

## Employment update - Largest award against a public sector employer given in recent WRC case

Insights - 02/05/2024

The largest award against a public sector employer was handed down by the Workplace Relations Commission (WRC) in *Wim Naude v University College Cork (UCC)*. Mr Naude brought a claim under Section 8 of the Unfair Dismissals Act 1977, leading to the third-largest WRC award ever made. The case highlights the importance of fair procedure in employee dismissals. Mr Naude claimed that he was dismissed unfairly by UCC when they did not follow procedure or allow him the opportunity to appeal the decision to dismiss.

### Background

UCC hired Mr Naude as a Professor amidst the Covid-19 pandemic, when physical teaching was not feasible, and all classes were conducted virtually. Mr Naude intended to relocate to Cork however he faced difficulties in securing suitable accommodation, citing the housing crisis as one of the main inhibiting factors. Further to this, he claimed that UCC did not provide adequate assistance in securing housing, despite this being available to other colleagues.

Mr Naude's work and rapport with students was excellent, and no issues were raised in this regard. Despite this, Mr Naude was dismissed just days after submitting plans for reduced hours or blended work for the upcoming academic year. Counsel highlighted that the UCC statute includes governance around staff relocation and that the internal disciplinary procedure includes a 6-step process that was ignored.

Mr Naude highlighted the many implications that the dismissal had on him and the roles he held at the time of the hearing were as follows:

1. He held an unpaid position at Aachen University and could not use the title Professor
2. He was a visiting mentor and researcher at the University of Johannesburg with the title of Professor being 'just a nameplate'

3. He was a shareholder in an Artificial Intelligence start-up, but the company was dormant and not generating income
4. He has been working 8 hours a day consulting, but this had been impacted due to his lack of affiliation with a University and
5. He applied for unemployment insurance in the Netherlands, but he claims that UCC never replied when contacted about same.

UCC argued that a key element to Mr Naude's position was physical presence, as outlined in an email of 19 November 2020. Additionally, he had only visited the University a handful of times. UCC did not accept Mr Naude's proposals to work on a blended or reduced hours basis. This was due to the new nature of the faculty, and the importance of leadership within the school. Head of HR Barry O'Brien noted that the UCC statute outlines a duty of residence. As a result, Mr O'Brien gave Mr Naude 3 months' notice of his termination.

Ursula Kilkelly, Head of the College of Business and Law was called as witness for UCC, she stated that the core elements of professorship are teaching, research and leadership and noted that the role could not be carried out remotely. She further noted that the College Council discussed all matters surrounding on campus teaching, of which Mr Naude was a member. However, she never contacted Mr Naude in relation to his need to be on campus. When it was put to Ms Kilkelly that there was a housing crisis in Cork, she agreed, however as a Professor on a full-time salary, she felt it was not as acute as was the situation for students.

## Decision

The Adjudication Office expressed how extraordinary the circumstances leading to this case were. The burden of proof under the Unfair Dismissals Act 1977 (the **Act**) is on the Respondent to satisfy. It was determined that the dismissal process was unconvincing, and that Mr O'Brien had no authority to carry it out. Fair process was ignored, despite being contained in UCC's internal statute. The Adjudicator further determined that the issuance of a termination by email was not legally possible nor permissible. They determined that the emails from Mr O'Brien, on behalf of UCC, did not form part of the terms and conditions of Mr Naude's contract of employment and that Mr Naude merely had to live a reasonable distance to UCC and did not have to reside in Cork. Notably, the Adjudicator pointed out that they would have re-instated Mr Naude's position back to the date of dismissal, however compensation was requested instead.

The losses that Mr Naude suffered were so egregious that the just and equitable compensation in this case was awarded at €300,000.00. This is the maximum monetary compensation permissible under the Act, 2 years gross remuneration.

## Key considerations

This is another substantial award given in a chain of recent unfair dismissal actions, further drawing attention to the importance of fair procedure and due process. Employers need to be consistent and equitable in cases where the dismissal of an employee occurs. An employer should have a disciplinary procedure in place, including the processes that occur prior to dismissal such as appropriate warnings and an opportunity of appeal. However, if a dismissal is actioned, the burden of proof regarding fair procedure falls to the employer. The fair grounds for dismissal as set out in the Act are as follows:

1. Capability to do the job,
2. Competence to do the job
3. Qualifications for the job
4. Personal conduct
5. Redundancy
6. Breaking the law, or
7. Other justified substantial grounds

A key takeaway for employers is strict adherence to the Company's disciplinary procedures and the Act to help avoid claims of unfair dismissal. For further information surrounding dismissal procedures or assistance in preparing or updating Company policies to ensure fair processes, please contact our team via their contact details below.

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