

Vet inspector's reassignment was not penalisation for disclosure

ANDY PRENDERGAST

The 'considerable gap' in time between a 2017 protected disclosure by an Agriculture veterinary inspector and his 2020 reassignment to a different division, has proved decisive in a penalisation claim under the Protected Disclosures Act at the WRC.

The complainant, Louis Reardon, alleged his move from the investigation unit to the wildlife service of the Department of Agriculture in 2020 was because of a protected disclosure he made to the Minister in 2017, in which he claimed certain politicians were interfering in the prosecution of cases under his remit.

The Department denied the penalisation allegation, arguing that Mr Reardon's 2020 transfer followed a review of the investigation unit and the deployment of a new mobility policy, designed to combat the 'attrition' associated with the inspector role, as it is a "high-pressure environment" where staff "were regularly finding themselves in confrontational situations".

WRC adjudicator (AO) Thomas O'Driscoll found the manner of the worker's 2020 transfer was unfair and that he had been treated in a "shabby" way.

He also noted the fact that one day after Mr Reardon made the disclosure in 2017, the worker was notified by the head of the unit that he would likely be transferred – this showed that "someone, somewhere, at that time in the respondent department, was unhappy with his disclosures, an unhappiness that manifested itself in a relayed veiled threat from on high to the effect that he should move, or else be moved."

However, he did not accept the claim that the 2020 transfer of the worker was penalisation for making the 2017 disclosure, describing it having to accept that there were "persons lurking in the tall grass, concealed and patient for three years, under the guise of the Steering Group, who set up a cross departmental review body which made numerous recommendations, including one mobility clause, for the purpose of ultimate retaliation for the protected disclosures of the complainant."

As a result the complainant did not meet the 'but for' test required under the Act.

'THROWN IN THE DUSTBIN'

Mr Reardon said his 2020 transfer "came out of the blue" and that he was given only two weeks to re-assign. He said his transfer "made no business sense", and that he was "left feeling that he had done something wrong."

He said he spent 20 years acquiring a new skillset in an extremely important part of the Department's work.

He was told he was very good at his job, but when he was transferred he felt he was "thrown in the dustbin". He was left feeling "humiliated and embarrassed after an otherwise unblemished record in the civil service, as a result of making protected disclosures" and was subsequently prescribed anti-depressants.

The complainant's area manager said Mr Reardon was badly treated. The person in the Department who decided to transfer the complainant accepted that he had "little or no regard for human resources practice at the time and felt that, in hindsight, the complainant should have been consulted and given greater notice of the move."

OTHER TRANSFERS

The AO observed that two colleagues of the complainant were moved on the basis of seniority. It was also the case that the "two main frontline players" involved in transferring the complainant had no knowledge of his 2017 protected disclosures at the time of the transfer.

The adjudicator said he "cannot ignore the considerable distance between the events of 2017 and 2020" and concluded that there was a "legitimate re-assignment by the respondent in June 2020 as per the Steering Group's recommendations, albeit patently questionable in its efficacy and detrimental to the complainant."

The complainant was represented by Darach McNamara BL, instructed by Sean Costello, Sean Costello solicitors. The respondent was represented by Sarah-Jane Hillery BL, instructed by the CSSO. (ADJ-00031151, AO: Thomas O'Driscoll)