

Refusal of domestic violence leave to prison officer was not penalisation

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A prison service worker's claim that he was penalised when he was refused domestic violence leave was "entirely misconceived", according to a WRC adjudicator.

The respondent, Irish Prison Service, outlined that the complainant's application failed because neither the person, nor the purpose for whom it was intended, fall within the parameters of the Act.

The complainant, Brian Kelleher, is covered by the civil service policy on domestic violence and abuse, and the relevant circular sets out the entitlements to leave.

Specifically, it says that the leave can be availed of by a staff member or a staff member who is supporting a relevant person who has previously experienced or is currently experiencing domestic violence.

It defines a relevant person as the spouse or civil partner of the employee, the cohabitant of the employee, a person with whom the employee is in an intimate relationship, a child of the employee who has not attained full age, or a dependent person.

The legislation further specifies the purposes for which the leave may be taken.

This includes to seek medical attention, obtain services from a victim services organisation, obtain psychological or other professional counselling, relocate residence, obtain an order from a court, seek advice or assistance from a legal practitioner or seek assistance from An Garda Síochána.

NOT RELEVANT PERSON

The complainant was off work on 28 September 2024, and said that he wished to avail of domestic violence leave upon his return to duty.

He spoke to management regarding his application and was asked whether he himself was alright and if he needed any support.

He said that he was supporting his neighbour and friend. He was then asked to specify the purpose of the leave and was advised of the circumstances in which the leave can be taken.

The complainant confirmed that it was not to do with any of the specified purposes for which the leave can be taken and it was simply to stay at home to support his friend.

Management concluded that the supported person was not 'a relevant person' as provided for in the Act and furthermore the purpose of the leave did not fall within the remit of the Act and domestic violence leave could not be granted.

However, he was granted annual leave for the day in question.

The respondent also provided statistics indicating that 1,400 applications for domestic violence leave have been approved, including 51 in the complainant's specific workplace.

DID NOT MEET ELIGIBILITY

AO Pat Brady noted in order for the complainant to make out a complaint of penalisation, he must first establish that it is in retaliation for the exercise of some right under the legislation.

In this case, the complainant stated that the act of penalisation was the decision not to grant him the day's leave under the Domestic Violence provisions.

Therefore, the act in respect of which this is to be seen as retaliation was the application for the leave in the first place.

"This gives rise to the interesting conundrum that the act giving rise to the penalisation and the act of penalisation are, in fact, the same act, unless the act of the application itself can be severed from the denial of the application which is absurd", AO Brady outlined.

The respondent's position was that the complainant did not meet the eligibility criteria to be covered by the scheme. The AO said Mr Kelleher did little to help his application by not cooperating with management "in giving them straight and honest answers."

The respondent employer had a duty to establish whether or not he was covered by the scheme and sought to establish this.

The AO recorded that at the WRC hearing, "apart from simply insisting that he did meet the criteria, he made no actual argument to rebut the plain facts of the matter which indicate that he does not'.

His application for domestic leave "was properly declined on the basis of a correct interpretation of the applicable regulation", and "cannot give rise, on these facts, to any penalisation", he concluded, noting that the complaint was "entirely misconceived." (*ADJ-00055136, AO: Pat Brady*)