

## Where to bring a claim in a dispute between employer and employee in Hong Kong - the Labour Tribunal or the Court?

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The Hong Kong Labour Tribunal offers a comparatively quick, informal and inexpensive way of settling monetary disputes between employees and employers as compared to the Courts of Hong Kong. This makes it an attractive venue, particularly to employees with limited resources.

### Why does it matter?

While the Tribunal Officers may help the claimant to draft the claim form, parties to claims brought before the Labour Tribunal are not allowed to be represented by lawyers and will not receive any legal advice from the Labour Tribunal. Employers may, in some circumstances, like to engage lawyers to conduct its case in a Court.

### Venue depends on nature of the claim

The Labour Tribunal Ordinance (Chapter 25 of the Laws of Hong Kong) confers the Labour Tribunal exclusive jurisdiction to hear monetary claims arising from a breach of any express or implied term of an employment contract. The exception is a claim founded on tort and such exception has been upheld by the Courts of Hong Kong. For example, in the

case of *Lee Yiu Hong v Well-In Hotel Supplies Company Limited [2020] HKCFI 2760*, the Court of First Instance held that a claim arising from causes of action in tort or in both contract and tort is beyond the exclusive jurisdiction of the Labour Tribunal.

### Nature of the claim depends on the substance

In the recent case of *Xinhua News Media Ltd v Chan Chun Wo [2021] HKDC 903*, the District Court struck out a mixed claim for overpaid wages and expenses founded on both contract and tort on the ground that it should have been initiated at the Labour Tribunal. While the District Court applied the general principle in the case of *Lee Yiu Hong v Well-In Hotel Supplies Company Limited [2020] HKCFI 2760* (as summarised above), it relied on the case of *Ho Chee Sing James and Secretary for Justice [2015] 4 HKLRD*

311 and commented that the test to determine the appropriate jurisdiction and venue is to look at the substance and not the labels of the claim.

## Background

In *Xinhua News Media Ltd v Chan Chun Wo* [2021] HKDC 903, the Defendants, being former directors of the Plaintiffs, had previously initiated separate proceedings against the Plaintiffs at the Labour Tribunal for arrear of wages and other payments. Subsequently, the Plaintiffs sued the Defendants in the District Court for overpaid salaries and medical expenses. The Plaintiffs' basis was originally, breach of employment contracts and/or fiduciary duties. The basis was afterwards amended to misappropriation of the Plaintiffs' assets and/or breach of fiduciary duties, and thus the Plaintiffs effectively removed references to the employment contracts.

The Defendants were of the view that the dispute should be tried at the Labour Tribunal and applied to the District Court for (i) a declaration that the District Court had no jurisdiction to hear the case, (ii) permanent stay of the proceedings, or (iii) the proceedings to be struck out.

The Plaintiffs argued that the proceedings should have been initiated in the District Court for the following reasons: (1) the claim involved a breach of fiduciary duties which, considering the Defendants' roles as executive director and company secretary, were different from those of an ordinary employee; and (2) the claim was founded not only on breach of employment contract but also on tort, bringing it outside of the Labour Tribunal's exclusive jurisdiction.

## The District Court's judgment

The District Court struck out the Plaintiffs' claim on the basis that the claim was within the exclusive jurisdiction of the Labour Tribunal and it was an abuse of process for the Plaintiffs to initiate the claim in the District Court. In giving its judgment, the District Court commented that, while a claim founded on tort would be beyond the jurisdiction of the Labour Tribunal, the test is to look at the substance, as opposed to the label, of the claim disregarding any "window-dressing" applied to the claim.

The District Court illustrated this by distinguishing (i) cases involving breaches of fiduciary duties arising out of employment contracts, which are within the exclusive jurisdiction of the Labour Tribunal, from (ii) cases founded on both contract and tort, such as one where a breach of confidentiality arises from an incident where an employee exploits his position to gain by using confidential information against the interest of his employer, which are beyond the Labour Tribunal's jurisdiction.

It was held that the substance of the claim was no more than a claim for recovery of alleged overpayments of wages and reimbursements in breach of expressed terms in the Defendants' employment contracts and the policy on reimbursement of expenses stated in the employee handbook. Therefore, it fell within the exclusive jurisdiction of the Labour Tribunal. The District Court further held that there was no practical reason for the Plaintiffs to bring the proceedings in the District Court, considering the claim could simply be determined on facts. Issues such as whether the alleged overpayments of wages and reimbursements were due to breaches of fiduciary duties, bad

faith, gross misconduct or honest mistakes would neither affect the finding nor the quantum.

## Takeaway

The Labour Tribunal does not have exclusive jurisdiction of all employment-related claims. It is important to assess the substance of a dispute between an employee and an employer before determining where to

commence proceedings. If the claim is in substance based on a breach of fiduciary duty arising out of an employment contract, the correct venue is the Labour Tribunal. Initiating proceedings at a wrong venue is an abuse of process and could result in the claim being struck out, wasting the parties' money and time.

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