

Employee awarded maximum two years' salary against An Post in sexual harassment case

Insights - 04/10/2023

The Workplace Relations Commission (the "**WRC**") has awarded an employee (the "**Complainant**") the maximum permissible amount of 2 years' gross remuneration in a sexual harassment case against her employer, An Post (the "**Respondent**").

Background

The Complainant submits that she was inappropriately touched by a colleague of hers (**Mr A**) at work in February 2022 when speaking with another colleague (**Ms B**). The Complainant claims that this was not the first time Mr A had done this. Two days later, Mr A approached the Complainant again and she asked him to leave her alone, asserting that what he had done had been caught on CCTV. The Complainant reported the incident to the floor manager, who then reported it to a member of the floor operations team.

The investigation

Some days later, the Complainant also made an official statement and submitted it to a member of the floor operations team. She requested a copy of the company's Dignity at Work Policy, however, her colleague advised that he had no idea what this was. A suggestion was made to the Complainant that she should try to speak to Mr A unofficially to resolve the matter, however, she advised that she had already done so previously and was unsuccessful. Mr A provided his own statement and version of events and merely stated "*I have no knowledge about the alleged incident*".

Ms B (who was speaking with the employee at the time of the alleged incident in February 2022) gave a statement saying that she had not seen the incident, but saw a shocked look on the Complainant's face at the time. Ms B approached the Complainant and told her that she was

pressured to make a statement by Mr E who was conducting the investigation.

The Complainant was informed in mid-May 2022 that the investigation was inconclusive despite not receiving any witness statements by that time or being interviewed as part of the investigation.

On 25 May, the Complainant finally received the witness statements and made efforts to speak the company's HR department to appeal the decision. During the appeal hearing, Mr E, who conducted the original investigation was also present as "note taker".

The original decision was subsequently upheld on the basis that there was insufficient evidence to uphold the allegation. Mr A was instructed not to enter the Complainant's personal space or engage with her in the future.

The WRC hearing

The Adjudication Officer (the "AO") considered whether An Post as the employer "*took such steps as are reasonably practicable*" to deal with the allegations of sexual harassment. The AO made the following conclusions:

1. Mr E was not appointed by the Respondent to investigate the allegation of sexual harassment but rather took it upon himself to do so.
2. Mr E obtained statements from various members of staff but failed to interview the Complainant and only met with her on 12 May to inform her of the outcome.
3. Mr E did not share copies of any witness statements with the Complainant until after the investigation had concluded and the outcome issued.
4. Mr E, who conducted the initial flawed investigation and made the original finding, was also present during the appeal meeting in June.
5. The Complainant was not interviewed during the appeal process as she was on sick leave, however, the process concluded in the absence of her involvement.
6. The Complainant was not shown the CCTV footage, but Mr A was.
7. It was incomprehensible that local managers deemed it appropriate to appoint themselves to deal with such a serious complaint locally, with no reference to HR.
8. The AO could not understand how a large organisation such as An Post, who has sufficient resources, could not ensure compliance with its own policies and procedures and evidently, did not provide adequate training to its employees to achieve this.

The AO referred to the *Employment Equality Act 1998 (Code of Practice) Harassment) Order 2012* (the "**Code of Practice**") and stated that it was "*clear that the investigation made by the*

Complainant falls very short of what is set out in the Code of Practice".

For the reasons listed above, the Complainant was successful in her complaint of sexual harassment. Any award ordered by the WRC should be effective, proportionate and dissuasive. In this case, the AO made an award of €53,560 to the Complainant, which is the equivalent of 2 years' gross remuneration for her. The AO in this case went beyond the monetary award and ordered that

- the Respondent provide all supervisory and management staff full training on their Dignity at Work – Anti Bullying Policy;
- such training must include full guidance and practical steps in how a complaint should be dealt with;
- a record must be kept of all those who receive this training; and
- all new supervisors and managers must receive this training as part of their induction programme.

Key takeaways for employers

This case serves as a good reminder for employers that it is not sufficient to simply have workplace policies in place. They must also ensure that those policies are adhered to and that adequate training is provided to employees to ensure compliance same, and in turn, promoting a positive workplace culture. Failure to do so may land employers in the midst of a WRC hearing and bearing the brunt of a substantial fine.

The full decision of this case can be found online here: [Catherine Kelly v An Post \[ADJ-00040021\]](#)

For further information on discrimination in the workplace or for assistance on updating/ implementing workplace policies and procedures, please contact Mary Gavin or Marianne Norton via their contact details below.

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