

Employers take note : Employment Tribunals are making large Awards

Brian Morgan, Employment Law and Litigation Solicitor and Partner in Morgan McManus Solicitors, practising in the Republic of Ireland and Northern Ireland, advises employers to take care before instituting Disciplinary or corrective action against employees.

There is often a mistaken assumption by employers that Employment Law issues need not be taken too seriously as Decrees made by Tribunals are generally low in value and do not carry an award of Costs. This overlooks the fact that, unlike Health & Safety / Accident Claims which are usually insured, Employment Law Claims are generally not indemnified by an Insurer, with the Employer thus carrying the cost personally. Furthermore, the Employment Tribunals appear to be making larger awards these days.

This increase in Awards could be due to the fact that, unlike the days of the Celtic Tiger where jobs were aplenty, the loss of one's employment in the current economic climate can actually assign a dismissed employee to unemployment for a considerable period of time. In those circumstances Employment Tribunals are awarding more compensation than would have been awarded during the Celtic Tiger era. Two recent Decisions, one by the Equality Tribunal and the other by the Employment Appeals Tribunal, demonstrate this point.

O'Brien v Persian Properties trading as O'Callaghan Hotels (DEC-E2012-010)

This case concerned a complaint by Ms Julie O'Brien that her employer Persian Properties trading as O'Callaghan Hotels discriminated against her on the grounds of gender and family status leading to dismissal contrary to the Employment Equality Acts 1998-2011. She also claimed harassment and victimisation. Having already received negative treatment during her first two pregnancies the complainant claimed that the Managing Director said he would prefer it if she left should she have a third child but he later apologised.

She became pregnant again in 2009 and sought maternity leave. After several meetings, some of which were heated, the complainant claimed that she was asked to resign. She was signed off sick on work-related stress. Despite sending in medical certificates to say that she was ill, on 10th August 2009 she received a letter from the General Manager to arrange a meeting to complete the handover of any outstanding issues. Without warning, her fuel card provided by O'Callaghan hotels was revoked and access to her work mobile phone was blocked. She was later sent a letter asking her to return all company property e.g. her mobile phone, credit card and fuel card, even though these were normally retained by employees on holiday, maternity leave etc. She engaged a solicitor who wrote to the respondent and said the complainant would resign at the end of her maternity leave. The baby was still born in September. She suffered an acute grief reaction. She claimed constructive dismissal and victimisation:

Finding in favour of the complainant, the Equality Officer sent out a strong message to other employers stating that "*The award must also dissuade O'Callaghan hotels and other employers from unlawful discrimination.*" She ordered the respondent pay the complainant a total of €315,000.00 computed as follows:

- (a) €20,500 (the equivalent of 21 months' salary) in compensation for the harassment and discriminatory dismissal
- (b) €4,500 (the equivalent of 9 months' salary) in compensation for the distress caused by

victimisation.

Paul Taylor v David Lloyd Leisure Limited (UD 2366/2009) (MN2191/2009)

The employee made a Claim to the Employment Appeals Tribunal under the Unfair Dismissals Acts 1977-2007 and the Minimum Notice and Terms of Employment Acts, 1973-2005. The claimant had been provided with a company credit card but no guidelines, directives or recommendations regarding its usage were ever provided to him by the respondent employer.

Difficulties began to arise in October 2008 when new management practices were introduced by the respondent. Subsequently allegations of fraud were made against the claimant, such as inappropriate expenditure and misuse of the company's credit card. On foot of these allegations an investigation was initiated which ultimately led to the claimant's dismissal. The claimant brought a claim before the Tribunal. While the Tribunal accepted that the claimant may well have deserved some form of disciplinary sanction in relation to his conduct, it determined that the sanction imposed by the employer was disproportionate.

The tribunal awarded the claimant €80,000.00 compensation under the Unfair Dismissals Acts and an additional €19,038.42.00 or six weeks' pay under the Minimum Notice and Terms of Employment Acts.

Conclusion

Before an employer commences any form of Disciplinary or corrective action against an employee he should consider whether this is in breach of the employee's rights and consequently whether it is likely to give rise to an Employment Law Claim. A careful employer will seriously consider taking legal advice at this point in time. A solicitor experienced in Employment Law will ensure that measures taken by the employer are appropriate. Incurring legal cost at this point in time will avoid high Awards. An amicable resolution may even be reached at that time between employer and employee.

While one cannot prevent an Employment Law Claim being issued by an aggrieved employee a sensible employer will ensure to take timely advice to minimize cost.

11th April 2012

Brian Morgan, Partner, Morgan McManus Solicitors, Clones, Co. Monaghan.

Email : bmorgan@morganmcmanus.ie web : www.morganmcmanus.com