

Largest Unfair Dismissal Compensation Award Ordered – Update for Employers in Ireland

The recent Workplace Relations Commission ("WRC") decision by Adjudication Officer ("AO") Breffni O'Neill, represents the largest award to an employee to date¹. The AO awarded €329,199 in compensation for his unfair dismissal.

Background

The employee was initially employed as an Account Executive in December 2016 by a software firm before being promoted to the role of Enterprise Account Executive in April 2019. Only five months later, in September 2019, he was dismissed on the grounds of gross misconduct based on allegations of bullying made against him. The employee brought a WRC claim in March 2021 under the Unfair Dismissals Act and the Payment of Wages Act.

The employer alleged that two formal complaints were made against the complainant in late May and early June 2019, which resulted in an investigation being launched and a disciplinary process being brought against the employee. Following the complaints, the complainant was suspended for a period exceeding three months. The investigation and disciplinary meeting were held in close succession and the employment was terminated.

What was the basis of the employee's claim?

- The employee claimed that he was unfairly dismissed, that the disciplinary process was unfair and that the sanction was

disproportionate.

- The employee cited multiple alleged procedural errors including that he was not permitted to cross-examine two co-workers who made the complaints.
- His personal relationship with one of the colleagues was allegedly not taken into account.
- He asserted the use of robust and coarse language was regularly tolerated in the workplace and the penalty of dismissal was therefore unfair.
- The employer departed from its own procedures because no formal warning was issued.
- The notice of termination did not identify the precise grounds for dismissal, nor did it explain the precise conduct which led to the decision to dismiss.

What did the employer argue in its defence?

- The employer argued that there were allegations of bullying by two other employees which it was bound to investigate.
- The employee had been coached in relation to unacceptable behaviours before the complaints.

¹ <https://www.workplacelrelations.ie/en/cases/2022/april/adj-00027573.html>

- The suspension was justified in the circumstances.
- The investigation was conducted by a senior manager assisted by HR.
- All relevant information including the two formal complaints made against him were furnished to the employee in advance of his interview with the Investigator.
- He was then subsequently afforded another opportunity to document his comments after the interview and was provided with the initial draft of the investigation report for comment before it was finalised.
- Based on the investigation report, the employer then held a disciplinary meeting which was chaired by the Vice President of Sales.
- The Disciplinary Chair ultimately concluded that the claimant had allegedly repeatedly behaved in intimidating, manipulative, and undermining behaviour towards his colleague, which constituted bullying and was in breach of the employer's Harassment, Sexual Harassment and Bullying policy.
- The Disciplinary Chair considered the viability of alternative sanctions but that the only appropriate sanction was dismissal with notice.
- The employee was informed of his right to appeal against the dismissal notice.
- The employer argued that a full and fair appeal process took place and ultimately upheld the dismissal decision.
- The AO decided on the evidence that the employee had behaved inappropriately but this fell materially short of meriting dismissal.
- The employer had failed to show how the conduct differed substantially from previous behaviour by the employee which had not even led to a formal verbal warning in the past. In other words, the employer was inconsistent in its approach to this type of conduct.
- The employer had failed to adequately warn the employee at the beginning of the disciplinary process that dismissal was a possible outcome.
- The AO also criticised the fact that the respondent had not provided any employee training on the bullying and harassment prevention policy provided to the claimant. This seemed inconsistent with the employer's insistence that its principles were core to the business.
- The AO noted that the fact that the employee was observing Ramadan during the time period should have been taken into consideration as a mitigating factor by the employer.
- The sanction of dismissal was disproportionate and a lesser warning should have been issued.
- The AO criticised the absence of the "basic human courtesy of a face-to-face meeting" when he was suspended via phone call and informed via email that his employment was being terminated.
- The dismissal letter was too vague and only contained one example of alleged bullying which was not specific.
- The involvement of a manager who had previously raised performance issues with the employee undermined the fairness of the process when that same manager was appointed to chair the disciplinary meeting.

So who was correct – employer or employee?

The employee succeeded in his claim that he was unfairly dismissed for the following reasons both substantive and procedural:

Why was the award so high?

- The awards under the Unfair Dismissals Acts are designed to compensate for financial loss. The employee was highly paid.
- The employee was unemployed for 22 months after the dismissal. He was awarded €329,199 representing 75% of his loss.
- The AO observed that the employee had worked in a niche sector and he had suffered reputational damage which made it difficult to secure another role.
- The employee had looked for reinstatement of his employment as the preferred outcome of his claim. He did not succeed in this because of the evidence breakdown in the relationship between the two parties.

Lessons learned?

- The key criticisms by the AO relate to the absence of impartiality of the Disciplinary Chair due to previous involvement in managing performance and the apparent tolerance for this type of conduct which the employer had previously demonstrated.
- It is important to rigorously assess whether dismissal which is a penalty of "last resort" is in fact appropriate in any given situation.
- The bar for running a scrupulously fair disciplinary procedure is set very high. Compliance with the employer's own procedures as well as the principles of due process is critical.
- This is a very significant award and it is possible that this decision will be appealed.

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