

# Border control worker loses compensation following Justice appeal

## ANDY PRENDERGAST

**A civil servant in the Department of Justice has had a €33,346 payment of wages award set aside by the Labour Court, which found he did not have a “legitimate rational expectation” to an allowance covering a two-year period.**

Mr Martin Switzer had won his payment of wages claim at the WRC earlier this year, with a WRC adjudicator finding an on call allowance he was not paid between 2018 and 2020 was an “integral part” of an agreement he made with an official in the Department to take up the role in the border management unit (BMU) at Dublin Airport (*see IRN 28/2023*).

The Department of Justice appealed this ruling to the Court, which has now set aside that award of €33,346. The Court, based on the history of the matter outlined by the parties in oral and written submissions, concluded that Mr Switzer “had not established that he had a legitimate rational expectation insofar as that might be relevant to a complaint under the [Payment of Wages] Act, or any contractual or other entitlement to an allowance in any specified amount during the period of his occupancy of a role in the BMU.”

The complainant had argued he took up the role on the basis that he would be paid a per annum allowance of €18,023.

However, the Court pointed out that the complainant knew, in 2018, that the allowance was initially subject to a decision by the human resources division on a business case made in that year by the manager of the BMU.

## NO TESTIMONY

The worker also knew that in 2020 an application was in train to DPER from Justice, and that a sanction from DPER was required. Justice had sought sanction for an allowance to be paid to Mr Switzer. However, DPER did not sanction an allowance until March 2020.

An allowance was sanctioned covering the period of March 2020 to the following May when the complainant left the BMU. The allowance amount of €1,197.50 was not paid to him until late 2021.

The Court had asked both the complainant and the Department of Justice to provide evidence to assist it in establishing facts on the discussions between the complainant and

the BMU manager in 2018, pertaining to the allowance. But when invited to tender testimony “on any matter at the hearing of the Court, both parties declined to do so.”

The Department of Justice was represented by Emma Cassidy BL, instructed by the Chief State Solicitors Office. (*PWD2325, Chairman: Kevin Foley*)