,

This letter is in regard to case LBTC No. 1327/2002, presided by Mr. Josiah Lam of Labour Tribunal, in Pioneer Centre. In particular, I wish to relate to two matters:

1. Complaint against Presiding Officer (PO) Josiah Lam.
2. Request for a change of Officer to preside my case in the Labour Tribunal.
3. Request for my case to be set aside for hearing as soon as possible.

I believe PO Lam has stepped out of his boundaries and has been unreasonable for the sequence of events and reasons stated below.

Background

- A) I filed a Breach of Contract and Union Discrimination claim against Cathay Pacific Airways Ltd. (CPA) in Labour Tribunal in November 2001. I filed a Disability Discrimination claim against same company at the Equal Opportunities Commission (EOC) in August 2001. Whilst the EOC case was being investigated, Cathay Pacific was of the opinion that the 2 cases could not run concurrently, stating 32Q of the Employment Ordinance. Although I argued that the Disability Discrimination at the EOC is a separate claim from the Union Discrimination and Breach of Contract claim in Labour Tribunal, PO Lam agreed with Defendant's opinion and so at the for-mention hearing on 7th March 2002, ordered an adjournment of my Labour Tribunal case to 22nd May 2002. The reason PO Lam gave was that he must wait till my EOC case was completed before listening to my claims in the Labour Tribunal. As the EOC investigation was not completed by late May and due to my studies, I requested for further adjournment to December 2nd 2002.

Tania

4/7

- B) On 21/5/2002, the EOC wrote to me that they decided to stop investigation of my Disability Discrimination claim. However the Flight Attendants Union (FAU, my representative) had been appealing against this decision. When I appeared in Labour Tribunal court on 2nd December 2002, I notified PO Lam of the EOC's response but added that the FAU would appeal or complain to the Chairwoman of the Commission or other authorities regarding the EOC's decision. PO Lam answered that if we were planning to do so, he would have to adjourn my Labour Tribunal case again, stating the same reasons as he did on 7th March 2002.
- C) Complaint: I see no reasonable cause for PO Lam to have done so. The EOC has already stopped investigation of my claim. Nevertheless, I have the right to appeal or complain in relation to that decision, without PO Lam giving me the ultimatum that if I do so, I would be doing so at the cost of adjourning my Labour Tribunal case. Although PO Lam had not asked me to drop the EOC case, his ultimatum in effect left me little choice but to do so if I wished my Labour Tribunal case to progress. I felt pressured and under duress to make such decision. I am a student in London and therefore return to Hong Kong specifically and only for my Labour Tribunal case. This is not only costly in terms of airfare, but also causes me to miss parts of my courses. Therefore, faced with PO Lam's ultimatum, I said that, feeling I was under duress, I would agree not to appeal the EOC's decision. PO Lam raised his voice and told me to mind my language, asked me if I knew what I was saying, and scolded that I was making "a very serious allegation". I answered that I was telling him what I felt, that it was an emotion. Your Honour, do I not have a right to even state my emotion or feeling on the matter, without fear of being yelled at?
- D) Complaint: PO Lam would not take my word for it that I would not appeal my EOC case. He instructed that if I decided to do so, then I must write a letter to the EOC stating so, have a reply from the EOC, and hand such copies of transaction to him as proof. I believe he is already showing bias by instructing me to do so. I am in a court of Law, he is an Officer of the court, and all verbal declarations are recorded. As such, he must first assume that I will uphold my word to him, rather than assume I will not. He is in effect implying that he believes me to be fundamentally untrustworthy.
- E) After a stand down and conference with my FAU chairman, lawyer, and Lee Cheuk Yan of the Confederation of Trade Unions, I decided that under the circumstances, I needed time to confer with more people and if needed, draft a letter to be checked by the lawyer. I wanted to have everything in order and properly done so as to avoid further unnecessary adjournments. Thus, PO Lam adjourned my case to 9th December 2002.
- F) After further consideration and upon advice from lawyer and Confederation of Trade Unions, I decided to reserve my right to appeal or complain on the EOC's rejection as I understood that PO Lam had no basis to adjourn my Labour Tribunal case based on the excuse he had given. (See Attachment C-11, letter handed to Labour Tribunal on 9th December 2002). The EOC has informed us that it seems to have become "normal practice" for POs in

Labour Tribunal cases to give such reasons for adjournment in similar situations, however they do not know of any rules against running two cases concurrently in different courts and it has been done all the time.

- (i) On 9th December 2002, it was PO Andrew Chan in Court No 10 who presided my case. He read the C-11 attachment, heard our argument and appeared to understand our point of view. He then explained that PO Lam's decision to adjourn repeatedly, stating it was "normal practice" (the 2nd time we've heard this phrase being used) for the Labour Tribunal to wait for the EOC to decide whether it would take up my claim. If the EOC did, my case would be heard in High Court, whereby all my claims, both in the Labour Tribunal and EOC, would be heard in one court. He said it would "be better" that way. When I asked "better" for whom, me or Labour Tribunal, PO Chan did not reply. I also emphasized to PO Chan that "normal practice" is not the same as legal procedure.
- H) PO Chan then said he needed to discuss things with PO Lam and left the courtroom for a few minutes. When he returned, he said that he was putting us back to the principal PO, that is PO Lam, to make a decision. He said that if PO Lam then gave a hearing date, it would be him, PO Chan, who would try and judge the case - a statement I welcomed. I did, however, find this arrangement strange and asked PO Chan why he, a Presiding Officer himself, could not make such a decision himself. He answered that it was a complex case and that it would be better if the principal PO handled it. I believe PO Chan to be a just and fair officer of the court and further believe that he realised the argument presented by the FAU and myself was correct and justified, and that he himself could not see just cause to adjourn my case according to PO Lam's ultimatums.
- I) Back in PO Lam's courtroom, PO Lam said that PO Chan was "uncomfortable" in handling our case because of the things I said in his court. Unsurprisingly and predictably, PO Lam adjourned my case *sine die*.
- J) Request to change PO Lam for another PO: I have enquired different legal bodies and am advised that PO Lam has no justifiable legal basis upon which to adjourn my case the many times he has, given the reasons he has stated. This leads me to question his purpose and judgement.
- K) PO Lam, being an officer of the court and leader in that courtroom, should not have displayed temper or bias. I now feel unable to express any emotion or present properly my side of the case as I see it, for fear of retribution from him. Since he already seems to assume I am a liar or a potential liar, I have lost confidence that I will receive a fair trial from him.

Not being a lawyer myself Being a layman, I am confused by the opposing opinions from different legal bodies and would also ask you to let me know if PO Lam has in fact practiced proper decorum to:

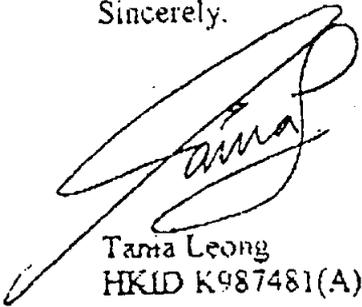
- 1) adjourn my case for the reasons he has stated, and
- 2) instruct a written undertaking as in the circumstances stated above.

Tania
3/7

I hope Your Honour will investigate this matter and also consider my request for a change of PO and also set aside my case for trial hearing as soon as possible since the case has now been adjourned to an indefinite date.

Thank you for your kind attention.

Sincerely,



Tania Leong
HKID K987481(A)

Tania
4/7

總裁判官內庭用箋



CHIEF MAGISTRATE'S CHAMBERS
KOWLOON CITY LAW COURTS BUILDING
147M ARGYLE STREET
KOWLOON CITY
KOWLOON

5 March 2003

Our Ref.: SC/550/6/89
Tel. No. : 2767 3241
Fax No. 2768 4650

Miss Tania Leong
c/o Becky Kwan, Chairman
CPA Flight Attendants Union
6/F Airline Store Bldg
2 Chun Ming Road
Chek Lap Kok
Hong Kong



Dear Miss Leong,

LBTC1327/2002

Thank you for your letter dated 22 January. The Chief Justice has directed me to investigate and reply.

2. According to our record, your claim (LBTC 1327/2002) was adjourned indefinitely on 9 December 2002. You were to decide whether to take action against the decision of the Equal Opportunities Commission (EOC). The latter had earlier on discontinued their investigation on your complaint arising out of the same factual background as the claim in question. You felt aggrieved by the decision of Mr. Josiah Lam, the Acting Principal Presiding Officer.

3. I have to stress at the outset that this is a judicial decision which should be challenged by way of an appeal according to section 32 of the Labour Tribunal Ordinance. It is inappropriate for anyone to interfere with the decision.

Duplicity of actions

4. Having considered the relevant file, I do like to clarify several points as follows:

P.T.O./...

Tania
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- a) The Labour Tribunal has inherent power to control its processes and prevent abuse. It is in the public interest to avoid any possibility of two courts reaching inconsistent decisions on the same issue. Thus, two actions based upon the same cause of action should never be allowed.
- b) Equally important is that individuals should be protected from the agony of repetitive litigation by what is really the same claim. It is incumbent upon a Court or a Tribunal to consolidate actions involving common question of law or fact or arising out of the same transaction. This procedure is clearly set out in Order 4 of the Rules of High Court and the Rules of the District Court.
- c) Your claim in the Labour Tribunal alleged, among other things, that the dismissal was without any valid reason. You had also complained to the EOC that you were discriminated by the Defendant Company because of your disability, i.e. low back pain. You also argued that the dismissal was related to your involvement in union activities
- d) The Defendant Company maintained that you were incapable of performing your duties and therefore dismissed.
- e) The reason for your dismissal is the common and fundamental issue in both actions. Before setting the claim down for trial in the Labour Tribunal, it is necessary to ensure that there would not be concurrent actions. Had there been an action under CAP 487 in the District Court, it would be appropriate for the claim in the Labour Tribunal to be heard in the same court.
- f) This was done to avoid duplicity of actions. It was never meant to be putting pressure on you in relation to any tentative actions under the Disability Discrimination Ordinance, CAP 487.
- g) There was no evidence of bias against you either.

The hearing on 2 December 2002 and 9 December 2002

5. During the hearing on 2 December 2002, you indicated that you would not pursue the matter with the EOC. Mr. Lam directed that there should be some written confirmation before your claim would be set down for trial.

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6. Mr. Lam knew that you were studying in UK. He thus set the case down in a week's time for mention in a trial court to expedite the process.

7. On 9 December 2002, you, however, indicated that you would appeal against the decision of the EOC. In the circumstances, it is probable that there would be concurrent actions. The Presiding Officer, Mr. Andrew Chan, then transferred your case back to Mr. Lam for disposal. Based on the reasons above, Mr. Lam decided to adjourn the case indefinitely. There was nothing unusual about this arrangement.

Conclusion

8. I venture to set out the principles and background underlying the decisions in your case. It is understandable that these principles may not be obvious to laymen. There may easily be misunderstanding too.

9. Apart from balancing the interests of all parties concerned, we have to ensure that there is no abuse of process. There is no reason for us to be obstructive. We respect your choice to redress your grievance through legitimate channels. In fact, you can start your action in the District Court without any endorsement from the EOC.

10. In passing, I would like to draw your attention to the time limits in relation to actions under sections 72 & 82 of the Disability Discrimination Ordinance, CAP 487; and that for judicial review under Order 53 of the Rules of High Court. You should consult your legal advisers promptly.

Yours faithfully,



(Patrick Li)
Chief Magistrate

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