

Employment, Privacy & Discrimination

Whether All Employment-related Claims Must Be Lodged with the Labour Tribunal?

Introduction

The Hong Kong Labour Tribunal (“LT”) is established for the purpose of assisting employers and employees to resolve their disputes (e.g. unpaid wages and other statutory payments) quickly and cost-effectively without the need to go through the formal legal procedures of the court.

Exclusive jurisdiction of the Labour Tribunal

The LT has exclusive jurisdiction to determine claims arising from breach of the terms of the employment contract and non-compliance of the provisions of the Employment Ordinance. However, the LT does not have jurisdiction to deal with claims which are founded in “tort” (a civil wrong and/or breach of a duty arising from a personal relationship or contract).

Matters which are beyond the jurisdiction of the Labour Tribunal

A mixed claim which is based on contract as well as tort is excluded from the jurisdiction of the LT. This is illustrated by the recent decision of the Court of First Instance in *Uferahal Limited and Others v Hansen Larry Douglas* HCA 1707/2014 (“**Uferahal Case**”).

Legal proceedings in relation to the various anti-discrimination ordinances are also beyond the jurisdiction of the LT. Such actions shall be commenced in the District Court.

In order to avoid unnecessary delay and legal costs, a claimant should choose the right “venue” for lodging its claim.

Facts of the Case

The brief facts of the Uferahal Case are as follows:

1. The Plaintiffs are the companies within the Hasselblad Group which carries on the business of manufacturing and distributing photographic equipment.
2. The Defendant was the ex-CEO of the Hasselblad Group and had entered into an employment contract with the 1st and 2nd Plaintiffs.

3. The Defendant was summarily dismissed by the 1st Plaintiff. Thereafter, he instituted a claim against the Plaintiffs for breach of the employment contract at the Labour Tribunal and claimed a total sum of about HK \$12.6 million.
4. Subsequently, the Plaintiffs commenced legal proceedings against the Defendant for damages for (i) breach of the terms of the employment contract, (ii) breach of fiduciary duties, (iii) negligence; and (iv) conversion in using and refusing to return confidential documents to the Plaintiffs (“**High Court Action**”).
5. The Plaintiffs also applied for an injunction against the Defendant to restrain the Defendant from using the confidential documents.
6. The Defendant applied to stay the High Court Action. The Defendant did not want to submit to the jurisdiction of the High Court and he also alleged that the Plaintiff tried to delay and frustrate the proceedings in the LT commenced by him.
7. The Plaintiff succeeded in opposing the Defendant’s application to stay the High Court Action as the Plaintiffs’ claims in the High Court Action are beyond the jurisdiction of the LT.

Relevant Provisions in the Labour Tribunal Ordinance

Section 7(1) and (2) of the Labour Tribunal Ordinance (“**the LTO**”) gives the LT exclusive jurisdiction to determine the claims specified in the Schedule of the LTO which include:

“(1) *A claim for a sum of money, whether liquidated or unliquidated, which arises from:*

(a) *the breach of a term, of a contract of employment, whether for performance in Hong Kong.....;*

(b) *the failure of a person to comply with the provisions of the Employment Ordinance.....*

(3) *Notwithstanding paragraphs 1 and 2, the LT shall not have jurisdiction to hear and determine a claim for a sum of money (whether liquidated or unliquidated), or otherwise in respect of a cause of action, founded in tort whether arising from a breach of contract or a breach of a duty imposed by a rule of common law or by any enactment.”*

Reasons for the Court’s decision

The Defendant’s application for a stay of the High Court Action was refused for the following major reasons:

1. Most of the Plaintiffs' claims were mixed claims based on breach of contract of employment and tort. As such, the High Court Action fell outside the jurisdiction of the LT.
2. Some of the relief sought by the Plaintiffs, (e.g. injunction and delivery of the confidential documents) were not within the power of the LT.

Case Management

In relation to case management and procedures, the Court commented that the parties may consider transferring the Defendant's claim in the LT to the High Court and seek directions for consolidation of the two sets of legal proceedings.

Conclusion

Most employers and employees will want to resolve their disputes in an amicable way through the Labour Tribunal without resort to the court. However, the Labour Tribunal cannot deal with all kinds of employment disputes. If the dispute involves very complicated facts and law, either party may apply to transfer the case from the Labour Tribunal to the High Court. Moreover, if the dispute is based on breach of the employment contract as well as tort or the relief sought is not within the power of the Labour Tribunal, it is inevitable that the matter has to be determined by the court. In view of the above, employers and employees shall consider the nature of their claim carefully so that the dispute can be resolved by the appropriate authority.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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