



PERSONNEL MANAGEMENT CLUB

PM VOICE

MARCH 2003

更改僱傭條款 經驗交流講座

本研究社在2002年9月舉行了一個由勞工處勞資協商促進組的主管葉以暢先生 (Mr. Ernest Ip) 主持的交流講座，旨在與會員分享一些有關更改僱傭條款的案例。



現將其中兩個案例紀錄如下。

案例一：削減津貼及早工獎 [高等法院原訟法庭勞資審裁處上訴案件2000年第32號]

案情：

林先生等8人受聘於被告公司，除趙先生外，其他7人都已經在公司服務超過兩年。他們在公司的薪金包括底薪、津貼、早工獎和勤工獎等。

公司在1999年5月25日發出通告：「由於本公司的生意由年初至今訂單不足，而在經營成本尚高的情況下，本公司決定將早工獎和津貼10%取消，因這兩項是附加項目，此項決定將在1999年6月1日開始實行。」通告末端寫明：「閱後簽署作實」。

林先生等8人在考慮過通告內容後，決定在6月1日起停工，理由是公司單方面更改他們的僱傭條件，構成變相解僱。各人在6月1日後便再沒有上班，並向公司追討有薪年假、年終雙薪、遣散費或長期服務金或終止僱傭金。

勞資審裁處的裁決：

公司在5月25日所發的通告，是未經申索人的同意下，單方面把津貼和早工獎刪除，構成違反僱傭合約主要條款的行為。當公司秘書陳小姐向各人發出通告的時候，她曾對各人說：「如果他們不在通告上簽名，則後果自負。」

申索人可以引用《僱傭條例》第10(c)條與僱主解約。僱主更需要向申索人支付年終雙薪、遣散費和有薪年假。

上訴理據：

5月25日的通知只是一份邀約文件，因為通告中註明「閱後簽署作實」等字眼。個別員工在閱讀過通告的內容後有權決定是否接受公司提出的修改條件。既然只是一份邀約文件，公司方面並不能視為是單方面更改僱傭條件，故公司的行為在法律上並不能構成推定解僱的事實。

高等法院的裁決：

高等法院原訟法庭法官撤銷公司的上訴。由於趙先生服務不足24個月，他並未能符合領取遣散費的資格，故此應從他的應得金額中扣除遣散費。林先生等其餘7人的應得金額維持不變。法官認同審裁官對5月25日通告的看法，認為通告內容清楚顯示公司早在5月25日或之前已「決定」減去林先生等人的早工獎及10%津貼，並決定在6月1日開始實行。

高等法院的裁決理據：

如果通告只是一份邀約文件，僱員有選擇的話，公司方面大可在通告中提供同意或不同意的欄並要求員工任擇其一。公司的秘書亦曾說過，如果僱員選擇不簽署該通告，後果便須自負。通告所用的字眼及公司秘書所說後果自負的言詞顯示通告不只是一份邀約文件。

案例二：調職安排 [勞資審裁處上訴2000年第22號]

案情：

- 僱員李先生為一麵包師傅
- 僱主經營一間24小時運作的工廠

- 員工分為早、中、夜三班工作
- 李先生為中班師傅
- 僱主多次要求李先生轉換其他工作班次，卻遭李先生拒絕
- 李先生於1999年10月8日被僱主以「蓄意不服從合法合理的命令」作即時解僱
 - ▲ 李先生曾拒絕下列四次調動：
 - ▲ 因患病而拒絕由中班調往夜班（9月）
 - ▲ 因降級而拒絕調往中班另一生產線（10月7日）
 - ▲ 因減薪而拒絕調往早班（10月8日）
 - ▲ 因病拒絕調往夜班（10月8日）

勞資審裁處的裁決：

- 由於李先生身有病患，並不適合夜班工作，所以他拒絕僱主的調職安排，並不能視作「蓄意不服從合法合理的命令」
- 其中兩次調職安排更牽涉到降職及減薪，審裁官懷疑此舉有報復李先生的成份，而並非基於運作需要
- 因此僱主的即時解僱並不恰當，須依《僱傭條例》支付李先生應有的補償

上訴理據：

僱主堅持李先生多次拒絕調職，屬「故意不服從合法合理的命令」，應被即時解僱。

高等法院的裁決：

勞資審裁處的裁決正常無誤，拒絕僱主上訴。

須着意事項：

- 僱員入職時，僱主應先交待可能出現的人手調配安排，並於僱傭合約內清楚列明
- 在調職前，勞資雙方須坦誠溝通
- 調職過程不可終止或減少《僱傭條例》及僱傭合約所賦予僱員的權利
- 調職後的職位須與僱員的基本能力和技能吻合。若有差異，僱主應負責提供適當的培訓和輔導
- 調配是出於企業的運作需要，並非針對個別員工的處罰

方法

考慮指引：

- 兼顧有關法規，如僱傭保障、普通法、僱傭條例10C條
- 與僱員開心見誠地協商，來達到雙贏的解決方法
- 吸取同業在類似情況下的處事經驗
- 到勞工關係組和勞資協商促進組尋求建議

結論：

嘗試在合法的、合理的和感性的基礎上解決人力資源的問題。

Written by Mr. K C Wong, Member, PMC

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The 34th Annual General Meeting and Fellowship Dinner



The 34th Annual General Meeting and Fellowship Dinner was held on 16 January 2003 evening at the World Trade Centre in Causeway Bay.

The Chairman of the Club, Dr. Felix Yip, presented his first Chairman's Report on the activities organized by the Club for the year 2002 since he took up the chairmanship of the Club in January 2002. The Accounts of the Club for the year 2002 were also presented and showed an operating surplus of HK\$3,044 for this year. Following the adoption of the Chairman's Report and the Accounts of the Club, a new Executive Committee of the Club for 2003



comprising the following members was elected:

Chairman:	Dr. Felix Yip (San Miguel Brewery Hong Kong Ltd)
Vice-Chairman:	Ms. Freda Cheuk (Estee Lauder (HK) Ltd) Mr. Aaron Chiang (Hutchison Telecommunications (HK) Ltd)
Hon Treasurer:	Mr. Alan Li (The Hong Kong Polytechnic University)
Officers:	Mr. C K Lee (C K Lee & Associates) Mr. Philip Li (Sun Hung Kai Insurance Consultants Ltd) Mr. Alex Wong (Triumph International Overseas Ltd) Ms. Amy Wong (BASF East Asia Regional Headquarters Ltd) Mr. Chris Wu (Li & Fung (Retailing) Ltd)

In addition, the following members were also appointed to join the Committee accordingly:

Ms. Isabella Chan (CMS Cameron McKenna)
Ms. Pauline Chung (Chiaphua Industries Ltd)
Mr. Lincoln Lam (Nanyang Brothers Tobacco Co Ltd)

The Fellowship Dinner began at 8:00 pm. It was attended by many guests, some of whom were panelists of the selection committee for the Club's sponsorship to 3 full-time degree programme students in HRM. The guests were:

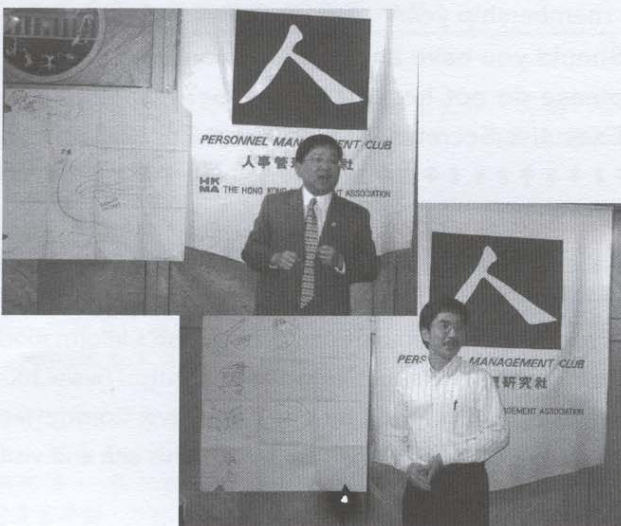
Dr. Randy Chiu, Head & Associate Professor, Dept of Management, Hong Kong Baptist University

Dr. Andy Chan, Assistant Professor, Dept of Management, The Hong Kong Polytechnic University

Professor Wong Chi Sum, Professor, Dept of Management, The Chinese University of Hong Kong

Highlights of the dinner included exciting games and raffle draws with terrific prizes donated by various organizations. If you were not there, the Club sincerely hopes that you will join in and share the joyful moments with your fellow members the next time.

Written by Mr. Aaron Chiang, Vice-Chairman, PMC



Personnel Management Club Scholarship 2002-2003

In October 2002, PM Club invited 5 universities in Hong Kong which run courses on HRM to nominate candidates for the PM Club Scholarship for the year 2002/2003. The 5 universities are Hong Kong Baptist University, The Chinese University of Hong Kong, City University of Hong Kong, Lingnan University, and The Hong Kong Polytechnic University.



The mechanism of the scholarship is that each university can nominate two candidates for the contest, which is made up of written test and presentation. First of all, each candidate is required to submit a paper, not more than 2,000 words in English, on a topic decided by the PM Club. Then, the three candidates whose papers received the highest marks are required to make a presentation in English. The score of the presentation will determine which candidate will be the winner, the first runner-up and the second runner-up respectively. The winner will receive an award of \$4,000, the first runner-up \$2,000 and the second runner-up \$1,000. Nevertheless, all candidates will be awarded free membership of PM Club for one year.

The topic selected for the essay writing in the first round of the contest is:

“At this economic downtime where unemployment rate remains high and the jobs available for the increasing number of fresh graduates are diminishing, what can you as a fresh graduate with no prior working experience do to win a job in this tough situation after graduation? And, assuming “going north”, i.e., seeking job in China, is a viable alternative, how will you prepare yourself to successfully out-compete your counterparts (i.e., fresh graduates from universities in Mainland China) and secure a job in China?”



Eventually, students from the four universities, except Lingnan University as her students were busy preparing for exam at that time, competed for the scholarship and submitted the essay. After evaluation by a group of assessors formed by the PM Club Executive Committee members, Ms. Lai Pui Ying of The Chinese University of Hong Kong, Mr. Choi Siu Kei of Hong Kong Baptist University and Ms. Tiffany Yan Ka Ying of The Hong Kong Polytechnic University were selected for the 2nd round of contest.



The presentation was held on 16 January 2003, before the Annual General Meeting and the Annual Fellowship Dinner started. The three candidates were required to make a presentation of their respective essays, in English, for about 10 minutes to a panel of judges. The panel of judges was formed by the PM Club Executive Committee members and the representatives of the universities. However, the representative from the same university of the candidate going to present was not required to make any assessment of that candidate in order to avoid conflict of interest.

The contest was keen and, finally, Mr. Choi Siu Kei turned out to be the winner, while Ms. Lai Pui Ying was the first runner-up and Ms. Tiffany Yan was the second runner-up. Prizes were then presented to each of them during the Annual Fellowship Dinner held thereafter in the same evening.

Written by Mr. K C Wong, Member, PMC



Additional Benefits to Existing and Prospective Members

- PM Club members can enjoy the following benefits throughout 2003 :
 - Attendees of a seminar to be offered a 30% discount for joining the next one;
 - Members or guests with a full attendance in attending our activities, except for company visits during normal office hours, in a membership year to be offered one free seat in the AGM in the same membership year.
- Should you have any queries about membership, please do not hesitate to contact Ms. Gigi Lau, Executive Secretary of the Club at 2826 0527.

PMC Website

“From now on, members can get the Club’s information from our newly launched website at <http://www.hk-pmc.org/>, developed by our Executive Committee Member, Ms. Amy Wong. Bookmark this site and visit us for the latest news of the Club.”