

Fatal vulnerability' in Revenue's handling of worker's dismissal for sale of contraband

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The Labour Court has ruled that Revenue Commissioners unfairly dismissed a former employee, for his involvement in the illegal movement of cigarettes, because it failed to maintain a "clear separation of the roles of investigation, disciplinary and appeal".

The Court found that Revenue, in how it managed the response to the issue of the employee, Mr Colm Keane's involvement with the contraband, conflated the functions of the investigation process and disciplinary process. Essentially, Mr Keane was dismissed in the absence of a formal investigation.

The Court stated that "in law, there is no such thing as an open and shut case. No matter how hopeless it may seem, a person accused of wrongdoing is entitled to a fair hearing in accordance with the rules of natural justice."

Mr Keane was a higher executive officer in Revenue, at the time of his dismissal in July 2018. He was dismissed for his involvement in the attempted sale of contraband cigarettes, which had been spotted by other employees of Revenue on social media.

Revenue said the worker breached Finance Acts and Revenue rules "that he was employed to safeguard", adding the worker "did not demonstrate an appreciation of the significance of his misconduct and is in denial."

A WRC adjudicator found against Mr Keane's unfair dismissal claim in 2019 (*see [Employment Law in IRN 23/2019](#)*).

Mr Keane claimed the personnel officer, AP – who had made the decision to dismiss him – did not inform him prior to a January 2018 meeting that it was disciplinary in nature. No formal investigation of the matter was carried out beforehand the decision was made to dismiss him.

The worker appealed to the Disciplinary Appeals Board but was dissatisfied with how his appeal was handled. He wasn't afforded a right to legal representation after his trade union told him it would not represent him.

NO BASIS FOR PATHWAY

AP, in his dismissal report, noted that he considered himself to be carrying out an investigation under the Disciplinary Code.

The Court found that there was “an inescapable conclusion that [AP] was the person who purported to conduct an investigation under the Disciplinary Code and also the person who took the decision to dismiss as a result of what is described as an investigation.”

“That investigation appears to have also comprehended the essential characteristics of a disciplinary hearing which had the potential to result in the dismissal of [Mr Keane].” The Court said it could find “no basis in the disciplinary code of the Respondent to support this procedural pathway.”

If indeed the procedure carried out by AP incorporated both an investigation process under the code and a disciplinary process leading to dismissal, the Court said it must conclude that “such a conflation of functions in a matter involving potential dismissal of the Appellant is unfair.”

NIL COMPENSATION

The Report of the Disciplinary Appeals Board showed that AP was the lead representative of Revenue before the Board – no other official from Revenue made a submission to the Appeals Board.

The Court was concerned that this placed Mr Keane “in opposition to the person who made the decision to dismiss him.”

The lack of a clear separation of the roles of investigation, disciplinary and appeal “has created a fatal vulnerability in the processes employed to address the matter of the allegations made against [Mr Keane]”, the Court determined. Therefore, the dismissal of Mr Keane was unfair.

Neither re-instatement or re-engagement were appropriate remedies, so, an award of compensation was the remedy. However, as Mr Keane made no substantial effort to mitigate his financial loss by way of attempting to secure employment, coupled with the fact that he contributed to the extent of 100% to his own dismissal, the Court concluded the compensation should be nil.

Mr Keane was represented by Jack Nicholas BL, instructed by O’Gorman solicitors; Revenue was represented by Cathal McGreal BL, instructed by Maura Kiely, Revenue Commissioners. (*UDD2125, Chairman: Kevin Foley*)