

ETB worker on sick leave sought for all communication to be via solicitor

Rosanna Angel

An Education and Training Board did not discriminate against or victimise a teacher on long-term sick leave who sought that all communications regarding routine employment matters be made through a solicitor, according to a new WRC adjudication decision.

The complainant, Karen Gorman, claimed that she has been discriminated against on the grounds of disability by the respondent, specifically relating to their failure to provide reasonable accommodation.

She also alleged that she has been victimised by the respondent, Donegal Education and Training Board, as a result of taking a personal injuries action. The respondent denied her claims.

WRC adjudicator (AO) Shay Henry determined that the complainant was not discriminated against or victimised.

The complainant has been on sick leave since September 2019 due to post traumatic stress disorder (PTSD), depression and work-related stress.

She claimed that the respondent has discriminated against her by not acknowledging her sick certificates and by failing to refer her for medical assessment as required under Circular 0013/2024 and despite their occupational assessor advising them to do so.

She also alleged that the respondent has discriminated against her in not responding to her application to job share, failing to make any attempt to provide reasonable accommodation for her disability and failing to ensure that she received staff alerts including internal promotion opportunities.

ROUTINE MATTERS

Ms Gorman submitted that the reasonable accommodation she was looking for in relation to her application for job sharing was that the reply should go to her solicitor.

AO Henry noted that of course any contact regarding the legal proceedings in which the complainant was engaged should be through her solicitor.

However, it is not reasonable that all interactions between an employer and an employee regarding routine matters, such as a request for job sharing, should have to be made through a solicitor. Such a process could lead to additional and unwarranted legal costs for the respondent, he noted.

The AO said he failed to see how communicating with the complainant on routine employment matters through her solicitor could be construed as reasonable accommodation as defined by the Act. He therefore concluded that the complainant was not discriminated against.

The complainant also alleged that failure of the respondent to communicate through her solicitor is evidence of victimisation.

The AO was of the view that the respondent's failure to communicate a response to a routine request for job sharing through the complainant's solicitor did not constitute victimisation.

NOT DISCRIMINATED AGAINST

In evidence, the respondent HR Manager confirmed that no staff had their medical certs acknowledged and the complainant was unable to provide a comparator who had their certificates acknowledged.

The complainant was also unable to identify training that was not offered to her. The training on the portal was offered to all staff in a similar manner, i.e. by staff email. This was also the case for any promotions which were advertised in the same way to all staff.

Regarding the non-referral to medical assessment, the HR manager said that the complainant “fell off the radar” due to inadequate staff resources.

The AO noted that an Occupational Health review dated 1 March 2020 recommended a further review “in the event of a pending return to work, to confirm Ms. Gorman’s fitness for work”.

“This clearly left open the door to the complainant to initiate a return to work which she did not do at any stage”, he observed. He concluded that the complainant was not discriminated against.

DUPLICATION OF PROCEEDINGS

As a preliminary point, the respondent argued that the WRC proceedings should be adjourned pending the resolution of a High Court case involving the complainant and the respondent on a personal injuries claim. The respondent took issue with what it viewed as the duplication of proceedings.

AO Henry said he was not adjudicating on the liability of the respondent in relation to any potential personal injury caused to the complainant.

He outlined that his deliberations are confined to the Employment Equality Act and did not accept the respondent’s preliminary argument.

The complainant was represented by Boyce Kelly Solicitors. The respondent was represented by Ibec. (*ADJ-00054165, AO: Shay Henry*)