

## Ming Pao 12Nov09

**Headline – Cathay defamed 17 pilots - compensate \$56 million** – Open letter to public laid the problem. Cathay Pacific Chief Operating officer in 2001 sacked 49 pilots and openly criticized them as unprofessional, held Hong Kong to ransom and Cathay has lost faith in them. This has been ruled as defaming the pilots and required to compensate the 17 pilots over HK\$56 million.

49 Cathay pilots who were involved in the industrial action in 2001 were suddenly sacked by the company. Former Chief Operating Officer Mr. Philip Chen and current CEO Mr. Tony Tyler in reply to the public after the sacking criticized the pilots as unprofessional, disregard the interests of the company and Hong Kong. These have been ruled by the Court as Defamation. Each of these 17 pilots is awarded \$3.3m involving a total sum in excess of \$56m and laid down in the history of Hong Kong, the highest payout for defamation.

**Record as the highest compensation in Hong Kong for defamation** – Cathay expressed disappointment in the judgment. They are currently discussing with their legal advisors on the contents of the ruling to decide if further action will be taken.

Amongst the 49 sacked pilots, some had reached settlement with Cathay Pacific hence only 18 plaintiffs remained in this lawsuit including Mr. Gregory England who died before the trial begun thus his family would not be awarded compensation on defamation.

According to Legco member Ms Priscilla Leung, the barrister representing the pilots, this case had gone on for years and was extremely stressful to all plaintiffs. During this period, one pilot has committed suicide and two pilots divorced. Yesterday, she was at the Mandarin Hotel celebrating with the plaintiffs. She also says, after she takes over the case in 2005, she had witnessed these pilots dropped from their highest status to working for the lowest low cost carriers and at a much reduced pay. Some were on a temporary three months contract while others eventually quit their career. She described these pilots that because of their assets and income, unable to obtain Legal Assistance. Thus, when the Court ordered Cathay Pacific to pay for all the legal fees, the plaintiffs were surprised and appreciated.

**No discrimination record, Cathay's accusations could not be established** - Judge Reyes pointed out in his ruling that the open letter issued by Chief Operating Officer Mr. Philip Chen and Corporate Director (current CEO) Mr. Tony Tyler criticizing the pilots had threatened the company with industrial action and delaying the flights are unprofessional. They even accused the pilots had used the passengers as hostages. Hence, after going through their personal record, they have decided to sack these pilots. All the wordings they have applied in this open letter has constructed to defamation.

Cathay Pacific did not apply the strategy of "fair comment" to defend them which would be more likely to succeed but on the contrary they adopted the theory on "justification" which requires supporting evidence. Judge Reyes pointed out that industrial action is for the asking of better working environment and is not equivalent to not looking after the interests of the company. Cathay Pacific was unable to present evidence in court on any poor record of the pilots thus unable to support the accusations on their "unprofessionalism".

**Sacking is irresponsible. Open letter has no privilege** - Another defence applied by Cathay Pacific was "qualified privilege". Judge Reyes agreed that Cathay Pacific has the obligation to explain to the public on the sacking of these pilots but open letter is not under the protection of "special privilege". As Cathay Pacific has sacked the pilots prior to implementing the Disciplinary Procedure, without giving the pilots the opportunity for explanation and is lack of supporting evidence. These are regarded as irresponsible behavior hence cannot enjoy the "qualified privilege".

The judge reckoned that the pilots are professionals and their field in Aviation is very limited. The open criticisms made by Cathay Pacific had greatly damaged the image and development of these pilots and increased their difficulties in getting another job. In reference to a previous case on defamation of a professional, the Judge awarded each plaintiff the compensation of \$3m and because Cathay Pacific did not apologize for the defamation thus the penalty is enhanced \$300,000, making a total compensation payout on defamation per person as \$3.3million.

**Blocking the involvement in industrial action, Cathay Pacific was seen to have contempt on Union** – Judge Reyes pointed out the plaintiffs, in accordance to Employment Ordinance 21C and 32P, were sacked because of their involvement in union activities would be compensated up to the maximum of \$150,000 and because Cathay Pacific has terminated their contracts without following the proper Disciplinary Procedure, one month pay shall be compensated. Also, it is an offence under the Labour Law for contempt on the union. If Cathay Pacific has violated the aforementioned they might face criminal charges for it.

According to “Employment Ordinance 21B 1b”, all union members or staff could enjoy the right and time to attend union activities. If any employer attempted to block them or threatened them on their privilege, when being determined, they might face a fine of up to \$100,000.

The Judge also ruled that the real reason for sacking these 49 pilots is not because of the individual behavior or conduct but because of their involvement in union activities which is considered as “unfair”. According to the statements given in Court by Cathay Pacific senior officials, because they were unable to make the union cancel their industrial action thus they applied their iron fist by sacking 49 most active union members.

The Judge also commented that the witness from Cathay Pacific has admitted that the sacking was the resolution to industrial action. Even the former Chief Operating Officer Mr. Philip Chen, under repeated questioning in Court by the barrister and the Judge, has subsequently admitted that the sacking was partially due to union activities.

**If the speech made is unsupportive, it might be construed as defamation** - According to the legal advisors, the key element in the determination of “defamation” is in the speech the person made whether it has supporting evidence or been verified. Normally, when a professional like a pilot is accused of unprofessional, evidence such as misconduct, drunk flying, nodding at work, missing flights etc. has to be proven. If the pilots are adopting industrial action for the purpose of getting better benefit, it is only being regarded as a way of expression and cannot be regarded as unprofessional.

Defamation could be classified as “permanent or general”. “Permanent defamation” is construed when someone is being criticized in writing or in a recording format. “General defamation” is when someone expressed criticisms on another by word of mouth. Comparing these two categories, permanent defamation could result in more serious damage. As to compensation, if someone could not get a job and resulted in financial loss, the Court could order the defendant to compensate the damages incurred. The plaintiff could also claim for damage in his reputation.