

Corporate Commercial Client Alert

Employment & Pensions

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Employment contract: decision on school vs teacher dispute sheds light on significance of proper drafting

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Employment contracts almost invariably contain a clause specifying the notice period required for the parties to unilaterally terminate the employment relationship. However, what is unclear is after the employee has signed the employment contract, if he/she decides to back out before he/she starts work, would the employer be able to rely on the notice provision to demand payment in lieu? The recent case of *Law Ting Pong Secondary School v Chen Wai Wah [2019] HKCFI 2236* shows how the court, through contractual interpretation, rejected an employer's contention that it was entitled to such payment.

Background

The appellant (**Chen**) is a teacher who had entered into an employment contract (**Employment Contract**) with the respondent School (**School**). The Employment Contract was based on three documents which the School provided to Chen on 17 July 2017:

- (1) The Offer of Appointment (**Offer of Appointment**);
- (2) The Conditions of Service (**Conditions of Service**); and
- (3) The Letter of Acceptance (**Letter of Acceptance**).

According to the Conditions of Service, Chen's period of employment with the School was stated to be from 1st September 2017 to 31st August 2018 and that he could terminate his employment by providing the School with three months' notice; making a payment in lieu of such notice; or providing a combination of the two. The Letter of Acceptance provides for acceptance of the appointment in accordance with the Conditions of Service and, once accepted, the new contract will come to immediate effect and Chen would need to give three months' notice to terminate his employment with the school (**Immediate Effect Statement**).

Chen signed both the Conditions of Service and the Letter of Acceptance on the same day.

On 22 August 2017, Chen decided not to commence the employment and failed to make any payment in lieu of notice to the School. The School therefore brought a claim for breach of the Employment Contract in the Labour Tribunal and demanded payment in lieu of notice. The Presiding Officer took the view that the Employment Contract was constituted by all provisions in the three documents (including the Immediate Effect Statement), and ruled in favour of the School. Chen

then appealed to the Court of First Instance of the High Court (CFI).

Decision

Citing a recent English Court of Appeal case of *JLT Specialty Limited v James Craven* [2018] EWCA Civ 2487, the CFI opined that a valid offer has two essential features: first, there must be “an expression of willingness to contract by the offeror”, second, “such a willingness to contract must be subject to specified terms”.

The CFI held that the School’s willingness to contract with Chen was clearly stated in the Offer of Appointment, and the terms of the offer were specified in the Offer of Appointment subject to the Conditions of Service, but not the Letter of Acceptance. To accept the offer, Chen would have to read the Offer of Appointment in conjunction with the Conditions of Service. Since the Conditions of Service did not make any reference to the Letter of Acceptance, the Immediate Effect Statement could not have formed part of the terms of the Employment Contract because it was not included in the Offer of Appointment at the outset.

Accordingly, the CFI allowed the appeal on the basis that Chen’s employment would not commence until 1 September 2017, and that he was not liable to make any payment in lieu of notice by backing out before that day.

Comment

While contractual interpretation cases are inherently fact-sensitive, this case provides a clear illustration of how, despite having the employee’s signature on every document, some of the provisions contained therein might still not form part of the contract terms. To ensure the effectiveness of all essential terms and to avoid disputes, employers are advised to review their contractual documents and carry out re-drafting work (where necessary).

Want to know more?

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