

Resignation or dismissal? When employees “resign” in the heat of the moment

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The recent case of *Lam Sin Yi Cindy v. Leung King Wai William*¹ is a reminder that when an employer and employee engage in a heat of the moment discussion where tension is high, words uttered by an employee that may be understood by the employer to be a resignation may not be construed as such by the courts. Employers are therefore advised to be mindful as to how to respond to a sudden resignation uttered in the heat of the moment.

Background

- An employee of a law firm (the “**Employee**”) submitted a leave application for the following morning. Although the leave application was approved by the human resources manager (the “**HR manager**”), on the day of her leave, the principal of the firm (the “**Employer**”) questioned her leave via WhatsApp, noting that he was considering whether the Employee was absent from work without cause and, if so, she was required to leave immediately as she was on probation and one week’s notice was required.
- The Employee responded on WhatsApp that she had been prepared to return to work in the afternoon, but it did not matter if she was to return to pack her things, to return her security key card and to take her pay cheque, and could arrange for other members to monitor her packing. Her message was understood by the Employer to be a resignation.
- The Employee returned to the office on the same day and was prevented by the HR manager and receptionist from seeking clarification from the Employer. She was asked to pack her personal belongings, return the keys and to cancel her computer password. The Employee did not return to work thereafter and, subsequently, an amount equivalent to seven days’ payment in lieu of notice was deducted from her wages.
- The Employee made a claim for underpayment at the Minor Employment Claims Adjudication Board (the “**Board**”), which initially dismissed her claim and found that her words and actions constituted a valid resignation.
- The Employee appealed and the court overturned the decision below, finding that the Employee had in fact been dismissed, and ordered the Employer to pay the Employee the underpayment of her wages, which had been wrongfully deducted.

Key points

- The court considered relevant authorities including *Willoughby v. CF Capital PLC*² which held that, while the words in an oral notice of resignation may on the face of it be clear and unambiguous, there are exceptions to this general rule where there are “special circumstances”, such as words or actions expressed in anger, in the heat of the moment or under extreme pressure. Where there is a “special circumstance”, it may be unreasonable for an

employer to assume a resignation has occurred, and to accept it forthwith.

- Further, as in any type of contract, repudiation of contract is fact-sensitive and must be considered in the entire context, including the relationship between the parties, the conduct constituting the repudiatory breach and evidence of unequivocal conduct which demonstrates the intention of the party to treat the contract as irrevocably discharged. There is a need to find clear and unequivocal conduct and words which evince an intention to treat the contract as terminated.
- Applying the principles to this case, the court held that, considering the entire context of the WhatsApp messages exchanged between the Employer and the Employee, noting that words may have been exchanged in the heat of the moment during emotive exchanges or by impulsive responses, the Employee was indignant and felt aggrieved by the fact that her leave was challenged by the Employer and interpreted it to be notice of instant dismissal. Her response that “it would not matter” if she returned to pack her belongings was an impulsive statement expressed in her moment of anger and **did not constitute resignation**. Further, even if the Employee had been mistaken in her belief of dismissal, the Employer failed to correct the Employee’s belief or provide her with any opportunity to clarify her own intentions upon her return to the office that day.
- Accordingly, the court held that the Employee’s words and conduct could not be properly and reasonably construed by the Employer as her resignation, and were ambiguous in all the circumstances. By requiring the Employee to leave, **she was effectively dismissed**.

Key takeaways

- This case serves as a reminder to employers that there are special circumstances which may render an apparent indication of resignation by an employee ineffective. A notice of resignation or dismissal, whether by oral or written notice, must be clear, unequivocal and unambiguous. It may be in a certain form (if required by the employment contract), and such notice should indicate the notice period.
- When an employee purports to resign in the heat of the moment, the employer should take steps to confirm with the employee their intention to do so.
- There is a duty of mutual trust and confidence that exists between an employer and its employees. An employee who purports to resign in the heat of the moment should be given the opportunity to recant, particularly if such resignation arose during an emotional outburst or while the employee was in obvious distress.

1. [2020] HKCFI 2525.↩

2. [2011] IRLR 985.↩

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