

EMPLOYMENT

Procedural fairness and Constitutionality of the WRC Upheld by the High Court

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In a landmark decision of the High Court, the constitutionality of the WRC Employment Rights Adjudication regime has been upheld.

In [*Zalewski v The Workplace Relations Commission and ors*](#), the issue presented was whether the procedural mechanisms for the resolution of employment disputes established under the Workplace Relations Act 2015 (the "2015 Act") involved the administration of justice within the meaning of Article 34 of the Constitution, and whether WRC adjudication hearings were procedurally fair.

Mr Zalewski argued that the WRC, in its capacity as decision-maker of employment disputes, is unconstitutional on the basis that:

1. it carries out the administration of justice in breach of the constitutional rule that (with limited exceptions) only the courts may administer justice; and/or
2. many of the statutory procedures of the WRC were deficient such that they failed to vindicate his constitutional rights.

The High Court upheld the constitutionality of the WRC and rejected both of these arguments.

BACKGROUND

Mr. Zalewski was dismissed by his employer in April 2016. He instituted a claim under the Unfair Dismissals Act 1977 and a claim for payment in lieu of notice under the Payment of Wages Act

1991. An adjudication officer of the WRC issued a decision a number of weeks later, dismissing the claims, despite the fact that no hearing had yet taken place. By way of judicial review proceedings, Mr. Zalewski challenged this decision as well as the constitutional basis underpinning the WRC and the fairness of its procedures.

WRC IS NOT ADMINISTRATING JUSTICE

Mr Zalewski's principal argument was that the 2015 Act is unconstitutional as it confers decision-making functions involving the administration of justice upon non-judicial bodies such as the WRC (and its adjudication officers) and (on appeal) the Labour Court, in circumstances where this function should be reserved only for the Courts under Article 34 of the Constitution.

In finding that the WRC adjudication service does not exercise judicial functions, the Court applied the test set out in *McDonald v. Bord na gCon* [1965] I.R. 217, i.e. that the administration of justice had the following characteristics:

- a dispute or controversy as to the existence of legal rights or a violation of the law;
- the determination or ascertainment of the rights of parties or the imposition or the infliction of a penalty;
- the final determination (subject to appeal) of legal rights or liabilities or the

imposition of penalties;

- the enforcement of those rights or liabilities or the imposition of a penalty by the court or by the executive power of the State which is called in by the court to enforce its judgment; and
- the making of an order by the court which is an order characteristic of courts in this country.

The Court held that determinations made by adjudication officers and the Labour Court did not fulfil the 4th limb of the above test, which requires that a decision-maker has the ability to enforce its own decisions. In this regard, the Court noted that in order to enforce of a decision of the WRC or Labour Court, a party had to make an application to the District Court to translate these administrative decisions of the WRC into a court order, thereby depriving such determinations of one of the essential characteristics of the administration of justice. The Court also noted that the District Court's discretion to modify the form of redress represented a significant curtailment of the decision-making powers of adjudication officers and the Labour Court. The District Court can, in effect, overrule their decision to direct that the employee be re-instated or re-engaged.

On this basis, the applicant's case that the determination of his claims of unfair dismissal and payment in lieu of notice, are matters which are properly reserved to judges appointed in accordance with the Constitution, was not made out.

PROCEDURES OF THE WRC UPHOLD PERSONAL CONSTITUTIONAL RIGHTS

Mr Zalewski also argued that the procedures under the 2015 Act were in violation of Article 40.3 of the Constitution.

LEGAL QUALIFICATIONS

The applicant argued that as a matter of constitutional law the 2015 Act should stipulate that adjudication officers and members of the Labour Court hold a legal qualification.

The Court found that it is legitimate for the Oireachtas to afford priority to subject-matter expertise rather than legal qualification. It was held that in the employment context, a decision-maker with relevant experience in human resources or industrial relations is competent to resolve disputes. Simons J noted that the Labour Court is a safeguard in this respect, given its power to refer a question of law to the High Court. The Court also rejected the contention that the absence of legal qualifications has given rise to difficulties in practice.

NO REQUIREMENT FOR OATH OR AFFIRMATION

The applicant argued that evidence should be given on oath or affirmation in the WRC and a sanction of perjury should be available to the WRC.

In rejecting this argument, the Court found that the precise nature and extent of the fair procedures required in any particular case will depend on the context and the procedures required for criminal cases will not be same as those required in other claims. The Court emphasised the need to consider the decision-making process in the round. In this regard the existence of a right of appeal to the Labour Court (where evidence is taken on oath) was held to be significant in providing a counter-balance to the more informal hearing in the WRC. The Court found that a more informal and expeditious process at first instance is a legitimate legislative choice.

NO EXPRESS PROVISION FOR CROSS-EXAMINATION

The applicant argued that there should be an express statutory provision for cross-examination in all cases. This was also rejected by the Court.

The Court found that there is a presumption that an adjudication officer will conduct proceedings in accordance with the principles of constitutional justice. In cases where cross-examination is required, it is presumed that the adjudication officer will facilitate that where appropriate. If he/she fails to allow such cross-examination, this may be a ground for judicial review or the claimant may appeal to the Labour Court.

RIGHT TO A HEARING IN PUBLIC

The applicant objected to the fact that the proceedings before an adjudication officer are held in private.

In rejecting this, the Court found that:

1. It is doubtful whether the values protected by the constitutional requirement that justice be administered in public can be "read across" to decision-making by non-judicial bodies.
2. Even if there is a presumption in favour of a public hearing, analogous to that applicable to the administration of justice under Article 34.1, the legislative requirement under the 2015 Act for a public decision but a private hearing represents a legitimate legislative choice.
3. Any requirement for a public hearing, is, in any event, achieved by the provisions governing the appeal to the Labour Court.

CONCLUSION

In upholding the constitutionality of the WRC employment rights adjudication service, the Court provided a welcome reminder that procedural fairness is underpinned by constitutional principles, which should be to the forefront of any decision-making process in the employment sphere - be it at investigation stage, at disciplinary hearing, or before the WRC.

KEY CONTACTS



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