WRC

An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

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Case Report for the 10th Anniversary of the WRC October 2025

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The following case summaries provide an overview of some of the key legal issues arising in decisions issued by Adjudication Officers ("AOs") at the Workplace Relations Commission ("WRC") in 2024. It is published as part of the WRC's ten-year anniversary look-back and gives an overview of the wide range of legal issues considered by AOs. It should be noted that these 50 cases of 2024 merely represent a snapshot of the thousands of decisions published per annum, and over 20,000 since 2015. They reflect the journey the WRC has come on since its establishment in 2015 and the expansion of rights and remedies over the decade.


Gwendolen Morgan
Registrar - Director of Legal Services

A common factor of WRC cases is that much of our law comes from statute or regulations, EU and domestic in origin. Frequently these cases involve statutory interpretation, without guidance of judicial interpretation or academic commentary. Such cases are often difficult; they may present an apparent conflict between a literal or purposive interpretation – a choice to be made by the AO in certain cases.

One of the features of work and therefore the job of the WRC is that it is central to society. So naturally our cases will frequently straddle the border with other legal areas, including transnational and domestic tax situations, anti-discrimination policy measures and contract law.

And always we have to keep fair procedures and general public law principles at the heart of what the WRC does in administering justice under Article 37 of the Constitution as illustrated by the cases below.

Although a strong feature since its establishment, the emphasis on fair procedures has increased even further since the Supreme Court's landmark constitutional decision in *Zalewski v An Adjudication Officer, the WRC, Ireland and others* [2021] IESC 24.

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However, given the high proportion of parties unrepresented on both sides of a dispute before the WRC, the challenge remains for the WRC to continue to comply with its original statutory purpose of providing an accessible, fair and friendly venue for litigants to resolve their disputes in the most efficient manner possible.

Notable cases included in this collection involve exploitative employment where multiple claims were referred to the WRC and employment status was an issue. In the sample of cases where the employment status of the employee is a key issue, the Supreme Court test in *Revenue Commissioners v. Karshan Midlands Ltd t/a Domino's Pizza* [2023] IESC 24 has been applied.

The sample of cases included contains decisions with notably high awards together with more complex calculations of redress including assessing what amounts to remuneration. This has arisen where an employee's salary includes shares, bonuses and other benefits.

Also included here are cases involving recent legislation, e.g. the Sick Leave Act 2022 and the Work Life Balance and Miscellaneous Provisions Act 2023 in respect of the right to request remote and flexible working.

Given most of the cases involve more than one issue, we have classified the cases by reference to what we take to be the most significant issue.

This digest of cases is published for the purposes of general information and accessibility only. It is not a statement of the law by or on behalf of the WRC: all readers are referred to the texts of the original decisions, which contain the only statements of the law made by the WRC in the administration of justice. The case summaries are not, and should not be treated as, legal advice. In accordance with its statutory obligation to publish its decisions, the WRC has also made the full texts of its decisions and recommendations available on its website at www.workplacerelations.ie. The website is updated regularly and includes advanced search filters. It is hoped that it is a useful and practical resource for all users. Decisions referred to here may have been subsequently overturned on appeal. No warranty, undertaking or guarantee is given as to their legal status.

Workplace Relations Commission Case Report October 2025

Case Index

1 *Kieran Wallace (Liquidator) for Protim Abrasives Ltd (In liquidation) v Minister for Enterprise, Trade and Employment,* ADJ-00043822

Keywords

Protection of Employees (Employers Insolvency) Act 1984 – Directive 2008/94/EC on the protection of employees in the event of their employer being insolvent – Whether defined benefit pension scheme fell within s.7 – Whether Minister payable for unpaid relevant contributions remaining to be paid by the employer to the scheme

Background

Protim Abrasives Ltd was established in 1957. The company was in the business of hardware supplies and had a specialised function in timber and wood maintenance and preservation.

The company operated a defined benefit pension scheme for its employees. A defined benefit scheme is a pension scheme that provides a promised benefit to employees based on (and with reference to) their years of service with an employer and, in most cases, based on their salary at date of retirement. It is intended to provide an anticipated level of pension for each retiring employee at a future date. A defined benefit pension scheme provides for a guaranteed income on retirement. It operates by periodically assessing the value of potential benefits for all past and currently employed members in aggregate. With a defined benefit scheme, the employer holds all of the risk associated with the employees' retirement benefits.

The company experienced financial difficulty in 2009 and filed a petition for the appointment of an Examiner. On foot of an instruction from the Trustees in July 2009 to conduct an analysis of the pension scheme, in line with the Trust Deed, the pension scheme Actuary wrote to the company, calculating how the deficit in the pension could be addressed, at a total figure of €3.7 million. In November 2009, the High Court ordered that the company be wound up and appointed the Complainant as liquidator. Immediately, the Complainant triggered the relevant clause of the pension scheme which terminated the company's liability to the scheme.

In February 2018, the Complainant applied for a payment under the Insolvency Payments Scheme in relation to unpaid contributions under s.7 of the Protection of Employees (Employers Insolvency) Act 1984 ("1984 Act"). The Insolvency Payments Scheme protects pay-related entitlements of employees whose employer has become legally insolvent. Section 7 of the 1984 Act allows a liquidator to make an application in respect of an occupational pension scheme. Where the liquidator can establish that on the date of insolvency there remained unpaid relevant contributions remaining to be paid by the employer to the scheme, the Minister shall pay into the assets of the occupational pension scheme the sum which, in the Minister's opinion, is payable in respect of the unpaid relevant contributions. The payment is paid out of the National Social Insurance Fund. The sum payable under s.7 shall be the lesser of the balance of relevant contributions remaining unpaid on the date on which the employer became insolvent and payable by the employer in respect of the period of 12 months ending on the day immediately preceding the date of insolvency or the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme.

The Complainant ultimately sought €6.124 million under s.7, as calculated by the Actuary as the contributions which were required to secure the full benefit entitlements of all the scheme members and which were payable as of 11 November 2009, the day before the liquidator was appointed.

On 3 August 2022, the Deciding Officer in the Redundancy and Insolvency Department, acting for the Respondent, refused the application, on the basis that it did not meet the criteria in s.7(3) and on the basis of its own actuarial report stating that nothing was due. The Complainant challenged this refusal. The Complainant submitted that there was no statutory ceiling on what could be paid out under s.7. The Complainant submitted that within the 12-month period prior to insolvency, the relevant Actuary made two legitimate recommendations as to the necessary contributions which had to be paid by the Employer, in accordance with s.7.

The Respondent submitted that the Insolvency Payments Scheme does not necessarily provide for the payment of the entire deficit of a pension scheme from the social insurance fund – that sum may only be claimed if it is less than the sum of the unpaid employer contributions which fell due in the 12 months immediately preceding the date of the insolvency. The Respondent rejected the Complainant's assertion that here they were one and the same figure. It rejected that the entire deficit was the same as the unpaid contributions payable in the previous 12 months.

Findings

The AO noted that, in order to succeed in a s.7 application, the Respondent had to be satisfied that an employer was insolvent, after October 1983, and that on the date of the insolvency, there remained unpaid relevant contributions remaining to be paid by the employer. The AO held that the appointment of the liquidator was conclusive evidence of insolvency.

The AO accepted that there was no upper limit in a s.7 application on what amount might become payable in respect of unpaid relevant contributions. Furthermore, the AO noted that there were no limits to the definition of an 'occupational pension scheme' in the 1984 Act. It did not exclude a defined benefit scheme.

The AO noted that from the terms of the Scheme, the Trustees could ask the Actuary to prepare a valuation report on the actuarial position of the pension scheme at any time but at least every three and a half years . The primary purpose of this was to recommend what contributions ought thereafter to be made to the fund. Nothing in the 1984 Act or the Deed of Trust precluded the making of a capital sum payment. Accordingly, the AO held that a capital sum payment falling to be paid by an employer in accordance with an occupational pension scheme had to be accorded the status of 'relevant contribution' for the purposes of the 1984 Act.

Next, the AO held that a distinction had to be made between a defined benefit pension scheme and a defined contribution pension scheme. In respect of the former, there was an expectation that, from time to time, the Trustees had to call on the employer to make a significant contribution to ensure the assets of the scheme were in line with liabilities. The AO was satisfied that it was incorrect to assert that only routine monthly payments could be defined as relevant contributions. One-off payments also had to be included. The AO acknowledged that one-off payments of the magnitude under consideration had the effect of 'driving a coach and four through the legislation'; however, the Respondent was unable to point to a brake mechanism for not allowing this outcome. The AO held that the Redundancy and Insolvency Section had limited its understanding of the width of what might fall to be paid by an employer. The employer's interpretation of s.7 that any payment made had to be in the form of routine, periodic payments which were known or knowable in the relevant 12-month period was incorrect. Such an interpretation would have excluded defined benefit schemes from s.7, which, the AO held, would be wholly unfair.

The AO accepted that, in the event of their employer being insolvent, she was obliged to read and consider the 1984 Act in line with Directive 2008/94/EC on the protection of employees. The Directive clearly operated to protect and enhance the interests of employees in insolvency situations, and the s.7 process could not be interpreted so that it failed to give effect to EU obligations. While the Respondent has asked for consideration of the need for limitations and balance, and while these concepts were contained in the Directive, the AO held that the 1984 Act did not set a financial ceiling, despite the fact that the Directive had invited each Member State to set such limits in Article 4.

The AO accepted that in line with the terms of the pension scheme, the Actuary had prepared a valuation report on the actuarial position of the scheme in July 2009, prior to the company going into examinership, and in anticipation of an end of year review with the Pension Authority. Accordingly, the AO held that, for the purposes of a s.7 application, the sum of €3.7 million was the relevant contribution which remained unpaid on the date of insolvency, and which was payable by the employer in the 12-month period preceding the date of liquidation. However, the AO reduced that sum by €876,000, the amount realised in the liquidation process and made available to the Trustees, finding that the Respondent should be the first person to have the benefit of this offset against any liability due to be paid out of the social insurance fund. Accordingly, the AO held that the Minister was liable to make a payment under s.7 of €2,824,000.

2

Krzysztof Knapik v. ASL Airlines (Ireland) Ltd, ADJ-00039692

Keywords

Unfair Dismissals Acts 1977 to 2015 – Jurisdiction – Regulation (EU) No. 1215/2015 – Applicable law – Regulation (EC) No. 593/2008

Background

From January 2021, the Complainant worked as a pilot for the Respondent, a cargo airline with a registered office in Dublin. The Complainant complained that he had been unfairly dismissed by the Respondent on 24 April 2022 contrary to the Unfair Dismissals Acts 1977 to 2015. The Respondent raised a preliminary issue that the WRC had no jurisdiction to hear the claim as the Complainant was not domiciled in and did not work in Ireland during his employment. The Respondent submitted that the Complainant had habitually carried out his work in Poland and had resided in Poland.

The employment contract, which had been concluded in Dublin, provided that the work would be performed at Katowice, Poland. The contract was silent on the applicable law and jurisdiction. The Complainant submitted that Irish law applied as the Respondent's aircraft was registered in Ireland, he was paid by an Irish-registered company, and his income was subject to tax in Ireland.

Findings

In EU cases, jurisdiction is regulated by Regulation (EU) No. 1215/2021 ("Brussels I") while the applicable law is governed by Regulation (EC) No. 593/2008 ("Rome I"). Pursuant to Article 21 of Brussels I, an employee may bring proceedings against their employer in the Member State in which the employer is domiciled or in another Member State where the employee habitually carries out his or her work. The AO was satisfied that she had jurisdiction as the Respondent company was registered in Ireland.

As the AO's jurisdiction is limited to applying Irish law, the AO had to be satisfied that the applicable law for the Complainant's contract was Irish law. Article 8 of Rome I provides that where the employment contract does not specify the applicable law, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his or her work in performance of the contract. The AO noted that the nature of the Complainant's role as a pilot involved him carrying out his duties in a number of Member States.

Having regard to relevant Court of Justice case law, the AO held that relevant factors included: the complainant's designated home base was Katowice, Poland; his *per diem* rate was calculated by reference to when he left his home base and when he returned; over 60% of the Complainant's positioning was from Katowice to France; standby, reserve, off-or-rest time during duty periods and rotations were spent predominantly in France and Germany; and the Complainant's accommodation during duty periods was also predominantly in France and Germany; during the duration of the contract, the Complainant had stayed in Ireland for only one night.

The AO held that the fact that the Respondent's fleet of aircraft was registered in Ireland, that the Complainant's licence was with the Irish Aviation Authority, and that he paid taxes in Ireland were not directly relevant in the assessment as to where the Complainant habitually carried out his work. On the basis of these factors, the AO concluded that Ireland was not the place in which or from which the Complainant habitually carried out his work. The AO also had regard to recital 23 of Rome I, which provides that the weaker party should be protected by conflict-of-law rules that are more favourable to their interests than the general rules. The AO considered s.2(3) of the Unfair Dismissals Acts 1977 to 2015, which provides that the Act shall not apply to an employee unless he was ordinarily resident or domiciled in the State during the term of his contract; accordingly, applying Irish law would not aid the Complainant.

Accordingly, the AO held that she did not have jurisdiction to hear the claim.

3

Michael Kiely v. Hyph Ireland Ltd, ADJ-00037708

Keywords

Unfair Dismissals Acts 1977 to 2015 – Unfair dismissal conceded – Mitigation of loss –Restrictive covenant

Background

The Complainant was CEO and Chairman of the Respondent company. He commenced employment in June 2013 and was summarily dismissed in November 2021. The Respondent conceded that the dismissal was unfair. The issue related to quantum of losses and whether the Complainant had sufficiently mitigated his loss. The Complainant submitted that he was subject to a 12-month non-compete clause and that the Respondent refused permission to form a new company within this period. The Complainant had since set up his own business but claimed for 17 months of loss. The Respondent submitted that the Complainant had failed to mitigate his loss, denying that the Complainant was refused permission to form a new company and submitting that there were many areas where the Complainant could have worked in music and technology that were not subject to the non-compete clause.

The Complainant also claimed payment in lieu of four weeks' statutory notice.

Findings

The AO held that no evidence was given by the Respondent to rebut the Complainant's evidence that he was refused permission to form a new company. The AO found the conduct of the Respondent to be oppressive which caused the Complainant very significant financial hardship having regard to the manner of his dismissal which impacted on the Complainant's ability to mitigate his loss. The AO noted that he had to assess the financial damage which the dismissal had brought about, subject to the maximum amount of compensation available. The period of loss commenced on the date of termination and ended on 1 May 2023. Having regard to the Complainant's earnings (an average fortnightly pay of €12,070), the AO assessed the financial loss at €460,000.

In respect of the 12-month non-compete clause, the AO held that the Complainant, as a successful entrepreneur, had every right to pursue the goal of re-establishing himself in a similar role. It was not reasonable for the Complainant to compromise this legitimate goal and accept any work that detracted from that objective. Although the Complainant could not be expected to mitigate his loss during the 12-month period, the AO held that the mitigation could have occurred after 12 months. Accordingly, the AO awarded 12 months' compensation amounting to €440,000.

In respect of the claim for payment in lieu of notice, the AO held that the Complainant was entitled to four weeks' notice. Having regard to his salary, the AO awarded €24,000 in compensation for this breach.

4

Gráinne Sherlock v. Pluralsight Ireland Ltd, ADJ-00044941

Keywords

Unfair Dismissal Acts 1977 to 2015 – Redundancy – Unfair selection – Financial loss – Remuneration – Shares – Mitigation of loss

Background

The Complainant worked with the Respondent, an online education company that provides training courses, from June 2019 to February 2023 when her employment was terminated by reason of redundancy. At the time of termination, the Complainant was working as Director on the Digital Sales Small and Medium Business team. The Respondent submitted that there had been a fair and reasonable selection process and extensive consultation. In December 2022, the Respondent announced a global reduction in its workforce. Eight managers in the Commercial and SMB function (where the Complainant worked) were impacted by this decision and were informed that there would be five positions remaining at the end of the process. The redundancy selection process was based on past performance (20%) and a competency-based interview (80%).

The Complainant submitted that she had been unfairly selected for redundancy, that the redundancy had been predetermined and lacked procedural fairness. She claimed that there had been no consultation or transparency around the criteria for selection for redundancy, and there was no feedback from the interviews.

Findings

In accordance with s.6(1) of the Unfair Dismissals Acts 1977 to 2015, a dismissal will be deemed to be unfair unless there are substantial grounds justifying it. The onus was on the Respondent to prove that the termination of employment resulted wholly or mainly from redundancy and that the Complainant was fairly selected for redundancy.

Although the AO accepted that the global reduction in headcount and consequent restricting of the leadership roles on the teams in Dublin constituted a genuine redundancy situation, the AO was not satisfied that the Complainant had been fairly selected for redundancy for the following reasons: her role had only recently been brought into the Respondent's Commercial function; the Commercial leaders were all retained following a process involving competency-based interviews; the 80:20 weighting, in respect of the selection criteria of competency-based interview and past performance, was not objectively reasonable where the Complainant was not informed that the interview aspect of the selection process involving assessing her for any one of the five restructured leadership roles and also where one of the interviewers had direct and current experience of the competencies of six of the eight candidates, but not of the Complainant; the outcome of the redundancy process was that the Complainant and one other employee from the SMB team were made redundant where the SMB function had operated differently to the Commercial function in terms of its targets and sales motion; the Respondent had identified key competencies for the restructured leadership roles but the specifics of the roles were not shared in advance of the interview process; and the Respondent failed to demonstrate where the Complainant ranked in the selection process.

The AO also held that there was no real and substantial consultation before taking the decision to make the Complainant's position redundant. The outcome letter was premature and inconsistent, considering the Complainant had been applying for another role within the organisation. The Respondent did not respond to the Complainant's request that the consultation process be extended so that she could explore other roles in the company.
In respect of redress, the Complainant submitted that her remuneration included "on target earnings", a performance-based bonus, and shares. The AO noted that it was incumbent on a Complainant to prove her loss, holding that there was no evidence in respect of the loss of shares.

In respect of the duty to mitigate loss, the AO held that the Complainant's success in finding other employment in May 2023 was indicative of reasonable efforts on the part of the Complainant in March and April 2023. However, the employment did not extend beyond the probationary period and terminated in September 2023. Having regard to the fact that the general statutory protection against unfair dismissal did not arise, the AO did not consider the new employment to have been sufficiently permanent in nature to find that any financial loss attributable to the dismissal came to an end when the Complainant commenced alternative employment. However, post-September 2023, the AO held that it was not reasonable for the Complainant to focus only on sales leadership roles. Taking these factors into consideration, and the Complainant's salary, the AO awarded compensation of €112,000 based on the Complainant having made reasonable efforts to mitigate her loss following the termination of her employment and applying a 50% reduction for the period from September 2023.

5

Sharanjeet Kaur v. Bombay Bhappa Ltd t/a Bombay House, ADJ-00045992

Keywords

Exploitative employment – Human Trafficking – Organisation of Working Time Act 1997 – Unfair Dismissals Acts 1977 to 2015 – Minimum Notice and Terms of Employment 1973 to 2005 – Payment of Wages Act 1991 – Employment Equality Acts 1998 to 2021 – National Minimum Wage Acts 2000 and 2015

Background

The Complainant, an Indian national, was approached while working in Malaysia in respect of a chef position in the Respondent's restaurant in Dublin. The Complainant obtained a work permit and arrived in Dublin in September 2021. She commenced working at the Respondent restaurant and was housed in accommodation with other employees. Her employment terminated in November 2022. The Complainant gave evidence of exploitive working conditions: she was required to wash dishes, clean the kitchen, prepare food for cooking, and pack takeaway orders. She gave evidence of 50-hour working weeks, limited breaks, no payment of annual leave or other statutory entitlements, as well as experiencing discrimination, harassment and sexual harassment on an almost daily basis. A garda in the Human Trafficking Investigation and Co-Ordination Unit gave evidence of having been notified of grave concerns concerning the Complainant in December 2022.

She outlined that the Complainant was very traumatised and noted that a criminal investigation was ongoing.

Although representatives of the Respondent appeared at the hearing, they objected to the garda presence and applied for a private hearing. When this was denied by the AO, the Respondent left the hearing and did not present any evidence.

Findings

The AO first considered the cognisable period for the Complainant's complaints. Section 41(6) provides for a six-month time limit for bringing complaints to the WRC. However, s.41(8) provides that the AO can extend time for a maximum of 12 months where the AO is satisfied that the delay in bringing the complaint "was due to reasonable cause". The AO held that there was reasonable cause: the Complainant outlined a distressing catalogue of discrimination, harassment and sexual harassment and mistreatment while living under the constant threat of blackmail and deportation. Accordingly, the AO held that the cognisable period for the Complainant's complaints was 12 months from the date of referral.

The AO found all of the Complainant's complaints were well founded and awarded the following compensation:

- Failure to pay Sunday premium contrary to the Organisation of Working Time Act 1997 ("OWTA"): the Complainant worked every Sunday and was not compensated for so doing. The AO held that the breach was at the serious end of the spectrum. Following the Labour Court decision in V*iking Security Ltd v Tomas Valent* DWT1489, that compensation for Sunday premium should be time plus one-third for each hour worked, the AO awarded payment of €1,410 for financial loss and €2,500 (one month's pay) for breach of statutory rights.

- Failure to provide breaks contrary to the OWTA: the Complainant gave uncontested evidence of having only a five-minute lunchbreak during the day. The AO noted that the right to rest breaks derives from EU law, and, therefore, the redress provided should not only be compensate for economic loss sustained but must provide a real deterrent against future infractions. The AO held that the breach was at the serious end of the spectrum and awarded compensation of €10,000 (four months' pay).

- Failure to pay public holidays contrary to the OWTA: the Complainant gave evidence that she had not received additional pay or time off in lieu for public holidays for the entirety of her employment. The AO awarded €345 for three public holidays during the cognisable period for financial loss suffered as well as €2,500 for breach of statutory rights.

- Failure to pay annual leave contrary to the OWTA: under the Complainant's contract of employment, she was entitled to 21 days of annual leave. The Complainant gave evidence that she never received paid annual leave. As the right to paid annual leave derives from EU law and the fact that the breach was at the serious end of the spectrum, the AO awarded €1,150 (two weeks' pay) for financial loss as well as €10,000 for breach of statutory rights.

- Breach of maximum working hours contrary to the OWTA: the Complainant gave evidence that she worked nearly 50 hours every week. The AO, noting that the maximum number of weekly hours derives from EU law, awarded the Complainant €10,000 for breach of statutory rights.

- Unfair dismissal: the Complainant gave evidence that she was summarily dismissed at the end of her shift on 25 November 2025 when the Director of the Respondent told her not to come into work the next day. The AO held that there was no evidence that there was a justification for the dismissal, and, moreover, the Respondent had failed to follow fair procedures. The AO noted that the Complainant had mostly been in receipt of social welfare since her dismissal which had left the Complainant in a precarious and vulnerable situation and with considerable difficulty in sourcing alternative income to mitigate her loss. The Complainant had been out of work for approximately one year. The AO awarded €30,000 (one year's gross salary) to cover financial loss suffered by the Complainant as well as estimated future loss of income.

- Failure to comply with minimum notice contrary to the Minimum Notice and Terms of Employment Acts 1973 to 2005: the Complainant was entitled to one week's notice or payment in lieu of notice. The AO awarded €575 (one week's pay).

- Unlawful deductions from wages contrary to the Payment of Wages Act 1991: the Complainant gave evidence that the Director of the Respondent paid approximately €500 into her bank account each week, but, a number of days later, he would drive her to an ATM where she had to withdraw and give him €290 in cash. The AO directed the Respondent to pay €7,540 (€290 for each cognisable week).

- Discrimination, harassment and sexual harassment contrary to the Employment Equality Acts 1998 to 2021: the AO held that the Complainant, in uncontested evidence, outlined a distressing catalogue of discrimination, harassment and sexual harassment which she suffered on an almost daily basis for the entirety of her employment. The AO awarded the maximum compensation of two years' remuneration amounting to €60,000.

- Failing to pay the minimum wage contrary to the National Minimum Wage Acts 2000 and 2015: the Complainant gave evidence of working 50-hour weeks. Once the various payments and deductions were taken into account, she was paid approximately €4.46 per hour. The AO noted that the minimum hourly wage at the time was €10.50 and awarded arrears of €7,248.

In total, the Complainant was awarded €143,268.

6

Courtney Carey v. WIX Online Platforms Ltd, ADJ-00048434

Keywords

Unfair Dismissals Acts 1977 to 2015 – Uncontested unfair dismissal – Mitigation of loss

Background

The Complainant was employed by the Respondent as a Customer Care Team Lead in January 2019. Her employment was terminated in October 2023. The Complainant complained that she had been unfairly dismissed. The Respondent conceded that the dismissal was unfair. The Complainant submitted that she had made a number of formal and informal attempts to find alternative employment and had registered with a number of recruitment agencies. In May 2024, the Complainant started employment with An Post on a salary of €25,000. Since this was less than what she was earning with the Respondent (annual salary of €40,000), the Complainant submitted that her loss was ongoing. The Complainant also contended that the very public nature of her dismissal and subsequent comments made by the leadership of the Respondent had a negative effect on her efforts to mitigate her losses and on her future career prospects.
The Respondent submitted that the Complainant could claim only for financial loss suffered; she could not claim compensation for alleged upset or stress. The Respondent further submitted that the Complainant had failed to provide any proper evidence of attempts to obtain alternative work.

Findings

Having regard to the Complainant's previous salary, and the fact that she was unemployed from October 2023 to May 2024 (discounting her pay in lieu of four weeks' notice), the AO calculated the Complainant's losses at €20,000. The AO also considered the Complainant's lower salary in her new role from May 2024. If the Complainant were to continue in this employment for the remainder of the cognisable 104 weeks (from date of dismissal), the Complainant would incur a loss of €18,453.30. However, the AO was not satisfied that the Complainant had made significant efforts to mitigate her loss. The documentation submitted was very sparse and did not enable the AO to investigate the substance of the Complainant's assertions. She did not provide any information on the dates of the job application or documentation which directly linked her to those applications. Furthermore, the AO held that the number of jobs applied for was not sufficient, given that the Complainant was out of work for six months following her dismissal. While the AO acknowledged that a factor to be taken into account was the complete lack of procedural fairness in the dismissal, the AO held that this did not entirely absolve the Complainant from the requirement to make serious efforts to mitigate her financial loss. Accordingly, the AO awarded compensation of €35,000.

7

Stephen Hanley v. PBR Restaurants Ltd t/a Fishshack Cafe, ADJ-00028355

Keywords

Unfair Dismissals Acts 1977 to 2015 – Dismissal by reason of redundancy – Redundancy during Covid-19 pandemic – No genuine redundancy situation – Organisation of Working Time Act 1997 – Excessive working hours – Terms of Employment (Information) Acts 1994 to 2014 – No written terms of employment

Background

The Complainant's father had founded the Respondent company which had operated a number of restaurants. It was a family business, with the Complainant and his two brothers in various managerial roles. The Complainant had started working in the company while still in school and had worked his way up to Operations Manager. In 2019, the Respondent experienced financial difficulties and went into examinership. Under a scheme of arrangement in December 2019, an investor refinanced the business and became the main shareholder. The Complainant's father relinquished his directorship and shareholding, and two new directors were appointed, with the Complainant and his family remaining on as employees. In March 2020, following the imposition of Covid-19 restrictions, the Respondent's staff, including the Complainant and his family, was placed on unpaid layoff. The Complainant and his family were made redundant in August 2020.

The Complainant brought a complaint that he was unfairly dismissed, subjected to excessive working hours and had not been provided with a written statement of terms of his employment.

The Respondent submitted that the Complainant was subject to a genuine and fair redundancy process, that he had responsibility for and control over his working hours, and that his father was responsible for renewing contracts. The Respondent submitted that a genuine redundancy situation had arisen directly as a consequence of an external factor: the financial impact of Covid-19 following examinership. Management was top-heavy which required restructuring. The redundancy of the Operations Manager role held by the Complainant was impersonal, and the Respondent had sought to retain him by way of consultation and invitation to apply for an alternative role.

The Complainant submitted that there were unhappy differences between his family and the new directors from the beginning. The process was biased and prejudged and Covid-19 was used as an opportunity to get rid of the family. The Complainant submitted that the Respondent had failed to properly inform him regarding the need for redundancies; failed to provide any selection criteria; failed to provide a proper consultation process; failed to engage properly with him regarding alternatives to redundancy or offer an alternative role; and failed to afford him a proper appeal.

Findings

The AO noted that the Unfair Dismissals Acts 1977 to 2015 require the employer to first establish that a genuine redundancy situation existed and, if so, that the dismissal resulted wholly or mainly from redundancy, and, second, that it conducted itself reasonably throughout including demonstrating adherence to fair procedures.

The AO was satisfied on the evidence that there had been a very troubled relationship between the parties from the outset. When differences arose, the Respondent made no efforts to utilise the company grievance procedures or seek third-party intervention to address them. The AO concluded that the new management used the Covid-19 pandemic to embark on a blinkered, cynical process to make the Complainant and the other family members redundant in a sham redundancy process, having regard to the following facts: the lack of rationale for retaining them on layoff until they were made redundant, while at the same time allowing other staff members to return to work; the lack of rationale for bypassing the Respondent's own policy to offer voluntary redundancy as a first resort; the fact that the Respondent was advertising for staff in tandem with the process of making the family redundant; reports generated to support redundancy were skewed towards presenting a financial forecast that supported a redundancy programme involving cutting management; only the roles held by the family were identified for redundancy; the Complainant was not offered alternative roles within the Respondent; and the family were unpaid while in layoff and as such were not a significant liability to the Respondent. Accordingly, the AO held that there was no genuine redundancy situation. In respect of fair procedures, the AO noted that the redundancy was a *fait accompli* from the outset as there was no meaningful engagement on the part of the directors to discuss alternatives to redundancy.

In respect of mitigation of loss, the AO held that 11 months to find alternative employment was not unreasonable, having regard to the lack of alternative management positions within the restaurant business during the pandemic, coupled with the impact of the manner in which the Complainant had been treated on his health and the fact that he had worked his whole life in the family business. The AO awarded €46,385 (amounting to one year's remuneration) in compensation.

In respect of the complaint of excessive working hours contrary to the Organisation of Working Time Act 1997, the AO held that the new directors clearly required the Complainant to undertake additional duties and that he no longer retained control over his hours. Accordingly, the AO awarded €11,596 (13 weeks' remuneration) in compensation for the breach, having regard to the fact that the rights derive from EU law and the requirement that sanctions for such breaches must be effective, proportionate and dissuasive.

In respect of the complaint that the Complainant had never received a written statement of terms of his employment following the change in management, contrary to the Terms of Employment (Information) Acts 1994 to 2014, the AO held that the Complainant was required to undertake additional duties under new management and was thus entitled to updated written terms of employment. The AO awarded €3,568 (four weeks' remuneration) in compensation.

The total amount awarded to the Complainant was €61,549.

8

Wim Naude v. University College, ADJ-00042625

Keywords

Unfair Dismissals Acts 1977 to 2015 – Lack of fair procedures – Dismissal by person with no authority to dismiss

Background

The Complainant was employed as a Professor of Economics at the Respondent in January 2021. At the time, during the Covid-19 pandemic, teaching was remote, and the Complainant lived in the Netherlands with his family. During the 2021-22 academic year, the Complainant worked remotely until December 2021, then worked in a blended format from January 2022, attending on campus approximately one week per month. The Complainant submitted that it was his intention to relocate to Cork; however, he was unable to find accommodation, a situation complicated by the needs of his autistic child and his sick wife. In advance of the 2022-23 academic year, as he was still having difficulties finding accommodation, the Complainant submitted two alternative proposals for his work: blended working or a 33% reduction of hours. He received no response to this. In August 2022, the Director of HR dismissed the Respondent by email for having failed to relocate to Cork. It was accepted that the Respondent had not issued any disciplinary procedure, and there was no right of appeal given to the Complainant.

The Complainant submitted that he had been unfairly dismissed contrary to the Unfair Dismissals Acts 1977 to 2015 when the Respondent failed to afford him any fair procedures in respect of the dismissal.

The Respondent submitted that the dismissal was appropriate and necessary and that it was in the interests of the University and its students. The Respondent submitted that the Complainant's contribution to his dismissal was significant.

Findings

Noting that the burden is on the Respondent to prove that the dismissal was legitimate, the AO held that it was the Respondent's case that the Director of HR, who had never met the Complainant and had had no involvement with him until he was informed of the Complainant's proposals for work, and who accepted that the Complainant had never come to the attention of HR within his tenure, was the person who took the decision to dismiss the Complainant and did so by way of a three-paragraph email offering no mechanism of appeal. The AO held that the Director of HR had no authority to dismiss the Complainant. The AO further held that an employee at risk of any disciplinary sanction, up to and including dismissal, was entitled to the benefit of fair procedures and natural justice, as set out in the Industrial Relations Act 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order 2000 (SI No. 146 of 2000). Furthermore, the Respondent had a comprehensive policy set out in its internal statutes, which it also did not apply. The AO held that the Complainant was not afforded fair procedures in that: there was no notification that he was at risk of any sanction; the Complainant was not informed that he had any case to meet nor was he given an opportunity to remedy any alleged issue; there was no investigative process; there was no disciplinary process; there was no right of representation afforded to the Complainant and no right to present his case; and there was no right of appeal. The dismissal was both procedurally and substantively unfair. The AO rejected the Respondent's submissions that the Complainant committed a fundamental breach of his contract by not relocating to Cork, holding that, even taking this case at its height, the Complainant still should have been afforded the full benefit of a disciplinary process.

The AO held that the losses suffered by the Complainant far exceeded the maximum jurisdiction of the Acts and awarded him €300,000 (two years' remuneration).

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Poliane Fernandes Lima v. Elland Distributors Ltd Born Clothing, ADJ-00049872

Keywords

Unfair Dismissals Acts 1977 to 2015 – Visa extension – Entitlement to remain in the country for eight weeks after expiry – Lack of procedures

Background

The Complainant, a Brazilian national, commenced employment with the Respondent in August 2022. She had been in Ireland for six years with an IRP card which she renewed annually. Her visa was due to expire on 23 January 2024, and she applied to renew it in November 2023. The Respondent's Office Manager discovered on 23 January 2024 that the Complainant's visa had expired. Following legal advice advising of the ramifications of employing someone without a working visa, he dismissed the Complainant on 25 January by giving her a letter of dismissal. The Office Manager accepted that he had not spoken to the Complainant about her visa and did not ask her whether it had been renewed.

There was no possibility for appeal in the dismissal letter. The Complainant submitted that she had informed the payroll administrator when she applied to renew her visa in November, and she informed the Office Manager when he handed her the dismissal letter that her visa was due to be renewed on 28 January.

Findings

The AO noted that the Office Manager was not aware that the Department of Justice gives an eight-week grace period where employees are legally permitted to remain in the State where they can prove that they have applied to renew their registration, information which was readily available on the Department's website. The AO accepted that the Complainant met the criteria set out by the Department of Justice and that she informed the Respondent of this. The AO held that the Respondent dismissed the Complainant in the absence of any procedures and acting on incorrect information. Accordingly, the dismissal was unfair.

The AO accepted that the Complainant had been unable to secure new employment since her dismissal despite having made strenuous efforts to do so. Having regard to her salary, the AO awarded €25,000 in compensation.

10

Matthew McGranaghan v. MEPC Music Ltd, ADJ-00037668

Keywords

Employment status – Whether Complainant was employee or independent contractor – Unfair Dismissals Acts 1977 to 2015 – Organisation of Working Time Act 1997 – Payment of Wages Act 1991 – Terms of Employment (Information) Act 1994 to 2014 – Minimum Notice and Terms of Employment Acts 1973 to 2005

Background

The Complainant is a musician and, since 2013, played with the Michael English band as its resident fiddle player. The Complainant played approximately four gigs a week. He submitted that he was instructed on the music to play, received a uniform and was paid by cheque every Friday. He received dates three to six months in advance from the Respondent and turned down work only on two dates. The Complainant submitted that he was an employee of the Respondent, rather than an independent contractor and had raised this issue with the Respondent. During the Covid-19 pandemic, there was no work for the Complainant. In the summer of 2021, the Complainant was contacted to see if he was available to return. The Complainant stated that he would return as an employee. In September 2021, the Complainant received an email from the Respondent stating that it regretted his decision not to continue his services.

The Complainant brought a number of complaints alleging that he was an employee and that the Respondent had breached its obligations under the Organisation of Working Time Act 1997 ("OWTA"), the Payment of Wages Act 1991 ("PWA"), the Terms of Employment (Information) Acts 1994 to 2014 ("TEIA") and the Minimum Notice and Terms of Employment Acts 1973 to 2005 ("MNTEA"). The Complainant also submitted that he had been unfairly dismissed contrary to the Unfair Dismissals Acts 1977 to 2015 ("UDA").

The Respondent denied that the Complainant was an employee. The Respondent submitted that from the beginning of the business arrangement, the Complainant made himself available for defined gigs as and when the Respondent was in a position to inform him of the gigs. He submitted an invoice at the end of each week to the company office wherein he indicated the number of gigs performed as a musician. The Complainant was responsible for and made tax returns with Revenue. He could never have been subject to a disciplinary hearing. There was no obligation on the Complainant to inform the Respondent of any unavailability, nor was there any consequences of absenteeism or failure to notify of unavailability. The Respondent submitted that the Complainant provided his services to other entities.

Findings

In determining the employment status of the Complainant, the AO considered the Supreme Court decision in *Revenue Commissioners v Karshan (Midlands) Ltd t/a Dominos Pizza* [2023] IESC 24 and the five questions set out:

1. Does the contract involve the exchange of wage or other remuneration for work?
The AO held that the Complainant's fee was a set amount for each gig or rehearsal in return for him providing his personal service of being the resident fiddle player for the band.

2. If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party to the employer?
The AO held that the Complainant provided his fiddle-playing services for the band as the resident fiddle player. In the very limited occasions where he was not available, a substitute was found to cover, who was paid directly. Substitution was an exception.

3. If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?
The AO held that the Complainant had no flexibility as to when the work was performed as gigs were scheduled in advance, he was told what music to play, he wore the band uniform and he was instructed by the Respondent for all work-related matters.

4. If these three requirements are met the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.
The AO held that the facts of the case could not support the Complainant being self-employed based on all the circumstances of the arrangement.

5. Finally, it should be determined whether there is anything in the particular legislative regime under consideration that requires the court to adjust or supplement any of the foregoing.
The AO held that there was no particular legislation that required an adjustment or supplement to any of the questions. Accordingly, the AO held that the Complainant was an employee, and his employment was terminated on 22 September 2021.
The AO found in favour of the Complainant in respect of his multiple claims under the relevant legislation as follows:

- Failure to pay Sunday premium contrary to the OWTA: the AO awarded compensation of €1,000.
- Failure to pay in lieu of notice of termination of employment contrary to the PWA: the AO awarded compensation of €4,480.
- Failure to provide annual leave contrary to the OWTA: the AO awarded compensation of €5,000.
- Failure to pay public holiday entitlement contrary to the OWTA: the AO awarded compensation of €1,500.
- Failure to provide a statement in writing of the terms of his employment contrary to the TEIA: the AO awarded compensation of €500.
- Unfair dismissal contrary to the UDA: the AO awarded compensation of €26,880 (six months' salary).
- Failure to provide the statutory minimum period of notice on the termination of his employment or payment in lieu contrary to the MNTEA: the AO awarded compensation of €4,480 (four weeks' notice).

11

Eric English v. Store-All Logistics Ltd, ADJ-00052205

Keywords

Dismissal – non-renewal of fixed-term contract – Unfair Dismissals Acts 1977 to 2015

Background

The Complainant was employed in the Respondent's warehouse as a fork-lift operator on a one-year fixed-term contract on 7 June 2022. The contract was renewed with a termination date of 5 May 2024. On 29 April 2024, the Complainant was informed that his contract would expire on 5 May 2024 and that he would be paid in lieu of notice. The Complainant brought a complaint under the Unfair Dismissals Acts 1977 to 2015 claiming that his dismissal was unfair as it was for reasons other than the natural expiry of his contract.
The Complainant submitted that he had an expectation that the contract would be renewed: he was excelling in the role, he had been asked to complete relevant and necessary paperwork, and he was not advised at any time that his contract would not be renewed. The Complainant submitted that he believed that his contract would have been renewed but for a customer making a complaint against him.
The Respondent submitted and provided evidence that the Complainant's contract had not been renewed due to a decline in customer demand and it had nothing to do with any complaints or the Complainant's political views. The Head of Operations gave evidence that she decided on the renewal of contracts and was not aware of any concerns with the Complainant. One of the Respondent's customers was going through a restructuring programme which resulted in a 25% reduction in the need for services of the Respondent at the warehouse where the Complainant worked.

Findings

The AO noted that s.2(2)(b) of the Unfair Dismissals Acts 1977 to 2015 provided that the Acts did not apply to a dismissal where the employment was under a contract of employment for a fixed term provided that the reason for the dismissal was the expiry of the term, the contract was in writing and it provided that the Acts would not apply in such circumstances. The AO noted relevant case law providing that s.2(2)(b) must be strictly construed and that the Acts do not apply to a dismissal which is related to factors other than the expiry of the term of the contract. In this case, the Complainant's contract was in writing, was for a specified fixed-term and included a waiver which complied with the requirements of s. 2(2)(b). The AO was satisfied that the Complainant's dismissal was related to the expiry of the term of the contract, and there was no further need for him due to a significant decline in customer demand. The Respondent was under no obligation to renew the contract.

Accordingly, the AO held that the Respondent was entitled to rely on the exclusion clause within the contract excluding the Unfair Dismissals Acts, and the complaint was held not to be well-founded.

12

Gary Rooney v. Twitter International Unlimited Company, ADJ-00044246

Keywords

Unfair Dismissals Acts 1977 to 2015 – Definition of dismissal – Whether failure to respond to communication constituted resignation – Unfair Dismissals (Calculation of Weekly Remuneration) Regulations 1977 (SI 287 of 1977) – Documentary Evidence Act 1925 – Whether performance bonus properly payable – Future loss – Loss attributable to dismissal

Background

The Complainant commenced employment with the Respondent in September 2013. At the date of termination, he worked as Director of Source to Pay. On 16 November 2022, the Respondent's entire workforce received an email from Elon Musk, who had taken over the Respondent, stating: "Going forward, to build a breakthrough Twitter 2.0 and succeed in an increasingly competitive world, we will need to be extremely hardcore. This will mean working long hours at high intensity. Only exceptional performance will constitute a passing a grade. [….] If you are sure that you want to be part of the new Twitter, please click yes on the link below. Anyone has not done so by 5pm ET tomorrow (Thursday) will receive three months of severance." *[sic]*. This email was followed by an FAQ document which did not set out severance terms. The Complainant did not click 'yes', and, on 18 November 2022, his access to the Respondent's systems and network was cut off. The following day, the Complainant received an automated email from the Respondent acknowledging his decision to resign and accept the voluntary separation.

The Complainant submitted that he had been unfairly dismissed contrary to the Unfair Dismissals Acts 1977 to 2015 ("UDA") and that a failure to click a box could not be considered a resignation. The Respondent submitted that the Complainant had resigned by not clicking 'yes' and relied on internal communications to demonstrate that the Complainant had a clear intention to resign by not clicking 'yes'. However, the Respondent confirmed that the only consideration in the decision to terminate the Complainant's access to his work the following day was the failure to click 'yes'.

Findings

The AO first considered whether the Complainant was dismissed or resigned. He stated that the internal communications had no relevance to the question of what brought about the termination of the Complainant's employment since they played no role in the termination of access to work. The AO noted that 'resignation' has been defined as follows: "Where unambiguous words of resignation are used by an employee to an employer, and are so understood by the employer, generally it is safe to conclude that the employee has resigned." (Ryan, *Redmond on Dismissal Law* (Bloomsbury Professional, 2017), para. 22-22). The AO held that not clicking 'yes' could not by any reasonable standards be deemed to equate with the use of unequivocal or unambiguous words of resignation. Accordingly, the failure to communicate to the Respondent by clicking 'yes' was not capable of constituting and did not constitute an act of resignation. Accordingly, the Complainant was dismissed. Since the Respondent had not put forward any substantial grounds justifying the dismissal, the AO held that the Complainant was unfairly dismissed.

The Respondent argued that the Complainant contributed 100% to his loss by failing to click 'yes', relying on s.7 of the UDA which provides for a reduction in compensation for certain reasons. While the AO accepted that the Complainant's dismissal and consequent loss could have been avoided by clicking 'yes', the Complainant could not be faulted or held responsible given the circumstances in which the email was sent. There was not sufficient time or information provided or made available for any prudent employee to make an informed decision, which was their contractual right. The AO noted that the choices available were vaguely and incompletely set out and required further information, time and the procurement of properly informed legal advice. Accordingly, the Complainant's failure to click 'yes' did not cause or contribute to the dismissal or to the loss.

Redress

The Respondent raised a preliminary point in relation to the necessity of proving the Unfair Dismissals (Calculation of Weekly Remuneration) Regulations 1977 (SI 287 of 1977) in compliance with s.4 of the Documentary Evidence Act 1925. Relying on the Supreme Court case in *Director of Public Prosecutions v Collins* [1981] ILRM 447, the AO held that the SI was long-established and well known and often cited in cases before the WRC, the Labour Court and the civil courts. As the Regulations set out in the SI were "so notorious, well established, embedded in judicial decisions, and susceptible of incontrovertible proof", the AO held that he could not but take (the equivalent of) judicial notice of their making.

The Respondent disputed what made up the Complainant's remuneration for the purposes of calculating the financial loss.

The AO did not include a performance bonus, holding that it was not earned and was not properly payable for 2022, since there was no guarantee to any employee that they would receive the bonus simply by working a particular period. All entitlements for a particular year were based on the results at the end of the year. It was not disputed that no employee in the Respondent received a bonus in 2022. The AO did include equity grants/deferred cash consideration since the benefit arose by the mere fact of the Complainant's employment. This benefit continued to be paid in a similar manner and in a similar amount to employees who remained in employment after the Complainant was dismissed.

The AO calculated the Complainant's annual remuneration at €323,560. The Complainant obtained new employment in September 2023, but which paid less than his employment with the Respondent. The AO held that the Complainant had made appropriate efforts to mitigate loss. He was not obliged to take any job at any salary, but rather entitled to seek suitable alternative employment attracting an income as close as he could get to the overall compensation package he had enjoyed prior to dismissal. The AO took account of the Complainant's losses prior to finding alternative employment (€188,741) and the losses to date of hearing in respect of the lower salary (€161,390). Finally, the AO also had regard to future losses (€200,000). The AO awarded €550,131 in total compensation.

13

Amir Sajad Esmaeily v. Accountancy & Business College (Ireland) Ltd t/a Dublin Business School, ADJ-00045339

Keywords

Unfair Dismissal Acts 1977 to 2015 – mitigation of loss – calculation of remuneration

Background

The Complainant commenced employment with the Respondent in September 2018. His employment was terminated for gross misconduct in February 2023. The Complainant brought a complaint of unfair dismissal, and, at the hearing of the complaint, the Respondent conceded that the dismissal had been unfair. Accordingly, the only dispute concerned appropriate redress. The Complainant gave evidence of having applied for 35 jobs between February 2023 and August 2024 (the date of the hearing). He claimed that word of mouth of his dismissal had affected his reputation and career prospects and that his efforts were affected by personal tragedies at the time. The Complainant gave evidence that he took some casual employment in 2023 and had part-time work from September 2023 to May 2024.

The Respondent submitted that the number of applications, and the fact that there was no evidence that the Complainant had applied for work outside of his field, did not show a pro-active approach to finding work.

There was also a dispute in relation to the Complainant's remuneration. Although it was accepted by the parties that the Complainant's contractual salary was €50,000 gross, the Complainant submitted that he earned extra money each year supervising students. The Respondent submitted that this work was not guaranteed.

Findings

Although on the initial complaint form, the Complainant had indicated that he wished for re-instatement or re-engagement, the AO did not consider these appropriate given the length of time since the dismissal (18 months) and the fractured relationship between the parties.

Having regard to s.7(2) of the Unfair Dismissals Acts 1977-2015, and the obligation on a complainant to mitigate their loss, the AO held that the Complainant's efforts did not satisfy these requirements. However, he took cognisance of the personal events in his life and the effect of the dismissal on the Complainant. He also accepted that the Complainant was entitled to a sense of injustice about the disciplinary process to which he was subjected. The AO accepted that the nature of the supervision work should be considered as remuneration such that the Complainant's annual remuneration amounted to €91,000.

Having regard to these factors, the AO awarded €53,000 in compensation for the financial loss attributable to the unfair dismissal.

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A Worker v. An Employer, ADJ-00051951

Keywords

Industrial Relations Acts 1946 to 2019 – Unfair dismissal – Less than 12 months' service – Lack of fair procedures – Dismissal during probation

Background

The Worker was employed as a Business Support Manager by the Respondent, a company engaged in the provision of catering services on a contract basis. The Worker was dismissed during his probationary period. As the Worker did not have the required 12 months' service under the Unfair Dismissals Acts 1977 to 2015, this claim was brought under the Industrial Relations Acts 1946 to 2019.

The Worker submitted that his contract provided for a probationary period of six months. He submitted that his performance reviews were tick-box exercises and he was never advised that he was not performing or that his job was at risk. The probation was extended for another two months, but the Complainant submitted that he was told that this was only a formality to get him up to speed and provide supports. Two weeks later, the Complainant was dismissed. He was not provided with reasons for his dismissal.

The Respondent submitted that it became apparent that the Worker was not suitable for the role, and the decision to dismiss was fair in the circumstances.

Findings

The AO noted that probation reviews should be conducted in order to offer feedback on the employee's performance and to highlight areas where improvement was required. An employer should explain to an employee that they may be at risk of failing their probation if their performance does not meet the required standard. The AO further held that the fact that a worker is on probation did not negate their entitlement to fair procedures. On the basis of the evidence, the AO held that there was no assessment of performance by the Respondent in such a manner as to provide for a performance improvement plan with clear goals and reviews and no formal indication of the support that would be provided. Further, the Worker was dismissed with immediate effect and received nothing in writing outlining the reasons for dismissal. The AO concluded that it was unreasonable and unfair of the Respondent to terminate employment two weeks after probation had been extended for two months without any warning, any right to appeal, or any right to be accompanied. The handling of the dismissal breached the Worker's right to fair procedures and natural justice. Accordingly, the AO recommended the Respondent pay €2,600 to the Worker, having regard to the relatively short duration of the employment relationship and the fact that the Respondent paid six weeks' pay to the Complainant at termination.

15

Lauren McBride v. FSR Atlantic Ltd t/a ADHD Now, ADJ-00049238

Keywords

Employment status – Contract for services – Contract of service – Payment of Wages Act 1991 – Organisation of Working Time Act 1997 – Terms of Employment (Information) Acts 1994 to 2014

Background

The Complainant applied for a position of Assistant Psychologist with the Respondent, an online platform which provides an online ADHD initial assessment, diagnosis and an optional follow-up plan. At interview, the Complainant advised that she would charge €30 an hour and would prefer full-time hours. The Respondent confirmed that she would be provided with 35 hours of work a week. The Complainant signed a contract for services on 8 October 2023 which required her to maintain a minimum availability of 10 hours per week on the platform. Ultimately, between 8 October 2023 and 3 November 2023, the Complainant was offered only eight hours' work. She also received work for 45-minute sessions. She was paid a pro-rated rate of €22.50 for these sessions. The Complainant also submitted that she completed four hours of training for which she was not paid.
The Complainant brought claims under the Payment of Wages Act 1991 ("PWA"), the Organisation of Working Time Act 1997 ("OWTA") and the Terms of Employment (Information) Acts 1994 to 2014.

The Respondent submitted that the Complainant was not an employee of the Respondent.

Findings

In respect of the claim under the PWA for unlawful deductions, the AO first considered whether the Complainant had a 'contract of employment' for the purposes of the Act. The AO noted that a 'contract of employment' is defined as a "contract whereby an individual agrees with another person to do or perform personally any work or service for a third person … and the person who is liable to pay the wages of the individual in respect of the work or service shall be deemed for the purposes of this Act to be his employer". The AO was satisfied that the Complainant was engaged under a contract of employment as she had agreed with the Respondent to personally perform work for a third person (clients of the Respondent). In respect of the Complainant's complaint that she did not agree to the pro-rating of the hourly rate, the AO held that the contract provided for "a rate of €30 per hour of work performed". Accordingly, the AO found that as the Complainant worked pro-rated hours, the full hourly rate was not properly payable. This complaint was not well founded.

The Complainant also complained about a deduction for time spent training. An employer is prohibited from making a deduction in respect of any service to the employee which is necessary to the employment under the PWA. The employer may only avail of an exception where the deduction is authorised by a contractual term. The AO held that the training constituted the provision of a service by the Respondent to the Complainant and that there was no contractual term permitting the Respondent to make this deduction; accordingly, the AO held that four hours' wages were properly payable to the Complainant.

The AO directed the Respondent to pay €120 in compensation.

In respect of the complainant under the OWTA, the AO noted that a 'contract of employment' is defined as including "a contract of service". Although the Complainant was engaged on a contract for services, the AO noted that it was not always the case that written contracts reflected the true nature of the employment. The AO considered the Supreme Court case of *Revenue Commissioners v Karshan (Midlands) Ltd t/a Dominos Pizza* [2023] IESC 24 and the five questions set out:

1. Does the contract involve the exchange of wage or other remuneration for work?
The AO held that the parties entered into a binding contractual agreement which involved the exchange of remuneration for work.

2. If so, is the agreement one pursuant to which the worker is agreeing to provide their own services, and not those of a third party to the employer?
The AO held that it was not contested that the Complainant agreed to provide her own personal services to the Respondent.

3. If so, does the employer exercise sufficient control over the putative employee to render the agreement one that is capable of being an employment agreement?

The AO was satisfied that the Respondent exercised sufficient control over the Complainant to render the agreement one that was capable of being an employment agreement. The Respondent directed the Complainant on when, what, and how the assessments were to be done. It solely determined how clients were to be assessed and the duration of the assessment, and the Complainant was required to use the Respondent's assessment tools for this purpose.

She was not free to contract out the work or substitute another party for herself and had no control over the pro-rated hours. She was contractually required to maintain a weekly minimum of ten hours' availability on the platform. While the Complainant used her own laptop and was free to work from a location of her choice, the AO was satisfied that, in the significant degree of control in relation to the place, time, and way the work was to be performed, and in relation to what the Complainant was to be paid for. The AO also noted that there was no element of economic risk for the Complainant: she had no opportunity to vary the level of profit derived from the work she performed, and there was no capacity for her to profit in any material way from her own skill.

4. If these three requirements are met the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the working arrangements between the parties as disclosed by the evidence, are consistent with a contract of employment, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.

Having considered the entire factual matrix, the AO held that the evidence pointed towards the Complainant being engaged under a contract of service.

The Complainant complained that she was not paid for 25% of the time she was required to be available for work that did not arise. Section 18 of the OWTA regulates the use of 'zero-hour contracts'. Where a contract requires an employee to be available for a specified number of hours, even where they are not required to work, the employee is entitled to either 15 hours' pay or 25% of the contract hours whichever is the lesser. The AO was satisfied that the Complainant was required to make herself available for a minimum of ten hours a week as per her contract. Noting that the contract had not been terminated by either party in accordance with the provisions of the contract, despite the Complainant not being offered work after 3 November 2023, the AO calculated the minimum the Complainant ought to have been paid from the date of commencement of the contract to the date of the referral of the complaint. The AO awarded €435.60 in compensation.

16

Jasmine Olaru v. Remo Foods Ltd t/a Domino's Pizza, ADJ-00044923

Keywords

Employment Equality Acts 1998 to 2021 – Organisation of Working Time Act 1997 – Discrimination on ground of gender – Sexual harassment – Victimisation – Break periods

Background

The Complainant started working as floor staff for the Respondent in February 2022, during her Leaving Certificate year. She resigned in September 2022. The Complainant alleged that she was discriminated against on the ground of gender, sexually harassed and victimised contrary to the Employment Equality Acts 1998 to 2021 ("EEA"). The Complainant also complained that she did not receive her rest breaks in accordance with the Organisation of Working Time Act 1997.

The Complainant submitted that she had been discriminated against throughout her employment. She gave evidence that it was a pre-dominantly male workplace, and it was a very sexualised environment in which she felt uncomfortable. The Complainant submitted that her male colleagues regularly discussed women and sex, and she detailed numerous incidents of discrimination and sexual harassment perpetrated by the Deputy Manager, shift managers and male colleagues. She gave evidence that when she told her manager about the incidents, he laughed in her face. The Complainant submitted that she was not given a copy of the company policy, the manager did not offer to investigate her complaints, and he did not offer to take further steps.

The Complainant also gave evidence that after tendering her resignation, she was twice clocked out early, without her permission. Accordingly, she was not paid for the full shift. The Complainant submitted that she believed that this had happened as she had resigned and outlined the details of the sexual harassment to her Manager.

The Respondent submitted that the Complainant had not made any complaint, and it had no knowledge of same until it received the complaint form. Accordingly, the Respondent was unable to investigate the incidents. The Respondent further submitted that it had a comprehensive and clear anti-harassment and bullying policy in place, and a copy of same was provided to the Complainant. The Respondent submitted that it had taken all reasonably practical steps to ensure that the Complainant was not sexually harassed.

Findings

In respect of the allegations of gender discrimination and sexual harassment, the AO held that the Complainant was credible in her uncontested evidence, giving considerable detail including dates, names and locations, and providing corroborating evidence. Accordingly, the AO was satisfied that the Complainant had established facts to raise a presumption of discrimination. The AO noted that most of the alleged perpetrators were in management roles; accordingly, the Respondent was on notice. The AO noted that many details of the Complainant's evidence were outlined in her written submissions which were provided to the Respondent in advance of the hearing. The Respondent did not produce any witness to rebut the allegations. Accordingly, the AO held that the Complainant was discriminated against on the ground of gender and was sexually harassed.

The AO held that an employer's anti-harassment or dignity at work policy had to be effectively communicated to all and that management had to be trained in how to deal with incidents of harassment and how to recognise it. Given the Complainant's evidence, the AO held that the Respondent's sexual harassment policy was not effectively communicated and nor was management so trained. The Respondent, therefore, could not rely on the defence under s.14A(2) of the EEA, as it had not discharged the onus of proving that it took all reasonably practicable steps to prevent its employees from discriminating against and sexually harassing the Complainant.

In respect of redress, as the Complainant was not in receipt of remuneration at the date of the reference of the case, the maximum amount that could be awarded was €13,000. The AO made this award considering the serious nature of the Complainant's uncontested evidence. The AO also ordered the Respondent to review the operation of its harassment and sexual harassment policy within six months of the decision.

In respect of the allegation of victimisation, the AO held that the temporal proximity of the Complainant tendering her resignation and being clocked out before her shift ended could not be ignored. The AO was satisfied that the Complainant had shown that she suffered adverse treatment as a reaction to her complaint of discrimination and upheld her complaint of victimisation. The AO awarded her €3,000 (two months' pay) in compensation.

The AO also upheld the Complainant's complaint of a lack of daily breaks on the basis of her uncontested evidence that breaks were without structure; she had to work five or six hours before getting a break; and she was frequently instructed to complete the break record by reference to the roster. The AO awarded her €3,000 in compensation.

17

Martin Beirne v. Health Service Executive, ADJ-00040093

Keywords

Organisation of Working Time Act 1997 – Annual leave – Cesser pay – No notice that annual leave would be lost if not taken – No notice that carry over of annual leave had to be authorised

Background

The Complainant worked as a Property Manager for HSE Estates. A decision was taken in 2008 to abolish his role; however, when no suitable position was found, the Complainant was retained as Property Manager but without any line management. The Complainant retired in October 2022. In April 2022, he claimed payment for 104 days of untaken annual leave from 2007 as a cesser payment upon retirement. The Complainant submitted that the work was too busy for him to take four weeks' holiday every year. The Complainant submitted that annual leave was never discussed with him; he was never advised that he needed authorisation to carry it over and that he would lose it if it was not used.

The Respondent submitted that a claim under the Organisation of Working Time Act 1997 ("OWTA") was limited to unpaid holidays within the cognisable period, i.e. holidays accrued within a leave year plus six months prior to bringing the complaint. The Respondent submitted that the right to carry over annual leave only occurred where annual leave was not permitted to be taken. In this case the Complainant was in charge of when he took his annual leave and he never sought permission for carry over.

Findings

The AO held that the case law in this area was clear that the onus is on the employer to ensure that the worker is both given the opportunity to take paid annual leave and told that they will lose their annual leave if it is not taken. As the right to paid annual leave is an EU-law right, it can be lost only if the worker is placed on specific notice by his employer. The AO held that there was no communication between the Respondent and the Complainant in respect of annual leave. The AO was also satisfied that, in the absence of any evidence to the contrary, that the reason for failing to avail of his annual leave each year was due to work demands. Accordingly, the Complainant was entitled to a cesser payment (under s.23 OWTA) of 104 days' pay at €31,666.78.

18

Liam Cuffe v. St Vincent's University Hospital, ADJ-00048724

Keywords

Organisation of Working Time Act 1997 – Section 14 – Entitlement to Sunday premium payment – whether good faith payment constituted acknowledgement of entitlement

Background

Since 1999, the Complainant has been employed as a Hospital Chaplain by the Respondent hospital. Under his contract of employment, the Complainant was required to work weekends; however, the contract was silent in relation to the provision for Sunday premium. In June 2022, the Complainant queried his entitlement to a Sunday premium payment. The Respondent corresponded with the HSE and, having received advice that Sunday premium may fall to be paid, it commenced payment of Sunday premium from 6 November 2023. The Respondent emailed the Complainant on 3 November 2023 stating: "Following correspondence with the HSE, it has been decided that Sunday premium in respect of single time extra will be payable to Chaplains employed by SVUH effective Sunday 6th November 2023."

The Complainant sought compensation for the failure to pay Sunday premium in the six months prior to the submission of the complaint. The Respondent argued that the Complainant did not have a pre-existing contractual entitlement to Sunday premium payment and that the payment was now being made in good faith.

Findings

Section 14 of the Organisation of Working Time Act 1997 provides for a Sunday premium. The AO noted that the Respondent did not contest the question of whether a Sunday premium was payable following guidance from the HSE and held that as a matter of contract, the Respondent's email of 3 November 2023 was unequivocal and could not be construed as anything other than an acknowledgement of the entitlement to Sunday premium payment. The AO held that could not accept the Respondent's contention that the payment on 6 November was a good faith payment. The AO directed the payment of €2,627 amounting to the economic loss suffered within the cognisable period.

19

Suman Bhurtel v. Chicken Castle Ltd Chicken Club, ADJ-00050788

Keywords

Organisation of Working Time Act 1997 – National Minimum Wage Acts 2000 and 2015 – Migrant worker – Exploitative employment – Extension of time – Reasonable cause – Sunday premium – Public holiday pay – Annual leave – Weekly rest period – Maximum working week – Minimum wage

Background

The Complainant, a Nepalese national, worked for the Respondent restaurant until 15 August 2023, when his employment terminated. The Complainant complained that he worked Sundays and was not paid a Sunday premium; he was not paid for public holidays; he did not receive annual leave; it was normal to work 70 hours, seven days a week, so he did not receive a weekly rest period; and he was not paid a minimum wage.

The Respondent denied these claims, submitted that the Complainant worked a 39-hour week Tuesday to Saturday. The Respondent did not have any documentation in support of its case.

Findings

As the complaint was referred to the WRC on 15 February 2024, the Complainant applied for an extension of time. In considering whether the delay was due to reasonable cause, in line with s.41(8) of the Workplace Relations Act 2015 and case law, the AO noted that the Complainant gave evidence that his immigration visa, employment and accommodation were all dependent on his employment with the Respondent, which left him in a vulnerable position. When the Complainant's employment was terminated, he sought advice from Migrant Rights Centre Ireland in February 2024, and a complaint was referred the following day. The AO held that this total dependency on the Respondent, which took advantage of the Complainant's situation, gave rise to reasonable cause to allow for an extension of time. Accordingly, the cognisable period for the complaints was 15 February 2023 to 16 February 2024.

The AO held as follows in respect of the complaints:

- Failure to pay the minimum wage contrary to the National Minimum Wage Acts 2000 and 2015: the AO accepted that the Complainant sought a statement of his average hourly wage from the Respondent pursuant to s.23(1) of the Act, but this was not received. No credible evidence was given by the Respondent in this respect. The AO accepted the timesheets submitted by the Complainant that showed he regularly worked 70 hours a week. The AO held that the pay reference period was 12 months from the date the Complainant requested the s.23 statement. Accordingly, the AO calculated, on the basis of the Complainant's weekly wage and hours of work, that he earned €8.24 an hour, significantly short of the minimum hourly wage of €11.30 in 2023. The AO awarded €3,244.50 in arrears and €1,000 towards reasonable expenses incurred.

- Failure to pay Sunday premium contrary to the Organisation of Working Time Act 1997 ("OWTA"): the AO accepted that Sunday was a normal working day for the Complainant. The Respondent had failed to provide any documentary evidence, despite its obligation to maintain records. Further, there was no provision for or reference to a Sunday premium in the employment contract. In line with the Labour Court determination in *Chicken and Chips Ltd t/a Chicken Hut and Minowski* DWT159, where the complainant in that case worked in a similar industry, the AO held that a 33% premium should be applied. The AO found that the Complainant had worked 23 Sundays, and, accordingly, awarded compensation of €1,633.39 in compensation based on a 33% premium over a normal working day of ten hours.

- Failure to pay for public holidays contrary to the OWTA: the Complainant's evidence was not contradicted by evidence to the contrary from the Respondent. The onus was on the Respondent to maintain records of working hours pursuant to s.25. The AO awarded the Complainant €562 in compensation having regard for the hourly rate and normal working hours together with an additional sum for the economic loss suffered.

- Failure to pay annual leave contrary to the OWTA: the AO held that the undisputed evidence was that the Complainant did not have any annual leave during the cognisable period. The AO awarded €4,538.80 in compensation for 22 days' leave having regard for a daily rate together with an additional sum for the economic loss suffered.

- Failure to provide a weekly rest period contrary to the OWTA: the AO did not accept the Respondent's evidence that the Complainant worked Tuesday to Saturday. The Respondent failed to provide any documentary evidence either in the form of rosters or clocking times. The AO held that the Complainant was required to work seven days without the required weekly rest period. The AO awarded €6,655.50 in compensation, equivalent to an extra day's payment for each of the addition 24 hour periods each week during the cognisable period worked.

- Working more than 48 hours a week contrary to the OWTA: the AO held that the Complainant's normal working week was 70 hours a week. The AO awarded €5,496.75 in compensation which was the difference between the minimum wage of €11.30 and the contractual rate of €14.79 which he ought to have been paid for the hours worked.

20

Thandekile Sulo v. Abbot Close Nursing Home Ltd, ADJ-00050626

Keywords

Employment Equality Acts 1998 to 2021 – Discrimination on ground of disability – Access to Employment – Reasonable accommodation

Background

The Complainant is HIV positive. In July 2023, she started work experience with the Respondent, a nursing home provider as part of a course in Health Care Support. Shortly after commencing, she was offered a job as Healthcare Assistant with the Respondent and signed a contract in July 2023 with a commencement date of 4 October 2023. The Complainant submitted that she completed a number of medical forms for the Respondent and was asked to obtain a report from an occupational health therapist. The Complainant sought advice from the Respondent on where she could find such a therapist and how to go about getting an appointment but received no guidance. The Complainant detailed numerous contacts with the Respondent by email seeking updates on her employment where the Respondent failed to follow up or give her any guidance and help. In October 2023, the Complainant attended for work and was told that she had to leave the premises immediately and that she could not finish her work experience.

The Complainant contacted the Respondent by email on a number of occasions subsequent to this but received no response. The Complainant submitted that the completion of her work experience was delayed until she found an alternative nursing home in November 2023. The Complainant submitted a s.76 request for material information under the Employment Equality Acts 1998 to 2021 ("EEA") to the Respondent but received no response.

The Complainant claimed that she was discriminated against on the ground of disability in securing a job with the Respondent, in her conditions of employment and in the Respondent's failure to reasonably accommodate her. The Complainant also claimed that she had been dismissed for discriminatory reasons.

The Respondent denied the Complainant's claims and disputed her version of events, claiming that the Complainant never started employment because she had failed to provide references and other documents as per the recruitment policy. The Respondent denied that the Complainant was asked to leave the premises in October 2023.

Findings

The AO noted that the Respondent accepted that the Complainant had a disability for the purposes of the EEA.

In respect of the claim for discriminatory dismissal, it was accepted that the Complainant had a valid contract of employment. The contract provided for one months' notice of termination, which had not been provided. The Complainant had received no constructive engagement from the Respondent regarding her position between August and October 2023. The AO accepted that the Complainant had established facts which raised an inference of discrimination.

The AO did not accept the Respondent's submission that the Complainant's failure to provide references and work permit prevented her from commencing work. The Complainant gave evidence that these documents were presented at her interview and to the HR Administrator at the time she signed the contract. The HR Administrator did not give evidence at the hearing nor was the personnel file presented. The AO held that the Complainant was treated less favourably, which resulted in her constructive dismissal due to the Respondent's conduct on the ground of her disability.

In respect of the failure to provide reasonable accommodation, the AO accepted that the Respondent failed to reasonably accommodate the Complainant by arranging a referral to an occupational health physician. The AO noted that there was considerable confusion as to what exactly the Respondent was seeking from the Complainant, but the Respondent did not offer any further clarification. The AO also held that obtaining an occupational health report would not be a disproportionate burden on the employer. The AO held that the Complainant had been treated less favourably due to the nature of her disability, which was different from that of a colleague who was referred to an occupational health doctor, as well as other colleagues who had been deemed medically fit to work.

In respect of the complaint of discrimination in getting a job, training and conditions of employment, the AO held that it was entirely reasonable for the Respondent to seek a fitness to work medical report. However, in this case, there was a lack of clear engagement by the Respondent with the Complainant on what exactly it required and it was unclear why the Respondent did not refer the Complainant to an occupational health physician. The AO further did not accept the Respondent's reliance on the absence of references and a work visa. Having regard to case law providing that a respondent should provide cogent evidence to discharge the burden of proof in cases alleging discrimination on the ground of disability, the AO held that the Complainant, having made every effort to provide medical evidence of her fitness to work, was treated less favourably by the Respondent.

The AO further held that the failure to respond to the s.76 request compounded the Respondent's silence, lack of reasonable accommodation and barriers to the Complainant's access to employment.

The AO awarded €10,000 as compensation for discriminatory dismissal and €12,500 for the failure to provide reasonable accommodation and discriminatory treatment in access to employment.

21

Valentine Reilly v. Meath County Council, ADJ-00050118

Keywords

Employment Equality Acts 1998 to 2021 – Mandatory retirement age – Legitimate aims – Means appropriate and necessary to achieve those aims – Supreme Court decision in *Mallon*

Background

The Complainant had worked as a retained firefighter with the Respondent since October 1987. Under his contract, the mandatory retirement age was 55. When the Complainant reached the age of 55, he was granted a three-year fixed-term contract, and then received two successive one-year fixed-term contracts after applying for postponements of his retirement and following successful completion of a medical assessment. In December 2023, in advance of his 60th birthday, the Complainant applied to postpone his retirement. This request was refused. The Complainant brought a claim of discrimination on the ground of age in the imposition of a mandatory retirement age under the Employment Equality Acts 1998 to 2021 ("EEA").

The Complainant submitted that he was fit and healthy with good physical capacity. He referred to the Minister's statement in April 2024 that the mandatory retirement age for full-time and retained firefighters would be increased to 62 years of age.

The Complainant also submitted that the mandatory retirement age was disproportionate as he had no professional qualification that he could use post-retirement, and he did not have a state pension.

The Respondent submitted that the retirement age of 60 was set in accordance with the normal retirement age for retained firefighters nationally and that it acted in this case in accordance with circulars. Circular LG(P) 19/03 provided for a retirement age of 58, subject to an annual medical assessment. Circular LG(P) 02/2020, issued on foot of a WRC recommendation, provided for an increase in the retirement age to 60, subject to an annual medical assessment. The Respondent submitted that it could not be expected to provide for legislation which had not yet been enacted and that it had consistently applied the retirement age of 60. The Respondent submitted that its legitimate aims in applying a mandatory retirement age were: to ensure the proper functioning of fire services considering it was a field of work where physical and mental abilities were crucial for the role; and, possession of a particular physique could be considered a genuine and determining occupational requirement for the pursuit of the role as the exercise of the duties of the first service could have significant consequences for fire service employees and members of the public.

Findings

The AO noted that a mandatory retirement age is discriminatory. However, s.34(4) of the EEA provides an exception where an employer can establish that the mandatory retirement age was objectively and reasonably justified by a legitimate aim and that the means of achieving that aim were appropriate and necessary.

In considering the Respondent's stated legitimate aims, the AO noted that the Supreme Court decision in *Mallon v Minister for Justice* [2024] IESC 20 ("*Mallon*") discussed Court of Justice case law upholding the position that a legislative measure which does not identify the aim being pursued, but does provide a general context of the measure concerned, could be relied on to identify the underlying aim of the measure. Furthermore, pursuant to Mallon, the decision to adopt a mandatory retirement age was a matter for the relevant competent authority which was better placed than the courts to assess what was necessary or appropriate. The AO held that the Respondent was best placed to assess what was necessary or appropriate for the effective operation of its fire service, accepting that the physical and mental abilities of retained firefighters were crucial for the role and the proper functioning of the fire service. The Respondent had acted in accordance with the circular in place at the time and had engaged in succession planning. Accordingly, the mandatory retirement age was objectively and reasonably justified by legitimate aims.

In finding that the means used to achieve those aims were appropriate and necessary, the AO noted that the circular was applied consistently by the Respondent. Further, while the Complainant emphasised his own physical fitness, in accordance with *Mallon*, the avoidance of an individual capacity assessment was a legitimate aim in favour of justifying a general retirement age, and it was the consistent and systematic application of these rules which was important. Individual assessments were not supported by Court of Justice case law. Finally, the Complainant confirmed that he worked elsewhere, which weighed in favour of the proportionality of the mandatory retirement age.

The case was held not to be well founded.

22

Dylan O'Riordan v. Omniplex Cork Ltd, ADJ-00051601

Keywords

Employment Equality Acts 1998 to 2021 – Discrimination on the ground of disability – Failure to provide reasonable accommodation

Background

The Complainant is autistic. He was employed by the Respondent on 16 March 2022 and resigned on 7 June 2024. At the time of his resignation, the Complainant was a Duty Manager. The Complainant submitted that in the last months of his employment, he experienced a significant deterioration in his mental health. He informed the Respondent of his difficulties and that he needed accommodation in respect of his work, including consistent scheduling, having two days off to rest and recover, and not being placed exclusively on closing shifts. The Complainant went on sick leave in October 2023. He engaged with the Respondent in respect of accommodations, but felt that he was getting nowhere. He resigned and referred a complaint to the WRC submitting that he had been discriminated against contrary to the Employment Equality Acts 1998 to 2021.

The Respondent denied that the Complainant had been treated less favourably. The Respondent submitted that it had engaged with the Complainant extensively in order to find a solution and get the Complainant back to work and gave evidence of meetings and email exchanges in this respect.

Findings

The AO first considered whether a comparator could be identified. In cases involving less favourable treatment, a comparator can be actual or hypothetical. Here, the appropriate comparator was a person in a similar role who did not have a disability. The AO noted that it was common case that accommodation was provided for pregnant employees and students in relation to arranging suitable shifts. As no such accommodations were provided to the Complainant, the AO held that he had established a *prima facie* case. While noting the efforts the Respondent made to reach agreement with the Complainant, the AO held that the acute needs of the Complainant were not fully addressed. The absence of certainty in relation to two consecutive days off, which was emphasised in the occupational health reports, caused a significant difficulty for the Complainant. Accordingly, the AO held that the Respondent discriminated against the Complainant by failing to provide him with reasonable accommodation in relation to his disability. The AO awarded €12,000 in compensation for the effects of the discrimination. The AO directed the Respondent to engage awareness training or workshops in an effort to introduce a positive management approach to staff with neurological complex conditions such as autism.

23

Rachel Smyth v. Metron Stores Ltd t/a Iceland (in liquidation), ADJ-00047680

Keywords

Employment Equality Acts 1998 to 2015 – Discrimination on ground of gender – Pregnancy – Continuum of discrimination – Redress – Section 82(4) read in conformity with EU law – Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation – Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Background

The Complainant commenced employment with the Respondent in August 2020. At the time of the termination of her employment, she worked as a Junior Buyer. In February 2023, when the Complainant was seven months' pregnant, staff were informed that the Iceland brand had been bought and that there would be a TUPE transfer. She was informed that she would be relocated to 'Homesavers' in Tallaght, but, a number of weeks later, she, and other staff, were laid off without notice. Around the same time, the Complainant noticed that the Respondent was advertising for a Junior Buyer role in 'Homesavers' in Tallaght. While on lay off, the Complainant attempted to contact the Respondent numerous times to confirm her employment status but received no response.

The Respondent also failed to complete her maternity benefit forms when requested. The Complainant had to seek jobseeker's allowance before the Respondent completed the forms in August 2023. In September 2023, the Complainant was informed by a liquidator for the Respondent that she was being made redundant.
The Complainant submitted that she had been discriminated against on the ground of gender and penalised because of her pregnancy and that she had been harassed and victimised contrary to the Employment Equality Acts 1998 to 2021 ("EEA").

There was no attendance on behalf of the Respondent.

Findings

The AO noted that the Complainant's evidence was uncontested, and she provided clear and detailed information concerning the events, as well as a number of documents by way of corroboration.

The AO first considered the relevant timeframe. As the complaint form was submitted on 4 September 2023, the cognisable period ran from 5 March 2023 until 4 September 2023. However, the AO held, having regard to case law, that a continuum of discrimination had been established; accordingly, she considered the events from February 2023.

The AO noted that the Complainant was laid off without notice while she was seven months pregnant, while at the same time an equivalent role was advertised, and the Complainant kept completely uninformed as regards her employment situation. The Respondent also delayed in providing the necessary maternity benefit documentation which caused the Complainant considerable stress. Having regard to the case law that pregnant women are afforded special protection from adverse treatment and that the fact of pregnancy is itself sufficient to shift the burden of proof to the employer once the complainant has established less favourable treatment, the AO held the Complainant had established facts giving rise to an inference that she had been discriminated against by reason of her pregnancy. As the Respondent did not provide any evidence of rebuttal, the AO held that the Complainant was discriminated against on the ground of gender. However, the AO was not satisfied that there was any evidence of harassment or victimisation.

Section 82(4) of the EEA provides that the maximum amount which may be ordered by way of compensation shall be:

(a) "in any case where the complainant was in receipt of remuneration at the date of the reference of the case, or if it was earlier, the date of dismissal, an amount equal to the greatest of—
(i) 104 times the amount of that remuneration, determined on a weekly basis,
(ii) 104 times the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of discrimination or victimisation concerned,
or
(iii) €40,000,
or
(b) in any other case, €13,000.
"The AO noted that at the time the complaint was referred, the Complainant was employed by the Respondent but was not in receipt of remuneration as she had been laid off. Accordingly, on a strict reading of s.82(4), the maximum award was €13,000. However, the AO considered Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation which clearly apply to people in employment. The Directives did not exempt any persons on lay off or not in receipt of remuneration. The AO also considered the obligation to interpret national law in conformity with EU law, and, accordingly, interpreted "in receipt of remuneration" to read "in receipt of remuneration and/or in employment".

The AO awarded €51,000 in compensation (approximately 18 months' pay) having regard to the Complainant's evidence on the extent of the discrimination, the impact it had on her, and the length of time over which the discrimination occurred. The AO also had regard to the requirement, under EU law, for the sanction to have a deterrent effect.

24

Care Worker v. Costern Unlimited Company, ADJ-00046268

Keywords

Employment Equality Acts 1998 to 2021 – Unfair Dismissals Acts 1977 to 2015 – Sexual harassment – Section 14A defence – Constructive dismissal

Background

The Complainant was employed as a health care assistant with the Respondent from September 2021 until she resigned in August 2023. The Complainant submitted that she had reported a work colleague who was intoxicated at work but that the Respondent had not dealt with these concerns. The Complainant submitted that in February 2023, the work colleague placed his hand on her rear end. The Complainant reported this incident to management, as well as another incident where the colleague inappropriately hugged her and an investigation was held. The Complainant's complaint of sexual harassment was not upheld, and the Complainant continued to be rostered with or in close proximity to the colleague. The Complainant unsuccessfully appealed the decision.

The Complainant alleged that she had been sexually harassed contrary to the Employment Equality Acts 1998 to 2021 ("EEA") and that her resignation was a constructive dismissal as the working environment became oppressive and unsafe such that she had no choice but to resign.

The Respondent denied the complaints, stating that it had investigated the allegations thoroughly but that there was simply not enough evidence to support the allegations. The Respondent also submitted that it had clear policies detailing the requirements to comply with dignity and respect codes of behaviour which specifically state that any sexual harassment would be viewed as serious misconduct that could lead to dismissal. The Respondent submitted that all employees were given a handbook that detailed these policies and received induction training where the standards of behaviour expected were clearly communicated. The Respondent also submitted that it had acted entirely reasonably and that there had been no fundamental breach of a contractual term such that the Complainant's resignation could not be deemed a constructive dismissal.

Findings

The AO considered the case law and academic commentary on sexual harassment as an action that was actionable *per se* and did not need to be linked to a specific discriminatory ground nor did it need a comparator. The AO held that the evidence given by the Complainant was compelling and at minimum met the *prima facie* test to give rise to an inference of sexual harassment.

The AO considered s.14A of the EEA which provides a defence for the employer to prove that it took such steps as were reasonably practicable to prevent the person from harassing the victim. While the Respondent submitted its policies, the AO noted that the incidents were alleged to have occurred prior to the dates on the policies and handbook. The Respondent also did not produce training records. Accordingly, the AO held that there was no evidence to show

that at the time of the alleged incidents, the employer had comprehensive, accessible, and effective policies that focused on prevention, best practice and remedial action.

The AO held that as the Complainant had made out a *prima facie* case of sexual harassment which had not been effectively rebutted by the Respondent, the Complainant was discriminated against.

In respect of the claim of constructive dismissal, the AO held that the evidence of the Complainant was credible and persuasive. Allowing for the effects of the harassment on the Complainant and the absence of proactive policies at the date of resignation, the AO held that the Complainant was constructively dismissed. It was reasonable for the Complainant to assume that nothing would change and that there was every likelihood of future incidents with little consequence.

The AO awarded €25,000 for the effects of the discrimination, having regard to the fact that there had been two acts of intimate physical touching and the fact that the work environment significantly fell short of what was set out in the code of practice. In respect of the constructive dismissal, the AO held that the Complainant had not mitigated her loss sufficiently. While the Complainant did provide some evidence of her search for alternative work, the AO had regard to the fact that the employment market was buoyant. The AO awarded €15,000 for unfair dismissal.

25

Vanessa Rodrigues Linhan v. Carechoice, ADJ-00044371

Keywords

Employment Equality Acts 1998 to 2021 – Harassment – Sexual harassment – Racial harassment – Employer's liability – Failure to take action to reasonably avoid harassment

Background

The Complainant worked as a Health Care Assistant at the Respondent's nursing home for a period of five months. She complained about three separate incidents involving two different patients where she was racially and sexually harassed and brought a claim under the Employment Equality Acts 1998 to 2021 ("EEA").

The Complainant outlined that there were known issues with both patients. She submitted that she had emailed HR after the first incident and had complained to the nurses' station a number of times. She resigned after submitting her complaints to the WRC.
The Respondent's Director of Nursing and Assistant Director of Nursing gave evidence. The Respondent submitted that it put a plan in place after the first incident and that they were not aware of any other incidents.

Findings

The AO accepted that the Complainant had been racially and sexually harassed. While noting that there were certain circumstances in which the nature of the Complainant's role could alter what might be reasonably considered as harassment, this was not such a role. There was no general immunity to healthcare providers because their staff were involved in the care of patients.

An employer may be held liable for the harassment by others unless it can show that it took such steps as were reasonably practicable to prevent the person from harassing the victim (s.14A of the EEA). The AO noted that while the Respondent had an induction and training programme, the Complainant gave evidence that harassment by patients was not addressed. Furthermore, the Respondent's Bullying and Harassment Policy was generic and failed to consider the specific needs and risks involved in working in a healthcare setting. In respect of the first patient, the Respondent was aware of the risks posed. While action was taken to address the patient's behaviour following the Complainant's complaint, the Respondent had not established that there were efforts in place to manage the risks before that. In respect of the second patient, again, the Respondent was aware of his behaviour and had failed to establish that it took reasonably practicable steps to address the risks. The AO noted that when the Respondent became aware of an issue, it sought to address it; however, the AO stated that, when countering harassment, the most important tier of management was the victim's immediate supervisor, who would be on hand to actually react to incidents and risks. More senior staff offering support after the fact was no substitute for this.

Having regard to the fact that redress under the EEA is to compensate for the effects of acts of discrimination up to two years' salary, the Complainant's annual salary of €28,000, and the obligation, as EU-derived rights, to ensure that redress is effective, proportionate and dissuasive, the AO awarded €30,000 in compensation.

26

Oisín Gourley v. Mason Hayes & Curran LLP, ADJ-00049048

Keywords

Employment Equality Acts 1998 to 2021 – Discrimination on ground of disability – Reasonable accommodation – Minimum Notice and Terms of Employment Acts 1973 to 2005

Background

The Complainant was employed as a senior associate solicitor by the Respondent from 13 March 2023 until 17 August 2023 when his employment was terminated as he did not pass probation. The Complainant submitted that he had long Covid and this affected his mental health during his employment. Early in the employment, he informed a partner in the Respondent that he had long Covid but stated that it did not affect his ability to do his job. At probation reviews, the Complainant was told that there were issues with his performance and that the client he was working for wanted to see significant improvement. On 9 August 2023, the Complainant received an email stating that a HR representative would attend his weekly catch-up the following day. In response to this, the Complainant informed the Respondent of his medical issues and asked for reasonable accommodation. The following day, the Complainant was told that he had not passed his probation, and he would be given one weeks' notice. On 14 August 2023, the Respondent provided the Complainant with written notice of his dismissal.

The Complainant submitted that his dismissal was discriminatory on the ground of disability and that the Respondent had failed to provide him with reasonable accommodation contrary to the Employment Equality Acts 1998 to 2021 ("EEA"). The Complainant also submitted that he was not paid one week's notice contrary to the Minimum Notice and Terms of Employment Acts 1973 to 2005.

The Respondent denied the claims, submitting that the decision in respect of probation was made when a client asked that the Complainant no longer be given work, before the Complainant asked for reasonable accommodation. The Respondent further submitted that the Complainant had not identified a comparator. In respect of reasonable accommodation, the Respondent submitted that the Complainant never sought any form of reasonable accommodation prior to the day before his review meeting on 10 August 2023, and the Complainant never provided the firm with any medical letter or certificate suggesting a requirement for reasonable accommodation.

Findings

The AO noted that the Complainant had to establish facts from which a presumption of discriminatory treatment could be raised. The definition of disability has been interpreted broadly by the courts. The Complainant must show that he had a disability and that the disability hindered his full and effective participation in professional life on an equal basis with other workers. However, the AO accepted that the Respondent had decided that the Complainant would not pass his probation prior to the Complainant asking for reasonable accommodation.

Accordingly, the Respondent had not been made aware that the Complainant's condition affected his ability to carry out his job when the decision was made. Furthermore, as the Complainant had failed to nominate a comparator, his claim had to fail. Accordingly, the AO held that the Complainant had not made out a *prima facie* case of discrimination on the ground of disability.

In respect of the claim of failure to provide reasonable accommodation, having regard to the case law, the AO held that it was clear that the EEA place an unavoidable obligation on an employer to carry out an assessment to ascertain if measures could be put in place to enable an employee with a disability to continue in employment before making any decisions to their detriment. The employer had a duty to identify the aspects of the employee's competence which were problematic and then assess if it was possible to put in place any reasonable measures which would ameliorate those competency issues and enable the employee to fulfil the role. The AO accepted that the first time the Complainant sought reasonable accommodation was on 9 August 2023, when he knew there was a possibility that he might be dismissed. The Respondent was then obliged to make enquiries into the Complainant's fitness to fulfil the requirements of his role. The decision to dismiss was taken in the absence of any assessment of his capabilities and whether reasonable accommodation could be put in place to address his shortcomings. Accordingly, the AO held that the Respondent had discriminated against the Complainant and awarded €5,000 in compensation. The AO also ordered that the Respondent review its policy on reasonable accommodation and provide training on the policy to all of its employees in a staff management role within three months of the decision.

In respect of the claim that the Complainant was not paid his full notice, the AO noted that it was well established that notice did not have to be given in writing once it was unambiguous. The AO held that the Complainant was properly on notice from 10 August 2023 that his employment would end on 17 August. Accordingly, the complaint was not well founded.

27

Noel Feeney v. Oberstown Children Detention Campus, ADJ-00050420

Keywords

Workplace Relations Act 2015 – Substitution of referral statutory provision – Section 41(6) time limit – Jurisdiction to extend time

Background

The Complainant was employed by the Respondent until his retirement in August 2016. The Complainant brought a claim that he was entitled to payment in lieu of additional annual leave or privilege days provided for in a circular.

The Respondent raised two preliminary issues as to jurisdiction: first, the AO did not have jurisdiction under the legislation upon which the claim was brought (European Communities (Organisation of Working Time) (Mobile Staff in Civil Aviation) Regulations 2006 (SI No. 507 of 2006)); and second, the claim was out of time and statute barred as it had been referred outside of 12 months from the date of the alleged contravention.

The Complainant submitted that he had intended to refer the complaint under the applicable statute and that he was unaware of the circular until recently. He submitted that management had unfairly withheld payment and that time began to run from the date of his knowledge of entitlement to same.

Findings

The AO first considered whether it was possible to substitute the more applicable statute, the Payment of Wages Act 1991 ("PWA"). Having regard to the case law, the AO held that there is no bar to substituting or adding a statutory provision under which a complaint is referred, even if this changes the redress provisions. The AO held that as the WRC form is non-statutory, the general nature of the complaint may be set out via any representations to the WRC within the requisite time limit. The AO further held that the Respondent was well aware of the basis of the complaint and could not be prejudiced by the substitution. Accordingly, the AO substituted the regulations for the PWA.

In respect of the contention that the claim was statute barred, the AO held that the complaint was extremely vague without any concrete evidence of a contractual entitlement to additional annual leave or privilege days or a precise sum claimed in lieu. However, the AO held that it was clear that any payment in lieu would have become due and owing before or on the Complainant's retirement in August 2016, which was the date of the last possible contravention. The wording of s.41(6) of the Workplace Relations Act 2015 is very specific and does not make provision for referral of a complaint from the date of knowledge or where a delay in referring a complaint was due to a misrepresentation by an employer. Accordingly, there was no jurisdiction to extend time or investigate the complaint.

28

Fionnuala Bonner v. Donegal County Council, ADJ-00022541

Keywords

Protection of Employees (Fixed-Term Work) Act 2003 – Successive renewals of fixed-term contracts – Contract of indefinite duration

Background

The Complainant was initially employed by the Respondent as a Health, Safety, Quality and Environment Supervisor on 7 April 2015. Between that date and 31 May 2019, she was employed on four contracts: as a HSQE Supervisory for the first two, and a Water Pro Officer for the second two, for a specific EU-funded project, following an open competition. Between contracts one and two, there was a gap of approximately five weeks; between contracts two and three, there was a gap of approximately seven weeks; and there was no gap between contracts three and four. The Complainant submitted that the roles and duties that she carried out during the first contract continued throughout the contracts and after her termination. At the time her employment ended, she was engaged in a wide range of tasks and duties which were not related to external funding. The Complainant submitted that her last contract did not provide any objective reason for the temporary contract.

The Complainant claimed that the Respondent had failed to offer a contract of indefinite duration in accordance with the Protection of Employees (Fixed-Term Work) Act 2003.

The Respondent submitted that the four-year period was not continuous and that there were objective reasons for each contract. In respect of the third contract, the Respondent submitted that it was a specific purpose contract of employment linked to EU funding. The contract was extended by four months in order to complete the project.

Findings

The AO first considered whether the employment was continuous. Having regard to the detailed task analysis that had been produced by the Complainant, the AO held that there was an overlap and similarity between contracts one and two, and, accordingly, the gap should be treated as layoff. Similarly, the AO held that while contract three did contain additional new duties, it also required the Complainant to continue with a substantial number of tasks previously carried out. Accordingly, the AO held that the gap could be considered as layoff. The AO held that the contract language, break periods and the competition for contract three all hid the reality that the Complainant's job expanded during her period of employment. The overlap in duties was so significant that it had to be viewed as a role that increased in responsibility while maintaining a chain of continuity. Accordingly, the Complainant was engaged in continuous employment.

The AO noted that there was a lack of specificity in the renewal contracts as to why they were to end on the specified date. In respect of the contract linked to EU funding, the AO held that it failed to link the duration with the fact that funding was to end at that time or that the project would be completed by that date. In fact, the Complainant demonstrated that her duties continued after the termination of her employment. Accordingly, the AO held that the Complainant was employed on two or more successive continuous fixed-term contracts and the aggregate duration of the contracts exceeded four years. Accordingly, the AO held that the fixed-term of the contract had no effect and the contract was deemed to be one of indefinite duration.

However, since the AO had made an award of €45,000 under the Complainant's separate complaint (ADJ-00025462) under the Employment Equality Acts 1998 to 2021 in respect of a pregnancy-related dismissal, but related to the same facts, having regard to the principle that double compensation not be awarded, the AO declined to make an award in this case.

29

Michael Broderick v. North Quay Associates Ltd, ADJ-00048080

Keywords

Sick Leave Act 2022 – compensation for frustration and upset

Background

The Complainant brought a complaint that the Respondent had not paid him sick leave in July 2023 in accordance with the Sick Leave Act 2022. The Complainant submitted that he was penalised for raising the issue of his entitlement to statutory sick leave.
The Respondent accepted that it failed to comply with its statutory obligations and has paid the amount owing to the Complainant.

Findings

While noting that the Respondent accepted that it had not complied with its statutory obligations, the AO stated that it was regrettable that the Complainant had to resort to the services of the WRC before the Respondent's could clarify its position. While accepting the Employer's *bona fides*, noting that it was unlikely that such a mistake would be repeated, and holding that there was no evidence of penalisation, the AO held that the Complainant was frustrated and upset with the time and effort it took for him to be paid his legal entitlement. Accordingly, the AO awarded the Complainant €450 in compensation.

30

Ann Britton v. Amcor Flexibles Ltd, ADJ-00050138

Keywords

Sick Leave Act 2022 – Whether employer's scheme more favourable than statutory scheme – Reference period – No entitlement to sick pay in first 12 months of employment

Background

The Complainant commenced employment with the Respondent in April 2023. Under the terms of the Respondent's sick pay scheme, employees were entitled to ten days' of paid sick leave in a 12-month period after completing 12 months' service. The scheme also involved a waiting period of three days. On 2 February 2024, the Complainant commenced five days of sick leave. She was informed that she was not entitled to any benefit under the Respondent's scheme as she did not have 12 months' service. Furthermore, she would not be paid statutory sick pay under the Sick Leave Act 2022 since the Respondent's sick pay scheme was more favourable than the statutory scheme. The Complainant sought illness benefit from the Department of Social Protection, but this was denied on the basis that she was to receive sick pay for the first five days from her employer and social welfare illness benefit would not be paid until the sixth day.

The Complainant submitted a complaint to the WRC claiming that she was entitled to statutory sick pay of five days.

The Respondent claimed that the payment terms from its scheme were vastly superior to those in the statutory scheme. Having regard to the factors set out in s.9(2) in determining which scheme was more favourable, although the Respondent accepted that the statutory scheme was more advantageous in respect of the period of service required before sick leave was payable and the waiting period, it submitted that the period for which sick pay was payable and the amount of sick leave payable were more favourable. The Respondent submitted that its scheme provided for ten days' sick pay in a 12-month period, significantly greater than statutory sick pay. Furthermore, the amount of sick leave payable was well in excess of the 70% under the statutory scheme. In respect of the reference period for the scheme, the Respondent accepted that there no reference period within its scheme but submitted that the reference period in the Act and the scheme was equally favourable at 12 months. The Respondent submitted that the fact that an employee did not fall within the scope of its scheme did not make the scheme less favourable.

Findings

The AO held that the concept of a reference period was crucial to deciding this complaint. The Respondent contended that a 12-month period was the appropriate reference period as it was the same as the reference period in the statutory scheme. However, the AO held that the Respondent was seeking to go outside the reference period of weeks 1 to 50 as expressed in the Complainant's contract and to import into the reference period benefits from future periods of 12 months for which she had not yet qualified.

The AO held that the inference from this submission was that benefits in future years could be used to decide that the benefits of the employer's sick pay scheme was better overall and, accordingly, justified no payment at all during the reference period. Such an approach would have the effect of undermining the concept of a reference period as a key test in the legislation. The AO further noted that it was regrettable that the Act was not more precise about what constituted a reference period. The AO had regard to the removal by the Department of Social Protection of any entitlement to a state illness benefit until the sixth day in 12 months, which implied that the Department presumed that a worker would receive a payment for at least five days in any reference period. The AO noted that the effect of the competing interpretations of the Act was that the Complainant was worse off when she was ill in the first 52 weeks of her employment than if the Act had never been introduced.

The AO held that, to be properly assessed for comparison purposes, there had to be activity in the reference period and the benefits had to be those which applied in the reference period. During the 12-month period specified in the contract, the Respondent scheme provided no period of sick payment for the Complainant. Accordingly, the Respondent could not claim that the amount payable was better than the Act overall.

The AO awarded €1,000 in compensation to the Complainant.

31

A Worker v. Service Provider to Financial Services, ADJ-00048825

Keywords

Sick Leave Act 2022 – Section 11 employee on sick leave treated as not absent – Section 12 penalisation – Disciplined for level of absenteeism

Background

The Complainant works as a Customer Service Adviser, having commenced employment with the Respondent in November 2022. As he had been absent from work for 11 days, the Complainant's level of absenteeism was highlighted, and, in September 2023, he was given a verbal warning for his absences. In October 2023, the Complainant was absent for 1.5 days. He submitted a medical certificate and availed of sick pay pursuant to the Sick Leave Act 2022 ("SLA"). In November 2023, the Complainant was issued with a written warning in respect of his absences.

The Complainant brought a complaint stating that the issuing of the written warning was contrary to s.11 of the SLA, which provides that that "an employee shall, during a period of absence from work by the employee while on statutory sick leave, be treated as if he or she had not been so absent". He also claimed that he had been penalised contrary to s.12 for having exercised his entitlement to statutory sick leave.

The Respondent submitted that the Complainant was disciplined in line with its absence and disciplinary policies.

Findings

The AO held that it was clear that the issuing of a written warning was linked to the Complainant's absence on certified sick leave in October. While the AO acknowledged the Respondent's denial of a breach of the SLA and its assertion that it was adhering to the provisions of its policies, the AO held that the wording of the SLA provides that an employee on statutory sick leave shall be treated as if he or she has not been so absent. Accordingly, the AO held that the Respondent's actions in taking the Complainant's absence into account in imposing the sanction were a breach of the Act. However, the AO held that as the sanction predated the Complainant's assertion of a breach of the Act, there was no evidence of penalisation on the part of the Respondent.

The AO awarded €1,428.75 (equal to three weeks' pay) for breach of s.11.

32

An Assistant Lecturer v. An Institute of Technology, ADJ-00050085

Keywords

Protection of Employees (Fixed-Term Work) Act 2003 – Probation periods – Fixed-term contract – Proportionate probation – Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union

Background

The Complainant works as a part-time assistant lecturer for the Respondent. He was hired on a 24-month fixed-term contract in September 2023, subject to a 12-month probation period. The Complainant challenged the length of the probation period as not proportionate to the length of his contract. The Respondent submitted that its contracts were set by a sectoral bargaining arrangement, and it considered the probation period to be proportionate.

Findings

Under s.9A of the Protection of Employees (Fixed-Term Work) Act 2003, the length of a probationary period in a fixed-term contract must be proportionate to the expected duration of the fixed-term contract. As this provision derives from Directive (EU) 2019/1152 on transparent and predictable working conditions in the European Union, the stated purpose of which was to promote more transparent and predictable employment while ensuring labour market adaptability, the AO held that he would consider these aims in deciding whether the probationary period was proportionate.

The AO noted that an employer has a right to prescribe a probation period which allows it to consider whether the employee is a good fit and to dismiss them quickly if the relationship is not working out. It also facilitates the employer in monitoring and correcting the employee's performance early on. However, the AO also noted that probation periods were entirely contrary to the goal of providing predictable employment for employees. The AO also considered the Respondent's reasons for the length of the probation period. In simply stating that the probation period was proportionate and that the contracts were set by a sectoral bargaining agreement, the AO held that the Respondent had not provided any justification for the probation period. The Respondent did not dispute that there was no structured probation policy in operation; the probation period appeared to be just a threat of sudden dismissal hanging over the employee. In those circumstances, the AO held that the probation period was not proportionate.

Finding that there was a public policy reason for awarding compensation, which would give the Respondent a degree of impetus to update its position, the AO awarded €1,000 in compensation and ordered that the Complainant's probation period be reduced to six months.

33

Alina Karabko v. Tiktok Technology Ltd, ADJ-00051600

Keywords

Work Life Balance and Miscellaneous Provisions Act 2023 – Code of Practice for Employers and Employees on the Right to Request Flexible Working and the Right to Request Remote Working – Right to request remote working arrangement

Background

The Complainant commenced work with the Respondent as a Core Operations Specialist in January 2022. While the Complainant's contract provided that her normal place of work was Dublin, due to the Covid-19 pandemic, all employees were working remotely. From June 2022, the Respondent brought in a Return to Work policy which gradually required employees to return to the office three days a week with two days working from home. The Complainant was granted a discretionary exception to work remotely full time. In July 2023, the Respondent announced a planned return to the office for all employees not already mandated to return, effective from October 2023. Exceptions would be considered only where providing reasonable accommodation in respect of a disability.

In March 2024, the Complainant submitted a request for fully remote work stating that it would reduce her daily commute and carbon footprint (the Complainant lived 2.5 hours' drive from the workplace); it would improve her quality of life; and there was a lack of suitable accommodation in Dublin for her and her cat. The Respondent acknowledged receipt of the request and advised that an extension of time would be necessary to consider it. Two employees of the Respondent considered the request but ultimately refused it stating that the hybrid work model promoted three days of in-person collaboration in the office and two days of remote work. It noted that while some duties could be performed from home, there were other essential parts of the job that had to be performed from the office, such as team collaboration and knowledge sharing for continuous upskilling and performance.

The Complainant submitted a complaint under the Work Life Balance and Miscellaneous Provisions Act 2023 ("2023 Act") claiming that the Respondent did not consider her application for fully remote working arrangements in accordance with the 2023 Act and the Code of Practice for Employers and Employees on the Right to Request Flexible Working and the Right to Request Remote Working ("Code of Practice"). The Complainant submitted that the Respondent completely disregarded her needs when deciding on her request; and the Respondent did not consider the request in an objective, fair and reasonable manner.

The Respondent submitted that it had acted in accordance with its obligations under the 2023 Act as it diligently assessed the Complainant's application for fully remote work in good faith and made a decision for valid objective reasons, having weighed up both the needs of the business and the needs of the Complainant.

Findings

The AO considered the relevant provisions of the 2023 Act. Section 20 provides that an employee may request approval for a remote working arrangement and sets out how such a request may be made. Section 21 provides that an employer who receives such a request must consider the request having regard to a number of criteria and to respond not later than four weeks after receipt. Practical guidance for employers and employees on how to make and handle requests for remote working is provided in the Code of Practice. Section 27 provides that the AO cannot investigate the merits of a decision made by an employer where a request for remote working has been refused or where a request has been granted but is not in line with the employee's preferred pattern.

The AO held that the issue was whether the Respondent complied with s.21 when considering the Complainant's request. Section 21 places three distinct duties on an employe. First, s.21(1)(a) requires an employer to consider the request having regard to its needs, the employee's needs and the requirements of the Code of Practice. The AO held that it was clear from the evidence that the request was treated very seriously by the Respondent. On receipt of the request, two members of staff of the Respondent, one from HR and the other a manager from the Complainant's operational area, met on a number of occasions to consider the request in detail. According to their evidence, they studied both the 2023 Act and the Code of Practice, they examined the Complainant's request, and they referred to the Respondent's business plans.

The Complainant's line manager said that taking all of the relevant factors into account, the decision was made to refuse the Complainant's request to work remotely on a fulltime basis. Accordingly, the AO held that the Respondent had complied with its obligations under s.21(1)(a).

The second and third duties imposed by the Act require the employer to deal with a request within four weeks of receipt (s.21(1)(b)), while s.21(2) provides for an extension of the consideration period of up to eight weeks. The AO noted that the Respondent acknowledged receipt of the request within four weeks and notified her that it required an extension of time to adequately consider the request. The Respondent issued a decision in writing within this time. Accordingly, the AO held that the Respondent had complied with its obligations under s.21(1)(b) and 21(2).

The AO concluded that the Respondent did not breach s.21 of the Act, and, therefore, the complaint was not well founded.

34

Abdul Rafiq v. State of Kuwait, ADJ-00037216

Keywords

Unfair Dismissals Acts 1977 to 2015 – Redundancy Payments Acts 1967 to 2022 – Sovereign immunity – Whether the WRC had jurisdiction to hear claim against Embassy – Driver employed by Embassy – Alleged unfair dismissal – Unlawful deduction of wages

Background

The Complainant worked as a driver for the Respondent from August 2008 until he was made redundant in September 2021. The Complainant complained that he had been unfairly dismissed by way of an unfair selection for redundancy, alleging that his wife's complaint against the Respondent was the reason for the selection and that the Respondent made an unlawful deduction from his wages upon termination.

The Respondent invoked sovereign immunity in respect of the claim, relying on case law including *Canada v. Employment Appeals Tribunal* [1992] 2 IR 484 ("*Canada*"). The Respondent submitted that the Complainant's employment functions were governed by circulars emanating from the relevant departments in Kuwait. The Complainant worked under the supervision of the local Head of Mission, and, in his role, the Complainant was responsible for driving members of the mission and various government documents to various locations in the furtherance of government functions. The Respondent submitted that the Complainant's contract was public as opposed to private in nature.

In respect of the preliminary issue of immunity, the Complainant submitted that a more restricted view of sovereign immunity applied since the 1992 Supreme Court decision, relying on Court of Justice and European Court of Human Rights decisions. The Complainant also relied on the 2004 UN Convention on Jurisdictional Immunities of States and their Property.

The Respondent submitted that the Complainant was fairly dismissed by reason of redundancy. The Respondent gave evidence that the decision to make the Complainant redundant was taken by the Embassy of Kuwait in London. The primary function of the Cultural Office of the Embassy, which operates in Dublin, was to provide educational opportunities to Kuwaiti students in Ireland. The Covid-19 pandemic prompted remote working practices and led the Respondent to engage in a restructuring programme. The Complainant was the only driver and had not worked between August 2020 to September 2021, although he was paid his full salary. The Complainant was invited to meetings to discuss alternatives to redundancy, but none of these was viable.

In respect of the unlawful deduction, the Complainant claimed two months' notice pay, eight days of accrued annual leave, and a monthly food allowance of €234. The Respondent conceded that the Complainant was owed two months' pay but denied that he was entitled to eight days' leave, since he was entitled to a *pro rata* amount of leave, and the meal allowance was not paid to any staff as they were working from home.

Findings

In respect of the preliminary issue, the AO considered the case law on sovereign immunity. In Canada, the Supreme Court concluded that "if the activity called in question truly touches the actual business or policy of the foreign government then immunity should still be accorded to such activity".

The Court held that the work of a chauffeur fell within the public domain of the government in question, as he was directly connected to the work of the Ambassador. While the presumption could be rebutted, the element of trust and confidentiality that was reposed in the driver of an embassy car created a bond with the employers that had the effect of involving him in the government's public business organisation and interests. However, the AO held that the reach of sovereign immunity has been significantly tempered by decisions of the Court of Justice and European Court of Human Rights, which addressed the nature of the work undertaken by the employee. The AO also referred to Article 11 of the UN Convention on Jurisdictional Immunities of States and their Property which provides that: "Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State." Article 11(2) carves out a number of exceptions to this. Although Ireland has not ratified the Convention, the Court of Justice has held that Article 11 is a principle of customary international law. Accordingly, as Ireland had not opposed the Convention, the AO held that it applied in this case.

Considering the facts of the case, the AO noted that *Canada* was decided on the then thinking that a chauffeur's work, with his close connection and proximity to the Ambassador and the Ambassador's reliance on him, brought him within the sphere of activity that truly touched the actual business or policy of the foreign government. The AO held that no evidence was presented to demonstrate an equivalent reliance and exclusive connection between the Complainant and the Head of Mission.

The AO noted that the Complainant's work as a driver for the Mission's various requirements entailed driving the head of Mission on occasions, sometimes driving his family, sometimes delivering or acquiring goods, and delivering items to students. The AO considered that the role of a driver to a Mission was different to the connection existing, exclusively, between an ambassador and their personal chauffeur. Finally, the AO held that the Complainant did not come within any of the exceptions in Article 11(2). Accordingly, the AO held that she had jurisdiction to hear the complaint.

Having regard to the complaint of unfair dismissal, the AO accepted that the Complainant's role was a stand-alone position, and the arrival of Covid-19 changed work practices. This aligned with the justification for a redundancy in s.7(2) of the Redundancy Payments Acts 1967 to 2022. The AO accepted the evidence that the need for a driver no longer existed, and there were no suitable alternative roles for the Complainant. The Respondent engaged in a consultation process with the Complainant. Accordingly, the AO held that the Complainant was not unfairly dismissed, and the complaint was not well founded.

In respect of the complainant of unlawful deduction contrary to the Payment of Wages Act 1991, the AO held that the monthly food allowance had been paid throughout the Complainant's employment, and there was no contractual entitlement to withhold it, nor did the Complainant consent to the withholding. In respect of the unpaid leave, the Respondent produced no records or pay slips to show when and for how many days' annual leave the Complainant was paid. Accordingly, the AO held that the Complainant's complaint of an unlawful deduction was well founded and awarded €8,740, to include two months' pay, monthly food allowance and eight days' annual leave.

35

A Waiter v. A Hotel, ADJ-00046780

Keywords

Industrial Relations Acts 1946 to 2019 – Tips and gratuities – Failure to pay tips – Constructive dismissal

Background

The Complainant worked as a waiter in the Respondent's hotel in March 2023. He brought a complaint under the Industrial Relations Acts 1946 to 2019 that he failed to receive tips paid. The Complainant claimed that he was instructed to hand over all tips received. He complained to HR about this issue and asked for a statement about the amount of tips received. The Complainat stated that his life at work was made very difficult after this, and he resigned after the Respondent stopped paying his wages.

The Respondent did not respond to the Complainant's claims.

Findings

The AO noted that the Payment of Wages (Amendment) (Tips and Gratuities) Act 2022 amended the Payment of Wages Act 1991 to provide that employees are legally entitled to receive a share of tips and gratuities paid in electronic form. There is also a requirement on employers to display a tips and gratuities notice. The AO held that the employer produced no information to indicate that such a notice was displayed in the hotel restaurant. Although the Complainant could have lodged a complaint under s.41 of the Workplace Relations Act 2015, the Complainant was legally represented and he chose to bring the matter under the Industrial Relations Acts. His grievance concerned the Respondent's insistence that he hand over the tips received in cash and his decision to leave his job when he was suspended for complaining about it.

The AO considered that the Complainant would have taken home around €5,000 in tips during his time with the Respondent. The AO recommended that the Respondent pay compensation of €7,000 for failure to pay the tips earned, and for his unfair dismissal, and recommended that the Respondent gave serious consideration to its obligations regarding tips and gratuities.

The AO held that it was reasonable for the Complainant to look for another job when his wages were stopped.

36

Accounts Administrator v Service Facilities Provider, IR-SC-00002485

Keywords

Bullying – grievance procedures – failure to raise a complaint internally – role of the WRC limited to failure to investigate or failure in procedures – Industrial Relations Act 1969

Background

The Complainant commenced employment with the Respondent in February 2021. She resigned in December 2023. The Complainant brought a complaint of constructive dismissal under the Unfair Dismissals Acts 1977 to 2015 and separately brought a trade dispute under the Industrial Relations Act 1969, complaining about bullying behaviour in the workplace. In respect of the trade dispute, the Respondent submitted that it took all complaints seriously and had a staff handbook which contained a detailed anti-bullying policy and procedure. The Respondent submitted that the Complainant never raised an issue during her employment.

Findings

The AO noted that it is not the role of the WRC to directly investigate allegations of bullying. The AO is limited to considering situations where complaints were not investigated or not investigated in a timely manner or where there was no procedure in place or other means of raising a grievance. However, the AO noted that where a worker feels that they are or were the subject of bullying in the workplace, they had an obligation to make a complaint internally in the first instance. The AO acknowledged that, where it was alleged that the source of the bullying lay with senior managers, pursuing a grievance would not be easy; nevertheless, the Complainant was obliged to inform the Respondent of the issue and seek to have it investigated and resolved internally. The AO was satisfied that the Respondent in this case had policies in place to allow grievances to be raised and that the Complainant did not raise any issue while she was in employment. Accordingly, the AO held that the Complainanthad not valid basis for raising a dispute after she resigned. The AO recommended that the Complainant accept that the WRC could not investigate the matter further.

37

A Worker v A Third Level Institution, IR-SC-00000022

Keywords

Bullying – investigation process – alleged procedural shortcomings – trade dispute – standard required to set aside an outcome of a formal investigation process – compelling reasons – Industrial Relations Act 1969

Background

The Complainant was a long-standing employee with the Respondent. In 2021, he alleged bullying against a colleague and made complaints under the Respondents's Policy on Dignity and Respect and Procedures for Dealing with Harassment and Bullying. After an attempt to resolve the matter informally failed, terms of reference were agreed, and an investigator was appointed. The investigator did not uphold any of the complaints in his report. A senior member of the executive management team, appointed as the decision maker, found that the complaints were not upheld. The Complainantappealed to the President of the institution who upheld the original findings.

The Complainant brought a complaint to the WRC under the Industrial Relations Act 1969, claiming that, due to procedural shortcomings, he had been denied a fair hearing. He claimed that the report contained numerous errors, omitted crucial evidence, did not assess or analyse the select and limited amount of evidence, and was devoid of any form of fair and rigorous method to establish facts. The Complainantalso complained about the manner in which his appeal was dealt with by the President.
The Respondent submitted that the complaints lodged by the Complainantwere investigated fully and thoroughly in line with both the Respondent's procedures and the principles of fair procedures. The Respondent submitted that the issues raised by the Complainant before the WRC were the same issues raised in his appeal to the President, and which were appropriately dealt with.

Findings

Having regard to the decision of the Labour Court in *Environmental Protection Agency v A Worker* LCR22832, the AO held that the standard required to set aside an outcome of a formal investigation process was whether the process was fundamentally detrimental or caused the worker to suffer an injustice. The Labour Court upheld the decision of the AO, which provided that, when a worker submitted a grievance against another worker and the employer engaged in a full investigation, there should exist compelling reasons before the AO could recommend a reinvestigation of the complaint. The AO set out four criteria that should exist before a recommendation is made to set aside the investigation and findings:

- There must have been complaints about procedural issues before or during the investigation. The complaints must be valid when viewed objectively in terms of fairness and equity of treatment.

- It must be evident to the AO that an investigation was not conducted to a standard which followed basic requirements such as providing terms of reference in advance, taking statements, providing statements to the parties, and providing an opportunity to the parties to comment on those statements.

- While not investigating the complaint or seeking to second-guess the investigator, an AO could decide that the findings were perverse, being so at odds with the available evidence, or that the findings did not address the complaint made to such an extent that they may be regarded as unsafe and should be set aside in part or in whole.

- Sustainable evidence of direct interference in the conduct or outcome of an investigation.

In this case, the AO held that none of the requirements for recommending that the investigation process was flawed existed.
The Complainant was provided with terms of reference prior to the commencement of the investigation process. The Complainant was provided with notes of the meeting and an opportunity to comment on the notes, as well as an opportunity to comment on the report, which included statements taken from all witnesses. The investigating officer acted in compliance with the terms of reference in calling witnesses. While she noted that there were some shortcomings in the process, including errors in the report of a minor nature, the failure to inform the Complainant that a written statement had been received from the person against whom the allegations were made, and a lack of reasoning in the President's decision, the AO held that they were not of such significance as to conclude that the process was fundamentally detrimental to the Complainant or caused him to suffer an injustice.

She held that the investigation process was thorough and fair, the findings addressed the complaints and were based on the available evidence and documentation provided. There were no compelling reasons to set aside the investigation officer's report. The AO noted that, in the context of a continuing working relationship, mediation could be a useful and beneficial process for parties willing to engage in order to foster and strengthen relationships. The AO did not make any recommendations in favour of the Complainant.

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Dean Hart v. Komfort Kare,
ADJ-00051923

Keywords

Parental Leave Acts 1998 to 2023 – *Force majeure* leave

Background

The Complainant worked as HR Manager for the Respondent. On 21 May 2024, the Complainant was called away from work due to concerns about his wife's health. He accompanied her to hospital, and, later that evening, she suffered a miscarriage. The Complainant asked for *force majeure* leave for 21 May and for the two following days, in order to take care of his wife and mind their young child.
The Respondent agreed to provide *force majeure* leave for 21 May but stated that the Complainant could not avail of *force majeure* leave for the following days, since the Respondent did not grant consecutive days of *force majeure* leave, as it had already set a precedent with a similar set of circumstances with another employee. The Respondent also stated that, since the Complainant had notified in advance that he needed the leave, this could not count as *force majeure* leave. The Respondent gave the Complainant the option of carer's leave or unpaid leave.

The Respondent also stated that, as a gesture of goodwill, it would take the Complainant's application into consideration, if he furnished a letter from the maternity hospital supporting the issues outlined, including care instructions and support required. The Complainant refused to provide this letter and submitted a sick certificate. He had remained on sick leave.

Findings

The AO noted that s.13 of the Parental Leave Acts 1998 to 2023 provides for *force majeure* leave where, for urgent family reasons, owing to an injury to or the illness of an immediate family member, the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable. An employee is entitled to three days of *force majeure* leave in any period of 12 consecutive months.

The AO held that the Respondent's argument as to why the Complainant was not entitled to *force majeure* leave after 21 May was not entirely clear and not consistent. It was not the case that *force majeure* cannot cover consecutive days. The AO also held that, by arguing that the urgency of the matter dissipated after the diagnosis of pregnancy loss as the illness was no longer foreseen, the Respondent was misapplying the legislation to the facts of the case. The AO held that the matter was obviously unforeseen and that it was unreasonable for the Respondent to suggest that the Complainant should have been able to make arrangements by the following morning so that he could return to work. The AO also considered that the Respondent's request for details of the Complainant's wife's care plan was inappropriate.

The AO held that the Complainant was entitled to *force majeure* leave. In considering redress, the AO noted that amount was to be just and equitable having regard to all the circumstances, with 20 weeks' remuneration the maximum compensation available. The maximum available in this case was €13,425, having regard to the Complainant's salary. The AO considered that the maximum 20 weeks should be reserved for the types of cases concerning penalisation resulting from taking of leave. The AO also considered that, without expert medical evidence, he could not conclude that the Complainant's prolonged sick leave was due to the Respondent's refusal to accept *force majeure* leave. However, the AO accepted that the refusal came at a difficult time for the Complainant and his family, and the Respondent's approach clearly damaged the employment relationship and caused the Complainant significant upset. Accordingly, the AO awarded €7,000 in compensation.

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Lukasz Nowak v. Securitas, ADJ-00052345

Keywords

Parental Leave Acts 1998 to 2023 – *Force majeure* leave

Background

The Complainant was employed as a Security Officer with the Respondent. On 25 May 2024, the Complainant's wife gave birth but suffered some complications and had to undergo emergency surgery. She was discharged on 27 May. The Complainant requested *force majeure* leave in order to care for his wife and look after his children. His wife required significant care and had to be readmitted to hospital following discharge for other complications. The Complainant further submitted that he had no one immediately available to support and care for his family, so his presence at home was indispensable. The Respondent advised the Complainant that he was not entitled to *force majeure* leave but that he could take either annual leave or unpaid medical care leave. Ultimately, the Complainant took annual leave.

The Respondent submitted that *force majeure* leave relates to illnesses or injuries with a sudden and immediate onset which could not be foreseen. The Complainant's absence from work did not take place until two days after his request for such leave; as such, he had ample time and ability to make alternative arrangements to arrange for care for his wife and children or request an alternative form of leave. The Respondent submitted that, in pregnancy, medical complications during pregnancy and birth were medically associated risks. Considering this, and irrespective of any subsequent surgery, the Complainant still needed to put appropriate arrangements in place to have his children looked after while his wife was in hospital. The Respondent submitted that *force majeure* leave was not substitute for childcare arrangements.

Findings

The AO held that the Complainant primarily took emergency leave to care for his wife who was quite ill following the birth, and the position adopted by the Respondent caused some stress and anxiety to the Complainant and his family. The AO held that the days should be viewed as *force majeure* leave, and the records amended accordingly. The AO directed that the annual leave taken should be restored and awarded compensation of €2,500.

40

Brendan Ogle v. Unite the Union, ADJ-00045899

Keywords

Employment Equality Acts 1998 to 2021 – Discrimination on ground of disability – Reasonable accommodation

Background

The Complainant, a trade union official, was employed by the Respondent since 2004. In August 2018, the Complainant was appointed a Grade 10 Senior Officer. The Complainant was diagnosed with cancer and was on sick leave from July 2021 to July 2022. The Complainant claimed that, on his return to work, he was subjected to discrimination on the ground of disability contrary to the Employment Equality Acts 1998 to 2021 ("EEA") as follows:

- His role was fundamentally changed, with his political role reallocated and the removal of tasks. He no longer had a full-time role, and his current role involved two days' work per month.
- He was pressured to accept a Grade 9 role, a demotion.
- There was a strategic plan to exclude him.
- He was excluded from meetings and conferences, and he was allocated a car of a lower specification.
- He was not part of the organisational review which was presented in December 2022.
- His two grievances (regarding the removal of contractual duties and role and regarding the promotion process) were not concluded.

The Respondent submitted that the Complainant was not discriminated against. Its direction changed from political matters to industrial matters following the appointment of a new General Secretary in August 2021. The Complainant was allocated the combined role of Education and Legal Officer, which was a substantial role, commensurate with the Complainant's grade and position. The Respondent denied that there was a strategic plan to exclude the Complainant or that he was excluded from meetings and conference. It submitted that the processing of the Complainant's grievances was delayed by agreement with the Complainant while he took annual leave and then to facilitate without prejudice discussions.
Detailed evidence was given by a number of witnesses for both parties on the events alleged in the Complainant's claim.

Findings

It was common case that the Complainant had a disability within the meaning of the EEA. The AO considered each of the Complainant's allegations to determine whether the Complainant had established facts from which it could be inferred that he had been subject to discriminatory treatment. In respect of the allegation that the Complainant's role was fundamentally changed, having considered the evidence, the AO was satisfied that, following the election of a new General Secretary, the Respondent changed the role's emphasis/direction from political matters to industrial matters.

This change was implemented across the Respondent and was unconnected to the Complainant or his disability. The Respondent acted fully within its powers in appointing the Complainant as Education and Legal Officer, a role that was commensurate with the Complainant's grade and position. The AO was also satisfied that the Complainant's political role was not reallocated, nor were his tasks removed from him. The AO did not accept that the Complainant was pressured to accept the Grade 9 role. It was clear that the Complainant had sought the role, and the Respondent had accommodated him in keeping the role open for him until he confirmed what role he would take. The AO held that at the return-to-work meeting, it was clear that the Respondent was properly fulfilling its obligations in terms of ascertaining the Complainant's needs and identifying any reasonable accommodations required. The AO was further satisfied that there was no strategic plan excluding the Complainant. Although there was a direct conflict of evidence in relation to what had been said at a meeting, the AO preferred the Respondent's version of events. In respect of the delay dealing with the grievances, the AO held that it was clear that discussions were taking place between the parties with a view to securing a potential exit settlement. In those circumstances, the AO held that it would be highly unusual to proceed with a grievance. The AO was not satisfied that any of the matters raised by the Complainant in respect of alleged exclusion from meetings and allocation of a car could amount to discrimination.

They were wholly unconnected to the Complainant's disability. The AO was satisfied that the Complainant had made only mere speculation or assertions unsupported by evidence in alleging that the Respondent had discriminated against him.

The AO also held that it was clear that the Respondent fulfilled its duty to reasonably accommodate the Complainant's disability; it complied in full with the recommendations in the Occupational Health report. Accordingly, the AO held that the Complainant had not established facts from which it could be presumed that there had been discrimination against him, and he held that the complaint was not well founded.

41

Parent on behalf of her children v. Transport Operator, ADJ-00048586

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of disability – Unfavourable treatment when boarding bus

Background

The Complainant has three children, two of whom have a disability which require them to be in a disabled buggy. The Complainant submitted that she was discriminated against contrary to the Equal Status Acts 2000 to 2018 ("ESA") by a bus driver when she was boarding a bus with her children in July 2023. When the Complainant started boarding the bus, the driver gave her a 'dirty look' and responded to her question of whether it was okay to get on, 'not really no'. She stated that the driver did not scan her travel card but shouted at her to 'get on if you're going'. The Complainant got on the bus but emailed the Respondent that same day to complain of the incident. The Complainant submitted that as a result of the driver's attitude and behaviour, she had not travelled on public transport since the incident as it had caused her stress, anxiety and embarrassment.

The Respondent investigated the incident and commenced disciplinary procedures against the driver; however, he left the company before they were completed. The Respondent accepted that the driver's behaviour was not in keeping with the Respondent's ethos, values and training, or the level of professionalism expected as a public service employee. The Respondent acknowledged that the incident was unacceptable and appreciated the upset and embarrassment it caused.

Findings

The AO held that the Respondent was a service provider within the definition of the ESA. There was no dispute that the Complainant's children suffered from a disability nor that the incident took place. Accordingly, the AO held that discrimination on the grounds of disability occurred. The AO awarded compensation of €5,000.

42

Maria Rosita Apaza Machaca v. Scotco (RoI) Ltd, ADJ-00046352

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of disability – Assistance dog – Failure to provide reasonable accommodation

Background

The Complainant has a vision impairment and uses an assistance dog. On 25 April 2023, she and a friend were in the Respondent's fast-food premises in Dublin when a member of staff told her she would have to leave because dogs were not permitted on the premises. When she explained that the dog was an assistance dog, the staff member reiterated that she was not welcome with the dog. The Complainant stated that she felt intimidated and shaken and left the restaurant in tears. The Complainant handed in an ES1 form the following day.
The Complainant submitted that the Respondent had failed to provide reasonable accommodation under the Equal Status Acts 2000 to 2018.
The Respondent, in both the ES2 response and at the hearing, apologised to the Complainant, stating that it had conducted an investigation and explained to the employee that all customers had to be treated equally and with respect and that assistance dogs were permitted in the restaurant.

The Respondent acknowledged that there was a need for staff training on providing services to people with disabilities and, in recognition that the employee code of conduct was no longer fit for purpose, stated that a revised version had been drawn up.

Findings

The AO held that the Complainant had been discriminated against on the disability ground when she was asked to leave the restaurant because of her assistance dog. The AO held that the incident was caused by a lack of information and training regarding accessibility for people with disabilities. The AO accepted that the incident had caused the Complainant unnecessary distress and humiliation. Having regard to the Respondent's apology, the AO awarded €2,000 in compensation and directed the Respondent to put their draft employee code of conduct and any proposed training on discrimination before a disability rights organisation to determine if they were fit for purpose.

43

Irfanullah Refah v. Aidan Corless, ADJ-00049805

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of race – Discriminatory message

Background

The Complainant is an Afghan national who came to Ireland in August 2017 seeking asylum. He was granted refugee status in August 2018. From February, the Complainant entered into a tenancy agreement with the Respondent. The Complainant submitted that he had maintenance problems in the dwelling and regularly informed the Respondent, through an intermediary, of these issues, but there was no follow up. The Respondent issued two termination notices in or around June 2023 but these were deemed invalid. In July 2023, in response to a message from the Complainant in relation to repairs, the Respondent stated that the Complainant was staying in the dwelling illegally and: 'You need to be sent out of this country instead of trying to claim from the government. We need to check what papers you used to gain entry here.' The Complainant submitted that he was shocked and extremely concerned receiving such a message form his landlord. His fear was particularly heightened given the circumstances under which he had been forced to flee Afghanistan.

In September 2023, the Complainant sent an ES1 form to the Respondent setting out his belief that the message sent constituted both discrimination on grounds of race and harassment.

The Respondent disputed the Complainant's evidence in respect of the tenancy agreement, submitting that the flat had been rented to a third party who let the Complainant stay there. The Respondent believed that the Complainant was staying in the dwelling illegally. The Respondent accepted that he had sent the message in frustration but stated that the message was not meant as discriminatory. The Respondent submitted that he was not proud of the message and apologised for it.

The Complainant brought a complaint to the WRC that he was discriminated against and harassed by the Respondent on the grounds of race.

Findings

The AO noted that the Complainant must first establish facts upon which discriminatory treatment can be inferred, whereafter it falls to the Respondent to prove that the treatment was not discriminatory. The Complainant must also identify a comparator, i.e. pointing to how a person who does not have the protected characteristic would be treated in a comparable situation.

The AO held that the Complainant had identified a hypothetical Irish tenant of the Respondent as a comparator. In respect of the *prima facie* case, the AO held that the message from the Respondent reflected a negative view of immigrants as coming to Ireland without the necessary permission in order to access benefits. The AO held that the Respondent was attempting to use the imbalance between his position as someone who was familiar with Irish societal norms and that of the Complainant, an immigrant from a very different background, in an attempt to upset, frighten and intimidate the Complainant. Accordingly, the AO accepted the contention that an Irish person in a similar situation to the Complainant would not have been subjected to the same treatment.

The AO held that neither the Respondent's contrition nor his sense of frustration in any way lessened the detrimental impact of the message due to the blatant racism expressed therein. Accordingly, the message constituted an act of discrimination.

In respect of the claim for harassment, the AO held that since it was well settled that the same set of facts could not be relied upon to support more than one complaint, the complaint had been disposed of.

The AO awarded compensation of €10,000.

44

***A Minor (Case taken by her Father) v. The Ladies Gaelic Football Association,* ADJ-00046477**

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of disability – Reasonable accommodation – Age dispensation policy in sport

Background

The Complainant has cerebral palsy. She was a member of her local Gaelic Football club, and, since the age of seven, she had been permitted to play with a younger age group in light of her disability as she was smaller than her peers and ran at a much reduced speed. However, in April 2022, at the first under-12 match of the season, when the Complainant was 13 years' old, she was told that she could not play the match as she was over age. The County Board stated that the Complainant could no longer play competitive games with her team, but she could continue training with the team. In February 2023, a meeting was arranged to discuss the Complainant's options for the 2023 season. The club proposed that the Complainant take a supportive role with the under-14 team, but this was rejected by the Complainant who wanted to play in competitive games. The Complainant submitted that she was discriminated against on grounds of age and disability contrary to the Equal Status Acts 2000 to 2018 ("ESA") as the club had failed to reasonably accommodate her disability.

The Respondent submitted that the complaint was out of time since the issue arose in April 2022 while the complaint was submitted in June 2023. The Respondent also submitted that the Complainant, as a minor, could not invoke the age ground under the Acts which provides that treating a person under the age of 18 less favourably shall not be regarded as discrimination on the age ground (s.3(3)).

The Respondent denied that it had discriminated against the Complainant. The Respondent submitted that the maintenance of necessary rules around age levels and eligibility were essential for its legitimate aim of encouraging and fostering ladies' football.

Findings

The AO was satisfied that the complaint was not out of time since the alleged act of discrimination was an ongoing one. Evidence showed that the Complainant still retained current membership of her club but was barred from competing at the under-12 level. However, the AO held that the Complainant could not bring a complaint on the basis of the age ground, having regard to s.3(3) of the ESA.

In respect of the disability ground, the AO held that the Complainant must first establish a *prima facie* case of discrimination, i.e. that she had a disability and that she was subject to discriminatory treatment in that she was not afforded reasonable accommodation. The AO accepted that the Complainant's disability was a key factor in the Respondent's decision and, accordingly, the Complainant had made out a *prima facie* case.

The AO held that the Respondent had not thereafter proven that the discrimination was objectively justified. The Respondent came up short in the manner in which it withdrew the reasonable accommodation that had already been enjoyed by the Complainant, when she was previously allowed to play with an age group one or two years behind her due to her restricted movement and smaller size. Having regard to the Supreme Court decision in N*ano Nagle v Daly* [2019] IESC 63, the AO noted that the test was one of reasonableness and proportionality when evaluating what reasonable accommodation measures had been considered, and the onus was on the Respondent to show that it had fully considered the reasonable accommodation question. In this case, the AO held, the club implied that an insurance and other risk assessment would be carried out. There was no evidence that this had been done. The AO held that a decision was made to withdraw the reasonable accommodation based on misapprehensions only, without any medical or insurance advice, about the danger the Complainant could pose both to herself and other players on the pitch. This did not satisfy the test.

The AO accepted that naivety was at play here rather than any malicious intent, but awarded €5,000 in compensation for the effects of the discrimination, having regard to the principle of proportionality and that the award should be dissuasive. The AO also directed the Respondent to introduce an age dispensation policy for children with a disability in underage levels up to, and including, under-12 level, within six months of the decision.

45

A Member of the Roma Community v. A Supermarket, ADJ-00050944

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of race – Membership of the Roma community – Discrimination on ground of membership of the travelling community – Denial of service – Inference from failure to respond to ES1 form

Background

The Complainant is a member of the Roma community. On 5 October 2023, he went to purchase a number of items in the Respondent's supermarket. When he approached the till, he was told by staff that he was barred, and he was refused service. The Complainant complained that this was racism and called the gardaí. The Respondent disputed the Complainant's version of events and submitted that the Complainant was abusive to staff following which he was told to leave the shop. Staff of the Respondent gave evidence of this and stated that they did not know that the Complainant was a member of the Roma community.

The Complainant sent an ES1 form to the Respondent by registered post and sought retention of CCTV footage, the staff rota and other information. There was no response from the Respondent. The Complainant had proof of delivery, but the Respondent denied that it had received the form. The Complainant was provided with CCTV of the aftermath of the incident but not before this point.

The garda who attended the incident gave evidence and provided his statement. The statement noted that the garda was informed by the staff that the Complainant was barred and that, when told so, he became aggressive and started calling them racist.

Findings

The AO first considered s.27 of the Equal Status Acts 2000 to 2018 which allows the AO to draw inferences from the failure to reply to an ES1 form and/or the failure to supply information. The AO held that the Respondent's account of non-receipt of the relevant documents was implausible. The proprietor of the supermarket also owned the adjoining Post Office but accepted in cross-examination that he had made no further enquiry with employees when informed that the documents had been sent. The AO concluded that the Respondent did receive the ES1 form and was fully notified. The Respondent also failed to retain the full CCTV footage, although the proprietor admitted having been in possession of it. The Respondent failed to give a cogent reason as to why part of the footage was wiped. The AO held that the missing CCTV footage was a relevant and vital piece of evidence that was in the exclusive knowledge of the Respondent. Accordingly, the AO inferred that the non-release of the footage shifted the burden of proof to the Respondent as it had the means or knowledge to dislodge the inference of discrimination.

Having found that there was an inference of discrimination, the onus fell on the Respondent to prove that there was no discriminatory treatment. The AO noted that the parties were fundamentally in dispute about the circumstances in which the incident arose. However, the AO preferred the evidence of the Complainant, noting that while he had also been inconsistent in aspects of his testimony, the account provided by the Respondent was illogical and unconvincing in several key aspects: the unconvincing denial of receipt of registered post; the deletion of the most crucial piece of CCTV evidence; the inconsistency in a staff member's account of the Complainant's initial approach to the till compared to her written statement; and the fact that the garda statement contradicted the Respondent's account. The AO was satisfied that the denial of service was based on a stereotype associated with persons of Roma heritage.

The AO concluded that the Complainant had established a *prima facie* case of discrimination based on refusal of service on the grounds of being a member of the Roma community and that this was not satisfactorily rebutted by the Respondent. The subsequent ejection from the shop constituted harassment. Having regard to the Complainant's evidence of humiliation suffered in front of his young daughter, which the AO considered to be a serious aggravating factor, the AO awarded €6,000 in compensation for the effects of the prohibited conduct, having regard to the principle of proportionality and that the award should be dissuasive.

46

A Minor v. A Retail Outlet, ADJ-00049395

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of membership of the Travelling community – Refusal of service in a shop

Background

The Complainant is an 11-year-old child who is also a member of the Travelling community. He complained that he entered the premises of the Respondent just after 7pm to purchase a soft drink. He was refused service on the basis that he was not accompanied by an adult. The Complainant complained that he had been discriminated against by reason of his membership of the Travelling community contrary to the Equal Status Acts 2000 to 2018. He submitted receipts which indicated that on two other occasions, minors had been served in the Respondent's premises. These receipts were obtained from friends who were not members of the Travelling community.

The Respondent submitted that it operated a policy since 2020 whereby all under 14-year-olds had to be accompanied by an adult after 6pm. There was a sign at the entrance confirming this and stating that the policy was in place for health and safety reasons. The Respondent submitted that this policy applied to all minors, and the policy was adhered to in this case.

When the Complainant re-entered the shop accompanied by his father, he was served. The Complainant was treated no differently to any other unaccompanied minor.

Findings

The AO considered whether the Complainant had established facts from which it could be inferred that he had been subjected to discriminatory treatment. The AO held that the Complainant was refused service initially on the ground that the did not have an adult accompanying him. This amounted to a prima facie case. Accordingly, the onus shifted to the Respondent to prove that no discrimination took place. The AO noted that no evidence was given to demonstrate a consistent application of the Respondent's policy. Furthermore, the Respondent failed to rebut the evidence that minors under the age of 14, who were not members of the Travelling community, were served after the cut-off point.

Accordingly, the AO held that the Respondent did discriminate against the Complainant and awarded him €5,000 for the effects of discrimination. The AO further directed the Respondent to take a course of action in the form of taking measures to ensure the policy was implemented in a non-discriminatory manner.

47

Nadine Lattimore v. Lidl Ireland GMBH, ADJ-00051229

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of disability – Reasonable accommodation – Guide dog

Background

The Complainant is blind and uses a guide dog. On 14 February 2024, she entered into one of the Respondent's shops. She was asked to move away from the bakery shelf by a member of staff who was concerned that the guide dog would spoil the bakery goods. The Complainant brought a complaint under the Equal Status Acts 2000 to 2018 claiming that she was not provided with reasonable accommodation.

The Respondent acknowledged that there were shortcomings in how the Complainant was dealt with but denied that the facts amounted to discrimination and a failure to provide reasonable accommodation. The Complainant was not refused service and was not prevented from entering the shop. The Respondent had investigated the incident and followed up with the Complainant. The Respondent gave evidence of its Store Policy for Guide and Assistance Dogs and noted that, since the incident, it had commenced work on creating more robust policies and looking at the manner in which staff were trained on the subject of assistance animals.

Findings

The AO held that the Complainant was entitled to be provided with reasonable accommodation when accessing services and to avail of the Respondent's disposal of goods or service provision with the assistance of her guide dog. On this basis, the AO held that the Complainant was discriminated against on the disability ground when she was asked to move away from the bakery shelves because of her guide dog. While the AO acknowledged that the staff member's request was not in accordance with the Respondent's store policy, responsibility for the staff member's failure rested with the Respondent. However, the AO found that the apology and expression of interest in the Complainant's assistance with the Respondent's work with the Irish Guide Dogs had been sincere and demonstrated understanding of the impact of the incident on the Complainant. Having regard to the evidence of the Complainant of the impact on her of being asked to move away, the AO awarded €2,000 in compensation for the effects of the discrimination. Having regard to the fact that the Respondent was engaged in ongoing work to address the issues in the case, the AO did not consider it appropriate to direct the Respondent to take a certain course of action.

48

Judyta Zielinska v. Health Service Executive, ADJ-00049555

Keywords

Employment Equality Acts 1998 to 2021 – *Prima facie case* – Discrimination on ground of religion – Whether a request can amount to a discriminatory act

Background

The Complainant has been employed as a Multi-Task Assistant with the Respondent since December 2015. The Complainant is a Jehovah's Witness and does not participate in any religious observances that are not in line with her faith. The Complainant submitted that she was asked to support residents in attending mass, which she refused to do. She alleged that this amounted to indirect discrimination on grounds of religion contrary to the Employment Equality Acts 1998 to 2021 ("EEA").

The Respondent submitted that the Complainant was not discriminated against as she was not requested to participate in any religious service; she was simply requested to support residents in attending mass. Furthermore, the Complainant had not suffered any adverse consequences following this refusal; she had not been sanctioned.

Findings

The AO noted that in a case of alleged discrimination, the Complainant must establish facts from which it may be presumed that she has been discriminated against. Thereafter, it falls to the Respondent to prove that the treatment was not discriminatory. The AO noted that in this case the issue was whether a request could amount to discrimination. The case could be distinguished from previous jurisprudence as no adverse action had been threatened or taken by the Respondent. The AO held that it would potentially lead to extraordinary consequences if even an inadvertent comment in a conversation, or an instruction given in good faith might, of itself, and without any further consequences for a failure to carry it out, give rise to a breach of the EEA. As the Complainant had not established a *prima facie* case, her complaint was held not to be well founded.

49

Nadine Lattimore v. Dealz Ltd, ADJ-00047431

Keywords

Equal Status Acts 2000 to 2018 – Discrimination on ground of disability – Guide dogs

Background

The Complainant is blind and uses a guide dog. She brought a claim under the Equal Status Acts 2000 to 2018 ("ESA") after she was told by a security guard in the Respondent's shop that her dog was not allowed. A manager addressed the situation and confirmed that the dog was welcome in the shop, but the Complainant stated that she felt humiliated, embarrassed and somewhat vulnerable.

The Respondent did not dispute the Complainant's description of the incident but raised two preliminary issues. First, under the ESA, a complainant must write to the service provider within two months of the alleged act of discrimination and allow the service provider a month to respond. The Complainant gave evidence that she completed the ES1 form and hand delivered it to the shop where the incident took place within two months of the incident. Upon receiving no response from the Respondent, she proceeding to lodge a claim in the WRC.

The Respondent engaged with the case only when it was notified by the WRC of the hearing at its registered office address, some seven months after the incident.

The second point raised by the Respondent was that the security staff are not employed by it as they are contracted into the premises.

Findings

In respect of the delivery of the ES1 form, the AO held that there is no statutory requirement in respect of type of service on the Respondent and proof of that service. The AO noted that the Complainant's evidence of delivering the form was not contradicted. The AO held that the Respondent's own in-house communication had put the Respondent at a disadvantage, but the Complainant could not be expected to carry the blame for that.

The AO was satisfied that the Complainant had established a *prima facie* case of discrimination as her evidence had not been rebutted. The AO did not distinguish between staff employed directly by the Respondent and agency or contracted staff on the premises. She noted that the Complainant was an invitee on to the premises and the Respondent was a service provider. The AO held that all staff on the premises need to be trained up in all matters of the ESA.

The AO awarded €7,000 having regard to the effect that the discriminatory treatment had on the Complainant. The AO also directed the Respondent to train its staff members on a repeat basis on the provisions of the Acts and the duties of service providers and to display a 'Guide Dogs and Assistance Dogs Welcome' signage at the entrance.

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John Malone v. The Prior of Silverstream Priory, ADJ-00044468

Keywords

Equal Status Acts 2000 to 2018 – Definition of a service – Whether admission to a religious community constitutes a service

Background

In June 2022, the Complainant contacted Silverstream Monastery inquiring about the possibility of exploring a monastic vocation. The Complainant visited and stayed at the monastery and attended a retreat to discuss his vocation and in order that his suitability for religious life could be assessed. The Complainant submitted that when he disclosed that fact that his father was a member of the Travelling community, the attitude of the Respondent, the Prior of the monastery, changed; he became cool and made no effort to engage with the Complainant. In August 2022, the Master of the monastery contacted the Complainant stating that the Respondent had judged that it would not be advisable for the Complainant to enter the community, and it would be very exceptional to accept a candidate of the Complainant's age (50). The monastery's website states that entry to the monastery is limited to the ages of 18-35.

The Complainant complained that he had been discriminated against on the grounds of age and membership of the Travelling community contrary to the Equal Status Acts 2000 to 2018 (ESA).

The Respondent raised a preliminary issue that admission to the monastic life did not come within the ordinary meaning of a service within the Acts. The Respondent submitted that admission of an applicant to a monastery was to ascertain whether an applicant had a vocation; admission was by way of invitation, and there was no entitlement to admission.

Findings

The AO considered the definition of a service in s.2(1) of the ESA: "a service or facility of any nature which is available to the public generally or a section of the public." The AO held that the ordinary meaning of 'service' requires that whatever is being provided needs to be available to the public generally or a section of the public. The AO was satisfied that the Respondent's decision to invite an applicant to join the religious community was not a provision of a service. To find otherwise would involve a too expansive interpretation of 'service'. The AO relied on a recent UK Employment Tribunal case (*McCalla v Diocesan Board of Finance Inc and the Bishop of Lichfield* [2022] UKET 1303655/2021) which held that the discernment process, the purpose of which was for both the claimant and the respondents to determine if the claimant had a true spiritual vocation or a calling by God, could not be equated to a trade, occupation or personal office. The AO held that this process involved a whole person evaluation to determine suitability for religious life. Where both the religious body and the applicant enjoy a veto, this distinguished the process not only from constituting recruitment for employment services, but also from constituting a service. Accordingly, the AO held that the complaint was not well founded.

An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission