



# The Cathay Pilots Union

## *The 49ers' Legal Action*

### Dear Cathay Pilot

In July 2001, Cathay Pacific Airways management fired 51 union pilots. In October 2006 the pilots won a landmark ruling in the UK. The case went to the House of Lords, the highest court in the land. It was ruled that CPA had acted in breach of contract, that the dismissal was unfair and that CPA had failed to give proper reasons for dismissal. The ruling set legal precedent and changed the way that the UK Employment Rights Act is applied to UK based workers employed by companies registered outside of the UK. All VETA employees are now benefitting from the protection that this ruling provides.

This year, 18 of *The 49ers* will test the legality of CPA management's actions in the High Court of Hong Kong. The court case involves 3 causes of action:

- That CPA acted in breach of the Employment Ordinance S21B(2)(b) by firing *The 49ers* because of their taking part in legitimate and protected trade union activities.
- That CPA acted in breach of contract by not following the Discipline and Grievance Procedure.
- That CPA defamed *The 49ers*.

### The Next Hearing

A pre-trial hearing is to be held on 2<sup>nd</sup> March 2009 in the High Court, Queensway. It has been scheduled for the whole day and is open to the public. At this hearing matters relating to the breach of contract issue will be heard by The Hon. Mr. Justice Reyes.

Throughout this dispute CPA has held that, irrespective of the employment protection terms contained in the contract of employment, they had an "unfettered right" to terminate the employment of *The 49ers* - at any time.

That position will be tested at the hearing on 2<sup>nd</sup> March. This case is about **your** contract of employment because you are working under the same contractual terms; it is not just about *The 49ers'* action.

Effectively the question to be resolved is: *"Does your contract of employment offer you any employment protection at all or does your employer have an unfettered right to just terminate your employment on notice at any time without giving reasons?"*



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## Why is this relevant to you?

The CPA vision is to be a “socially responsible company” and CPA holds itself to be a “career airline”. Your Conditions of Service provide for a contractual Discipline and Grievance procedure “where the principles of commonsense and natural justice” are to apply. CPA management's treatment of *The 49ers* and continued defence of their actions against *The 49ers* suggest the opposite.

Your Conditions of Service are clear yet consider these contractual breaches:

- Direct Entry Captains stopping junior officers' promotion
- Failure to pay contractual bypass pay
- Breaches of rostering practices and the AFTLS
- Freighter crewing.

Unfortunately the list is long. The reality is that the security of *your* contract and *your* career are at risk. It appears that Cathay management's argument is that CPA pilots have no better than a 3-month contract irrespective of the various terms that the Conditions of Service provide.

***The 49ers' legal action is about issues fundamental to your own contract of employment - it is not just about The 49ers.***

Increasingly, the media and other organisations are showing interest in *The 49ers'* case. This is not surprising given that the outcome will be relevant to the contracts of employment of not only CPA pilots but also the wider Hong Kong community.

Among the team of barristers who will be advocating on behalf of *The 49ers* is Dr. Hon. Priscilla Leung Mei-fun. As well as holding the position of Associate Professor at the City University of Hong Kong School of Law, Dr. Leung is an elected member of the Legislative Council representing the Geographical Constituency of Kowloon West. She is also a highly respected arbitrator and labour advocate and, earlier this month, was successful in moving a motion in the Legco House Committee to relax the eligibility criteria for legal aid in Hong Kong.

The latest press coverage and information on our other activities can be found on [our website](#). If you would like to support or be a part of this important project please [email CPU Admin](#)

***Contract Security = Fair Treatment for The 49ers***

***The CPU: pilots helping pilots***