

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CRIMINAL CASE NOS. 205 AND 208 OF 2011 (CONS)

HKSAR

v.

Chau Pak-kin (D1)

Before: H H Judge A. Wong

Date: 18 October 2011 at 2.37 pm

Present: Mr Neil Mitchell, Counsel on fiat, for HKSAR
Mr Jim Chun-ki, Jacky, instructed by Messrs Cheung, Chan & Chung,
assigned by the Director of Legal Aid, for the 1st Defendant

Offence: Conspiracy to obtain services by deception (串謀以欺騙手段取得服務)

Reasons for Sentence

1. 1st defendant, you were found guilty after trial of one charge of conspiracy to obtain services by deception.
2. In sentencing, I have taken into account the whole circumstances of the case, including its nature and facts, your background and submission on mitigation.
3. I have already set out the circumstances and facts of the case when I delivered the verdict and do not intend to repeat them here.
4. In gist, you were at the material time employed by Singapore Air Terminal Services Limited as a ground service agent. I found that there was in existence a conspiracy, the objective of which was to dishonestly obtain services from Air Canada for certain passengers by falsely representing that those passengers were the persons named in the boarding passes they presented when in fact they were not, so that the airlines was deceived into authorising their boarding.
5. The basis of your conviction is that you have agreed to be a party to this conspiracy and the conduct you agreed to do was to turn a wilful blind eye in your capacity as a ground service agent and deliberately refraining from performing your duty when you were assigned to perform duties at the boarding gate.
6. At a boarding gate a ground service agent may be assigned to perform duties of checking the travel document and boarding pass of passengers lining up for boarding

or scanning the boarding pass of the passenger which had been so checked and see if there is any message requiring action to be taken in respect of that passenger before permitting him to board.

7. In either position, the main duty of the staff was to prevent unauthorised passengers to board.

8. On the evidence adduced by the prosecution, I am satisfied that there were four incidents in which unauthorised passengers had been permitted boarding by using the identity of others.

9. You were on duty at the boarding gate in two of these incidents. There is no clear evidence to prove definitely what positive steps, if any, you had taken pursuant to the illegal agreement in these incidents. However, on the whole of the evidence, I found the prosecution has proved beyond reasonable doubt that you were a party to the conspiracy and your involvement was instrumental to the successful implementation of the conspiracy.

10. I was told that you are 27 years of age. You received Form 6 education in the Mainland and were at the time of the arrest not in employment. You are single and living with your family. I was also informed that you suffer from septal defect but no treatment and medication is needed. You are a first time offender.

11. In mitigation, your counsel submitted that you had not played any active role in the illegal scheme and there is no evidence as to any actual act you had done in allowing the unauthorised boarding. It was also stressed, and I accept, that there is no evidence that you had received any reward for your involvement.

12. Your counsel also urged upon me to take into account the fact that you had taken the initiative to leave the job, thereby withdrawing from the illegal scheme. He also stressed it was your instruction not to put up any excuse at the trial and what was done was only putting the prosecution to prove the allegations.

13. Your counsel also said it is unlikely that you would commit any offence again.

14. Your mother and brother have written to the court. Both of them said you are a person of good nature and have a positive attitude. Both asked for a lenient sentence.

15. I have also received a letter from you in which you ask for a chance to live a new life early.

16. The airlines has been trying as far as practicable to prevent happenings of this nature. Measures are put in place and staff are engaged to prevent activities of this kind, not only to protect the commercial interests and the name of the airlines, but such actions are also essential for Immigration control, which airlines nowadays often have a role to play. In any case, the object of the illegal scheme you agreed to join undermines the effectiveness of Immigration control measures. Immigration control is not only essential to Hong Kong. It, as an international city, owes a duty in this aspect to all countries in the world.

17. It is very important to know who are onboard a flight. Apart from the Immigration concern, there is security concern. In present times, most countries are trying their best to combat and prevent terrorism. Permitting a person with false identity to board may increase the security risk to the flight and the destination country of the unauthorised passenger.

18. My attention was drawn to the case of HKSAR v He Wenyou, CACC235/2008. In that case, by means of a fraudulent scheme, offenders helped illegal immigrants enter the restricted area of the airport where they then used false boarding passes to board flights bound for a third country. Upon arrival in that country they would use false identity documents for gaining entry into that country. It is likely that similar things had happened in the present case as well. Cheung JA said,

“These activities will obviously tarnish Hong Kong’s international reputation. Furthermore, as a result of those activities, the immigration authorities of foreign countries will become wary of visitors from Hong Kong even when they are holding lawful travel documents, which means that visitors from Hong Kong will have to suffer a certain degree of inconvenience when they enter those countries. Severe deterrent sentences must therefore be imposed for those offences.”

One of the offences involved in that case was obtaining services by deception, the same offence as you have been convicted.

19. Whilst there is no direct evidence about the scale of the present illegal scheme, by common sense it must have involved much planning and organisation. As you said during the interview, you contemplated that it involved a lot of people including staff of the airlines and government departments.

20. Having an operation of substantial scale in contemplation you still agreed to lend your support to it.

21. I am prepared to accept that you were not a mastermind of the illegal scheme, not even in the core of it, and you might have succumbed to the circumstances rather than taking an initiative to join. However, for such an illegal scheme to be successful, it needs people like you to involve and participate.

22. You must be aware that your position was the last barrier or at least possibly the last barrier to the successful boarding of these unauthorised passengers but you decided to violate your duty.

23. Your involvement involved a serious breach of trust since what you agreed not to do went to the core of the duties you were specifically employed to do. Integrity of the measures was thereby compromised. Your participation in the conspiracy lasted for over half a year.

24. In all the circumstances, I am of the view that an imprisonment term is warranted.

25. There is no tariff for this nature of offence. In my judgment, a starting point of 3 years is appropriate and sufficient to reflect the nature of the offence and the degree of

culpability.

26. I note your previous clear record and have considered whether this is a factor which justifies a reduction in your sentence.

27. The present case involves not only a single lapse or failure to perform, but was about an agreement to continuously refrain from performance of duties knowing fully the unlawfulness of the conduct and the serious consequences. The engagement in this illegal conspiracy lasted for about half a year. It involved a serious breach of trust.

28. I do not consider any reduction in sentence is justified by virtue of the fact that this is your first conviction and other matters put forward on your behalf.

29. By reason of the matters aforesaid, I sentence you to 3 years' imprisonment.

(A. Wong)
District Judge

Please refer to CACC444/2011 for the relevant appeal(s) to the Court of Appeal.