

## The importance of the mitigation of losses highlighted by a recent Irish Workplace Relations Commission case

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In a recent decision by the Workplace Relations Commission (WRC), the case of *Courtney Carey v WIX Online Platforms Limited (Wix)* has emphasised the importance of an individual's obligation to mitigate losses in the context of unfair dismissal claims as per section 7(2) of the Unfair Dismissals Act 1977. Likewise, it highlights the significance of adhering to the Unfair Dismissals Act, and the importance of demonstrating how an employee has failed to mitigate losses when it comes to dealing with the issue of compensation.

### Background

In January 2019, Ms Carey began working as a customer care team lead with Wix, an Israeli tech firm. Her employment was terminated in October 2023 due to gross misconduct after she voiced concerns about the conflict in Palestine on social media. She brought a claim of unfair dismissal against the company. Approximately seven months after her dismissal, Ms Carey found employment as a clerk with An Post, albeit at a significantly reduced salary.

Wix conceded the procedural unfairness of the dismissal and concentrated its defence solely on the level of compensation to be awarded. Wix further argued that Ms Carey had not sufficiently demonstrated or documented her efforts to secure alternative employment. They considered that this had affected their ability to assess her actual financial loss. To enhance their position, they exhibited a list of roles they believed Ms Carey could have applied for. The company also pointed out that Ms Carey had applied for 60 jobs since her dismissal, meaning she had applied for 2 to 2.5 jobs per week.

In response, Ms Carey highlighted her proactive measures to secure alternative employment, including formal and informal applications and registering with several recruitment agencies. She

contended that the public nature of her dismissal had a negative impact on her ability to obtain employment as she felt "blacklisted" by the tech sector. This point was refuted by Wix, who noted that Ms Carey had received many positive posts on social media. Ms Carey calculated her loss of earnings between her dismissal and securing of new employment amounted to €25,000 and due to the lower salary, her loss was continuing.

## The decision

Under the Unfair Dismissals Act, the maximum award of compensation that an Adjudicator Officer (AO) can give equates to 104 weeks remuneration, based on the employee's actual loss.

The AO determined that Ms Carey was out of employment for 180 days, leading to a loss of income of €20,000 based off her weekly remuneration when employed by Wix. Additionally, the AO calculated that the continuing weekly loss suffered by Ms Carey was €236.58 per week, this being the difference between her current weekly salary and her previous salary with Wix. The AO calculated a continuing loss of €18,453.30 for the remaining 78 weeks of the full 104-week period which could be awarded as compensation. When adding both amounts, the total compensation comes to just under €38,500.

However, the AO drew particular attention to Ms Carey's duty to mitigate her losses. Ms Carey did not provide dates for any of the applications she submitted, nor did she produce sufficient documentary evidence to support her claim that she was actively looking for employment. As such, Ms Carey was awarded €35,000 compensation in respect of the monetary loss caused by the unfair dismissal.

## Key takeaways

This case clarifies the obligations of complainants under the Unfair Dismissals Act to actively seek and document their efforts to secure alternative employment having made an unfair dismissal complaint.

The Adjudicator Officer distinctly favours the decision in the case of *Sheehan v Continental Administration Co Ltd UD858/1999*, where it was noted that an individual must spend a reasonable amount of time every weekday seeking alternative employment beyond just informing employment agencies of their availability to work.

Additionally, the officer expressly denied that mere procedural unfairness can diminish an individual's obligation to mitigate their losses as was once the position determined in *Waterford Health Park Pharmacy Ltd T/A Stratus Healthcare and Aoife Foley UDD2412*.

A lack of effort to mitigate one's losses can lead to a reduction in the level of compensation awarded by the WRC as was seen in *A Construction Worker v A Construction Company*. The

complainant's financial loss in that case due to unfair dismissal was €40,000. However, as the complainant only applied for 15 jobs over the course of 14 months the award was reduced to €20,000.

Arguably, the Adjudicator Officer could have reduced the award more than €3,500 for the complainant's failure to provide sufficient evidence of her efforts to mitigate her loss in the Wix case. As such, it is important for an individual to actively try to mitigate their losses and document their efforts in instances where they believe they were unfairly dismissed. Similarly, an employer should evidence that there has been a failure to mitigate losses with reference to vacancies which the former employee could have applied for and employment agencies that could have been engaged. A key takeaway for employers is strict adherence to the Unfair Dismissals Act to help avoid claims of unfair dismissal.

## How Ogier can help

For further information surrounding dismissal procedures or assistance in navigating an unfair dismissal claim should one be brought against the company, please contact our team via their contact details below.

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