

Sacked pilots win battle with Cathay

Court awards HK\$3.3m each for defamation

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Eighteen of the "49ers" - the pilots sacked en masse by Cathay Pacific Airways during an industrial dispute in 2001 - have won compensation and damages expected to total more than HK\$61 million for unfair dismissal and defamation.

A Court of First Instance judge yesterday handed the pilots a victory in their long-running legal battle, with individual awards of HK\$3.3 million for defamation together with a month's pay and HK\$150,000 for the sackings.

Mr Justice Anselmo Reyes ruled the airline had contravened the Employment Ordinance by dismissing the pilots without a valid reason, adding that they had been sacked primarily because of union activities. He also held that remarks by former director and chief operating officer Philip Chen Nan-lok and chief executive Tony Tyler after the sackings were defamatory.

The defamation awards were thought to be among the highest in Hong Kong's legal history.

The unfair dismissal award did not apply to one of the pilots, George Crofts, who had already won his claim in an employment tribunal in London, while another pilot, Gregory England, who died in January 2002, was excluded from the defamation award. His dependents will receive the HK\$150,000 and month's pay.

The others are John Wahram, Kenneth Carver, John Dickie, Michael Fitz-Costa, Douglas Gage, Quentin Heron, Brian Keene, Pierre Morissette, Damon Neich-Buckley, Matthew Rogers, Michael Shaw, Christopher Sweeney, Hendrik Van Keulen, Brett Wilson, Campbell Blakeney-Williams and Craig Young.

As the victorious pilots celebrated at a party last night, the airline was mulling over what to do next.

"We are very pleased and happy about the judgment," Warham, a former president of the Hong Kong Aircrew Officers Association, said during the celebration.

The Cathay Pilots Union, formed by the 49ers after the dismissals, said on its website: "Thank you to all our members, supporters and benefactors for helping us achieve a landmark victory for labour in Hong Kong!"

A counter recording "3047 days since the 49ers were fired to achieve justice!" had stopped.

Cathay Pacific said it was "disappointed" with some aspects of the judgment. "We are now carefully studying the 70-page High Court judgment with our legal counsel before deciding on any further steps we may take," a spokesman said.

A total of 51 pilots were dismissed by the airline during an industrial dispute over pay and rosters in 2001, but they became known collectively as the 49ers because 49 were sacked on one day. The others have already accepted settlement offers from the airline, believed to range from HK\$300,000 to HK\$700,000.

As well as the damages, the airline will have to pay the pilots millions of dollars in legal costs.

In his judgment, Reyes said Cathay had failed to follow disciplinary procedures required by the employment contracts when the underlying reason for the dismissals amounted to "gross misconduct" - which he found was the basis for the sackings, although the airline denied it.

He said the pilots were deprived of their right to answer the allegations and to appeal against the decision through the prescribed disciplinary procedures.

He also found there was no evidence to show they had actually participated in those union activities.

The defamation awards referred to remarks by Chen that the pilots had shown a "total lack of professionalism" and had disrupted the airline's operations and the reputation of Hong Kong, and an accusation by Tyler that they had held Hong Kong to ransom and failed to act in the company's interests.

Reyes said these were serious allegations about the professionalism, character and employment of the pilots that would have "serious repercussions" on their careers.

The 49ers' court battle started in 2001 when the first 23 sacked pilots filed claims in the Court of First Instance, followed by more claims in 2002, 2006 and 2007. Some settled with the airline out of court.

In the long-running dispute with the airline, the union had introduced various industrial actions since 1999 including a "contract compliance" campaign, which the pilots described as the "withdrawal of enthusiasm".

Pilots were encouraged not to be contactable by the airline on their days off for calls asking them to come to work.

Another scheme called "maximum safety strategy" - a form of strict "work-to-rule" that slowed down the daily operations - was launched on July 3, 2001. According to the pilots, the scheme was a "limited industrial action" to put pressure on the management to continue talks with the union.

The airline management then conducted an internal review and decided to dismiss the 49ers. The pilots were sacked between July 9 and 11 and paid three months' wages. The airline said they had been sacked not for misconduct but because of the disruption their conduct had caused.

The Cathay Pacific Flight Attendants' Union, which recently lost its own court battle with the airline over allowances, said the judgment sent a message to all employers that they could not unfairly dismiss employees without valid reasons or because they participated in union activities.