

Employment Update: Case Review: A Senior Staff Nurse v A Nursing Home (In Liquidation) [2021]

Insights - 26/10/2021

Case summary

On the 20th August 2021, the Workplace Relations Commission (the “WRC”) issued its decision in the case of *A Senior Staff Nurse v A Nursing Home (In Liquidation) [2021]*^[1]. Ultimately, the WRC found in favour of the former nurse (the “Complainant”) and awarded her compensation of €85,000 as it held that the nursing home (the “Respondent”) had discriminated against the Complainant on the basis of her age. This article will set out the facts of the case, explain the decision reached by the WRC and briefly discuss the key takeaways that employers must consider going forward.

Background

The Complainant began working for the Respondent in May 2014 as a senior staff nurse under a fixed term contract of employment for one year which eventually became a contract of indefinite duration as it was never officially renewed. The contract included a clause which stated that “Retirement age is 65 years. Employment beyond retirement age is exceptional and only by agreement of the employer.”

In August 2018, three months before she was to reach the age of 65, the Complainant approached her manager and requested to remain in employment for a further 12 months. In response to this request, the Respondent granted the Complainant a further fixed term contract, what they called a “Post-Retirement Fixed Term Contract of Employment.” Eight months into this contract, the Complainant then expressed that she wished to stay on in the Respondent’s employment for a further year. It was at this point, on 25 October 2019, that the director of nursing informed her that it was not possible to extend her contract any further and that she was to retire, confirming her last day of work would be 28 October 2019. As such, despite having an “exemplary work record” and being “fit, willing and able to work”^[2], the Complainant was dismissed without any rationale or objective justification for the decision being offered by the Respondent.

In February 2020, prior to the Respondent being wound up, the Complainant submitted a complaint to the WRC of discrimination and/or discriminatory dismissal on the grounds of age contrary to Section 6 of the Employment Equality Acts 1998-2015 (the “Employment Equality Acts”).

What did the WRC decide?

The WRC considered the facts, the relevant provisions of the Employment Equality Acts and the Complainant’s oral evidence along with a number of past cases which dealt with mandatory retirement ages and age related discrimination. As the Respondent was subject to a High Court winding-up order, the appointed Liquidator attended at the hearing but did not proffer any evidence in rebuttal of the Complainant’s complaint.

It was submitted by the Complainant that the Respondent had unlawfully dismissed her from her role. It was further submitted that the Respondent had acted in breach of the Employment Equality Acts on the grounds of age by:

- refusing to engage with the Complainant regarding her request to remain in employment for a further year;
- failing to show that its refusal to allow the Complainant to remain in employment corresponded to a real need and legitimate objective and was an appropriate or necessary means to achieve that objective; and
- failing to consider the Complainant’s request to remain in employment in accordance with the Code of Practice on Longer Working. It was noted by the WRC that the Complainant had complied with the Code whilst the Respondent had not.

Ultimately, the Adjudicator in the WRC held that the Respondent’s decision not to renew the Complainant’s “Post-Retirement Fixed Term Contract of Employment” amounted to a discriminatory dismissal on the ground of age contrary to Section 6(2)(f) of the Employment Equality Acts. In her decision, the Adjudicator stated that “[p]ut quite simply, but for her age the Complainant would have remained in employment with the Respondent until it ceased trading”^[3].

The WRC awarded the Complainant €85,000 in compensation as a result of the significant breaches by the Respondent. The Adjudicator stated that the award made was “*proportionate*”^[4] in the circumstances as the nursing home made no effort to comply with the Employment Equality Acts.

What does this mean for employers?

The outcome of this case serves as “a warning for employers” ^[5] especially those with existing mandatory retirement age policies.

Any employer that has this kind of policy in place must now ensure that:

- a clear and consistent rationale for the policy is provided to all employees either by way of their contracts or in a company policy document or employee handbook;
- the policy is objectively and reasonably justified by a legitimate aim;
- having employees retire at that age is an appropriate and necessary way of accomplishing that aim; and
- any requests to continue working beyond the mandatory retirement age must be given due consideration in line the aim of the policy.

If you have any questions regarding the content of this article or would like to discuss the implications of implementing a mandatory retirement age policy please contact Bláthnaid at blathnaid.evans@ogier.com

[1] [ADJ-00027325](#)

[2] [ADJ-00027325](#)

[3] [ADJ-00027325](#)

[4] [ADJ-00027325](#)

[5] [Irish Legal News Article, 6th September 2021: “Age discrimination payout ‘a warning’ for employers”](#)

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Bláthnaid Evans

Head of Employment and Corporate Immigration

Ireland

E: blathnaid.evans@ogier.com

T: +353 1 632 3113