



Zalewski v The Workplace Relations Commission:¹

The High Court dismisses constitutional challenge to the validity of the Workplace Relations Commission

On 21 April 2020, Justice Simons of the High Court delivered his judgment to dismiss a constitutional challenge to the validity of the Workplace Relations Act 2015 (the “2015 Act”) and, in particular, the jurisdiction of Workplace Relations Commission (the “WRC”) and the Labour Court to adjudicate on employment disputes. Given the potential grave and significant consequences that an alternative ruling may have had on the rights of individuals to seek legal resolution, this decision has come as a welcome relief for many employers and employees alike.

Background

The Applicant commenced a claim in the WRC against his previous employer for (i) unfair dismissal pursuant to the *Unfair Dismissals Act 1977* (the “UD Act”) and (ii) payment in lieu of notice pursuant to the *Payment of Wages Act 1991* (together the “WRC Claim”). The parties attended at the WRC’s premises for a full hearing of the dispute on 13 December 2016. However, following what was described as a “bizarre turn” of events, the Adjudication Officer informed the parties that a decision relating to the matter had already issued and subsequently proceeded to issue a written copy of her decision to the parties, despite the fact that a full hearing had not taken place. In addition, the written decision was dated the 16 December 2016 - 3 days after the rescheduled hearing was due to take place.

In initiating his judicial review application in the High Court, the Applicant argued that:

- (i) the determination of the WRC Claim was a matter which should be properly reserved to judges appointed under Article 34 of the Constitution and as a result, the 2015 Act was invalid by conferring such decisions to the WRC and the Labour Court; and
- (ii) In the alternative, the Applicant argued that the procedures prescribed under the 2015 Act were constitutionally deficient.

The High Court Decision

(i) The constitutionality of the 2015 Act

The Applicant argued that the 2015 Act was unconstitutional as the resolution of employment disputes by the WRC and the Labour Court involved the administration of justice within the meaning of Article 34 of the Constitution, which should properly be reserved to judges appointed in accordance with the Constitution.

In rejecting this argument, Justice Simons held that decisions of the WRC and Labour Court are not directly enforceable and can only be enforced by way of application to the District Court. The Court observed in particular that the District Court has the power to make an order directing the employer to pay compensation to the employee in lieu of re-instatement or re-engagement and/or direct an employer to pay statutory interest on the compensation, the latter being a power which is not enjoyed by an Adjudication Officer or the Labour Court. As the WRC and Labour Court are vulnerable to being overruled by the District Court, this deprives these statutory bodies of one of the essential characteristics of the administration of justice. In addition, Justice Simons held that employment disputes have not traditionally been regarded as justiciable, or put otherwise, employment disputes have not traditionally fallen within the purview of the courts.

(ii) The procedures under the 2015 Act were constitutionally deficient

In the event that the Court did not find in favour of the Applicant in respect of his first argument, in the alternative, the Applicant argued to the effect that the procedures prescribed under the 2015 Act were deficient for the reasons set out at (i)-(iv) below and as result, amounted to a breach of his personal rights pursuant to Article 40.3 of the Constitution.

- (i) **There is no requirement for adjudication officers to hold a legal qualification:** Justice Simons held that as a dispute between the parties will largely turn on its particular facts, an individual with significant human resources or industrial relations experience would be competent to resolve such disputes. Furthermore, the High Court highlighted that the 2015 Act makes express provision for the Labour Court to refer a question of

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law to the High Court for determination and for parties to bring an appeal on a point of law to the High Court. These procedures ensure that where a claim gives rise to a novel or difficult point of law, then recourse to the courts is possible.

- (ii) **There is no provision for the taking of evidence on oath or affirmation:** Justice Simons held that there is no constitutional requirement that decisions arising from the WRC Claim must be performed on the basis of sworn evidence. Furthermore, even if this constitutional requirement existed, this could legitimately be achieved by providing for sworn evidence by way of appeal to the Labour Court.
- (iii) **There is no express provision for the cross-examination of witnesses:** Notwithstanding the fact that not every claim will require the cross-examination of witnesses, Justice Simons dismissed this argument on the grounds that an Adjudication Officer has an implicit power pursuant to Section 41 of the 2015 Act and Section 8 the UD Act to give the parties to the complaint an opportunity to be heard and to present any evidence relevant to the complaint. As such, it is inherent in these statutory provisions that an Adjudication Officer must allow the parties to test the evidence of the other side, by way of cross-examination.
- (iv) **The hearings before the adjudication officers take place in private:** Justice Simons expressed doubt that the constitutional requirement for justice be administered in public applied to non-judicial bodies. However, even if there is a presumption in favour of a public hearing, he held that there is a legitimate legislative right to choose for a public decision but a private hearing which is justified by the rights of the parties. Finally, and in any event, any requirement for a public hearing is achieved by appeal to the Labour Court.

Conclusion

In summary, the High Court dismissed the constitutional challenge to the validity of the 2015 Act.

The High Court made an order to the effect that the decision made on 16 December 2016 should be set aside by an order of *certiorari*. The Court further ordered that the Applicant's WRC Claim be remitted to the Director General of the WRC to be referred to another Adjudication Officer for rehearing, with a 28-day stay on the order allowing for an appeal. While it remains to be seen whether this decision will be appealed, the judgment provides a valuable insight into the interaction of employment and constitutional law in Ireland.

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