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Group Briefing
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Labour Court rules no penalisation where dismissal of whistleblower is "*wholly unrelated*" to disclosures made

In the recent case of *CPM Ireland Limited v Natasha Callaghan*, the Labour Court found that while an employee had made a protected disclosure, her dismissal was "*wholly unrelated*" to the disclosure.

This decision will be welcomed by employers and may be used to defend against future claims taken by disgruntled employees under the Protected Disclosures Act 2014 (the "Act"). However caution must be exercised, as employers will have to meet the high standard of demonstrating that any alleged penalisation is totally unconnected to disclosures made.

BACKGROUND

The claimant was employed by CPM Ireland Limited in May 2017. Her offer of employment was subject to her attendance at induction training, her ability to provide two verifiable references and completion of a Driver Declaration form. The claimant finished her induction training towards the end of May and began working with another colleague in the field. During this field work, the claimant noticed that her colleague was not following the practices that were outlined in her training and stated that she raised these issues with her employer, first verbally and then in written form. Around this time, the claimant separately revealed in casual conversation that she had a number of penalty points.

When the claimant subsequently met with her line manager she was asked why she had omitted her penalty points on the Driver Declaration form. She said this was an "*oversight*" and she was instructed to complete the form again. A further meeting was held to discuss the issues raised by the claimant. At that meeting, the claimant was informed that she had failed to provide two referees at the commencement of her employment, as requested. The claimant immediately gave two names.

On 6 June, the claimant left work early. The claimant told the Labour Court that she left early to take her mother to hospital. The employer submitted that the claimant had said she was going home to collect something she had forgotten. The claimant then failed to turn up for work on 7 June but emailed her manager to say she was still in hospital with her mother. The employer felt this was the "*final straw*" and the claimant was dismissed on 7 June.

The claimant alleged that her

employment was terminated as a direct result of having made a protected disclosure under the Act. The employer submitted that the issues raised by the claimant were properly investigated, although it did not necessarily accept that a protected disclosure was made. The employer further submitted that these issues did not impact the decision to dismiss the claimant and put forward other reasons for her dismissal, including her failure to correctly fill out the Driver Declaration form and furnish referees at the commencement of her employment and that the claimant had texted her line manager late at night. The WRC held that no penalisation had occurred and the claimant appealed to the Labour Court.

DECISION OF THE LABOUR COURT

As a first step, the Labour Court had to establish whether a protected disclosure had been made before it could examine whether penalisation within the meaning of the Act had occurred. Having considered the submissions of both the claimant and the employer, the Labour Court found that the disclosure made by the claimant was a protected disclosure under the Act. The Labour Court then considered whether the claimant's dismissal amounted to penalisation.

The Labour Court said that the "*detriment*" the employee had suffered for making a protected disclosure must be "for" having committed a protected act. It stated that "*this suggests that where there is more than one causal factor in the chain of the events leading to the detriment complained of the commission of a protected act must be an operative cause in the sense that "but for" the Complainant having committed the protected act he or she would not have suffered the detriment.*"

The Labour Court went on to say "*it appears that applying the "but for" test to the dismissal that the dismissal would have arisen even if she had not made a protected disclosure... in these circumstances, the dismissal was wholly unrelated to the protected disclosure and therefore no detriment in line with s. 12 of the Act arises.*" The Labour Court upheld the decision of the WRC and held that no penalisation had occurred.

ADVICE TO EMPLOYERS

In a climate where employee whistleblowing claims are on the increase, this case offers some reassurance to employers that they may take certain detrimental action against employees notwithstanding their whistleblower status. However, caution must be exercised in ensuring that any such action can be shown to be *wholly unrelated* to the protected disclosures made.

The case also serves as an important reminder that employers must carefully consider whether any disclosures made by employees fall within the protections of the Act. Whether or not an employee has made what constitutes a protected disclosure, and thus benefits from the protections contained in the Act, will be independently assessed by the Court in the cases that come before it. An employer's interpretation of whether the protections of the Act apply to any disclosures made will always be subject to further consideration by the Court.

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