

'Many deficiencies' in how An Post dealt with harassment allegation

ANDY PRENDERGAST

A postal operative at An Post has been awarded €53,560 for the effects of sexual harassment, with a WRC adjudicator finding the employer's investigation of a February 2022 incident fell "very short of what is set out in the Code of Practice".

The person who first investigated the sexual harassment complaint by An Post worker Catherine Kelly "took it upon himself to do so", did not interview the complainant – or anyone else – in the initial investigation, and then attended the complainant's appeal meeting, a new WRC adjudication decision outlines.

Ms Kelly alleged that a co-worker, Mr A, sexually harassed her on 22 February 2022. Mr A denied wrongdoing. Mr E, who ran the investigation, relied on statements and CCTV footage to determine the complaint could not be upheld.

In the appeal hearing, Ms Kelly was not asked about the incidents leading to her complaint, nor was she shown CCTV footage. In contrast, Mr A was interviewed and shown the CCTV footage.

AO Hugh Lonsdale discovered "many deficiencies in the initial investigation and the appeal investigation" and that An Post "cannot avail of the defence set out in section 14A" of the Employment Equality Act.

He said: "This is a large organisation with the resources to ensure their policies are complied with. It is unclear why local managers deemed it appropriate to appoint themselves to deal with such a complaint locally, with virtually no reference to HR."

AO Lonsdale also expressed surprise at why HR allowed the person who carried out the initial flawed investigation to participate in the appeal process.

The CCTV footage was viewed at the WRC hearing. The AO observed that Mr A came in close proximity with the complainant. While it does not show physical contact, it did show the complainant "twice pushing".

NOT UPHELD

An Post told the adjudicator that a witness, Ms B, who was beside the complainant on 22 February 2022, "had not provided any evidence to support the complainant's allegation, she had observed the complainant's shocked reaction, but had not witnessed the actual altercation."

Ms B had later “refused to co-operate” with this investigation. The recollection by a union rep, Mr C, of a conversation he had with Ms Kelly after the incident, “was completely at odds with the complainant’s version.”

Mr A had nevertheless been instructed not to enter the complainant’s personal space or engage with her in the future. Ms Kelly subsequently changed work location “to try and get away from all the gossiping” that followed, after her appeal was unsuccessful.

The employer said the CCTV footage appears to show the complainant and Mr A “continuing to laugh and joke after the alleged incident, and no shock is evident from the CCTV coverage.”

MAXIMUM AWARD

AO Lonsdale said that given the complainant’s statement and the CCTV footage showing close physical proximity, “this was clearly a complaint that should have been taken seriously and investigated in accordance with the Dignity at Work, Anti Bullying & Harassment Policy for An Post.”

Finding that Ms Kelly’s complaint was well founded, he said that in assessing compensation, while the employer has a Dignity at Work policy, he had to recognise “how poorly this policy was followed, both at investigation and appeal stage.”

He made the maximum award of two years’ remuneration, having regard to the mishandling of the investigation and appeal, the effects of the discrimination on the complainant, and with regard to the Von Colson principles – that awards should be effective, proportionate and dissuasive.

He also noted that the respondent’s witnesses showed a lack of awareness of the An Post policy and that there was a lack of training. He directed An Post to ensure all supervisory and management staff receive full training in their Dignity At Work – Anti Bullying Policy.

This training must include full guidance and practical steps in how a complaint should be dealt with. A record must be kept of all those who receive this training. In addition, all new supervisors and managers must receive this training as part of their induction programme.

The complainant was represented by Cillian McGovern BL, instructed by Crushell & Co. (*ADJ-00040021, AO: Hugh Lonsdale*)