

Civil servant awarded €15,000 for disability discrimination

## **Rosanna Angel**

**A clerical officer with an acquired brain injury was discriminated against on the grounds of disability, when the government department where he worked failed to properly investigate his behaviour before dismissing him.**

The complainant alleged that he was discriminated against because, when they decided to dismiss him, the management in the department did not take his disability (acquired brain injury) into consideration.

The respondent, an anonymised government department, maintained that the complainant's disability was not the reason for his dismissal.

The main reason he did not pass his probation was due to his conduct, arising from his decision to send an extract of a book about his life to his line manager.

Concerns were also identified about his attendance, punctuality and his ability to complete straightforward tasks.

WRC adjudicator (AO) Catherine Byrne concluded that the complainant was discriminated against when his employer failed to treat him in the same manner as another person without a disability would have been treated, when his conduct was not investigated in accordance with the department's disciplinary procedure.

"The outcome of a disciplinary investigation may or may not have resulted in his dismissal; the important fact is that he was deprived of an opportunity to explain himself within the framework of a disciplinary investigation and in the knowledge that his job was at risk.", she added.

AO Byrne directed the respondent to pay the complainant €15,000 in compensation.

## **UNSUCCESSFUL PROBATION**

On 13 June 2022, the complainant started in a clerical officer role in the government department. He was on a probationary contract for one year.

In his search for a suitable job, he was assisted by a social enterprise established to support people with disabilities to find employment.

In February 2023, the complainant and his manager, Ms GH, had a conversation about the accident that resulted in his brain injury.

He told her that he was writing a book about the experience and she said that she'd "love to see it when it came out."

On 9 March 2023, the complainant sent GH an email with an extract from his book attached.

Ms GH read the attachment the following day which contained content such as the complainant's description of his visit to a sex shop and his first sexual encounter with a man.

The following Monday, Ms GH informed the assistant principal officer, Ms AB, that the document made her feel uncomfortable and that her working relationship with the complainant was untenable.

While the complainant was on holidays, the HR business partner contacted the worker's support officer in the social enterprise and they agreed that the complainant would not come into the office of the department, but that he would work from the social enterprise office instead and report to a different line manager.

The complainant was invited to a final probation review on 8 May. He apologised for sending GH the extract from his book and acknowledged that what he had done was contrary to the ICT Acceptable Usage Policy.

The complainant's performance and attendance were also discussed at this final probation review.

On May 10, 2023, Ms AB decided that the complainant's probation was unsuccessful and she recommended that he should be dismissed.

The complainant's appeal against the recommendation was unsuccessful and his employment ended on 13 June 2023.

### **IMPAIRED JUDGEMENT**

The complainant was of the view that he should have been treated differently to a person without a brain injury, and that some leniency should have been applied to his failure to exercise proper judgement.

The AO noted that when the complainant applied for a job in the civil service, and when he started in June 2022, the complainant made no request for accommodation for impaired judgement.

When he sent the extract to GH, in the body of the email, he wrote, "don't judge me!" leading the AO to believe that he knew that GH might react badly to his writing.

When he was confronted with his behaviour at his final probation review, he didn't say that his brain injury affected his judgement and it was only when he appealed the dismissal that he used the explanation of poor judgement.

AO Byrne did not accept the complainant's assertion that the sending of the extract from his book to his manager was caused by poor judgement which can be explained by the fact that he has a brain injury.

She was of the view that his conduct was poor judgement by someone who should have and did know better, and that it was "unprofessional, immature and attention-seeking."

### **PLACED AT A DISADVANTAGE**

However, AO Byrne said she had a serious concern about how the complainant was treated from the time he returned from holidays in March 2023.

She noted that had the complainant not been disabled, he would not have had access to the support of the social enterprise and he could not have been "banished," to their offices.

She was of the view that the Department discriminated against him by treating him differently compared to a person without a disability, who could not have been sent to a different location.

The AO believed that this "placed him at a distance and at a disadvantage, with the result that, for the last three months of his probation, he was deprived of an opportunity to demonstrate

that he could mend his conduct and achieve the standard of performance required for him to pass his probation.”

If the Department’s management had invoked their disciplinary procedure, then, the complainant would have had an opportunity to explain his behaviour, to show remorse, to apologise to Ms GH and to argue for an alternative to dismissal, she added.

AO Byrne was satisfied that a person who does not have a disability would not have been deprived of that chance and, in this respect, the complainant was discriminated against.

She also noted that the Department had a responsibility to ensure that another employee was not offended in the same manner as GH.

She was of the view that rather than sending him to work in the social enterprise offices, the complainant should have been given an opportunity to provide some reassurances that a similar incident would not happen again.

The complainant was represented by his mother. The respondent was represented by Stephen O’Sullivan BL. (*ADJ-00049202, AO: Catherine Byrne*)