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Workplace Dispute Resolution Systems: The View from Ireland

Dáire McCormack-George (Courts Service of Ireland) · Saturday, June 12th, 2021

In 2015, the Irish Parliament overhauled the various statutory workplace dispute resolution systems which had been established over the previous 70 years and largely replaced them with a single [Workplace Relations Commission](#) (“WRC”). However, a recent judgment of the Supreme Court of Ireland raised a number of constitutional problems with this system, requiring the amendment thereof in a number of important respects. In this blog, I will briefly outline the background to the initial reform project in 2015, key aspects of the WRC itself and the Supreme Court’s recent judgment.

Background

As [Anthony Kerr SC](#) has outlined in detail in the *European Labour Law Journal*, immediately prior the 2015 reforms, there were no less than five distinct statutory workplace dispute resolution systems in Ireland (the Labour Court, Employment Appeals Tribunal, Rights Commissioners, Equality Tribunal and National Employment Rights Authority) which dealt with various kinds of workplace disputes, such as unfair dismissal, anti-discrimination, labour standards compliance, wage, notice and industrial relations disputes. Naturally, disputes not falling within these areas were to be taken directly to the ordinary courts. While the constitution and powers of these statutory workplace dispute resolution systems varied over time, by 2015 the following features stood out. Most of these tribunals were composed of non-lawyers but their decisions were binding, albeit with a right of appeal *de novo* to the Circuit Court (in some situations) and a general right of appeal on a point of law only to the High Court; and proceedings were conducted in public, in three out of five of these tribunals.

In the early 2000s, calls for substantial reform began to emerge from workers, employers and employment lawyers. These culminated in a speech by Richard Bruton TD, then Minister for Jobs, Enterprise and Innovation, declaring that “root and branch” reform would be conducted to develop a single, streamlined, efficient and non-legalistic workplace dispute resolution system. The outcome was the much-anticipated [Workplace Relations Act 2015](#) which established the WRC. With the exception of the Labour Court and the National Employment Rights Authority, the WRC replaced all five previous statutory workplace dispute resolution systems, addressing all categories of dispute which previously fell within the remit of those tribunals. The workplace dispute resolution system established thereby is roughly as follows.

Key Features of Ireland’s Workplace Dispute Resolution

System

If a complaint is made to the WRC, it must first be determined whether it could be resolved by mediation. If not, then it may be resolved by an Adjudication Officer employed by the WRC. The key features of this process are as follows. An Adjudication Officer is not a lawyer; they are not empowered to take evidence on oath or affirmation; hearings must be held in private; their determinations are not directly enforceable, requiring application to the District Court; an appeal from a determination of an Adjudication Officer lies only to the Labour Court, also composed of non-lawyers, where the hearing would be in public; but an appeal on a point of law only is to the High Court. At all stages, parties to a dispute are entitled to legal representation or a trade union/employers' association official.

A Recent Judgment on the Irish Workplace Dispute Resolution System

In *Zalewski v. An Adjudication Officer* [2021] IESC 24, the applicant employee brought an unfair dismissal and notice complaint against his employer to the WRC. The respondent, an Adjudication Officer thereof, dismissed the complaint without any formal hearing, having made her determination on the basis of written evidence and submissions only. Unfortunately, the determination was reached and supposedly delivered on a day which neither party was aware of in advance. This occurred against a background where the applicant had expected to cross-examine witnesses of his employer. In addition, the reasons given for the decision were apparently extracted from documents submitted by the applicant's employer. Unsurprisingly, judicial review proceedings were initiated shortly thereafter, the applicant arguing the the WRC was unconstitutional.

The Supreme Court, dividing 5-3, concluded that, while the WRC was exercising limited functions and powers of a judicial nature in accordance with the Constitution of Ireland, certain aspects of its procedures violated the applicant's constitutional right to fair procedures. While not criticising the policy of "providing a cheap, relatively informal and efficient decision-making function, staffed by persons with expertise in the areas of employment law and with practical experience in industrial relations", a majority of the Court nonetheless concluded that the general requirement to hold hearings in private, the lack of a power to take evidence on oath or affirmation and the absence of any punishment for giving untruthful evidence was unconstitutional. The applicant's remaining arguments—that Adjudication Officers should be legally qualified, the absence of express provision in the Workplace Relations Act 2015 for cross-examination—were rejected. Specifically, the Court held it was sufficient that Adjudication Officers have some formal education in employment law, human resource management or industrial relations, without being qualified lawyers; and cross-examination was permitted even in the absence of any express reference thereto in the Act.

Concluding Comments

In general, the Supreme Court affirmed the constitutionality of the WRC and lauded its status as a "world-class" workplace dispute resolution system. Although the Court concluded that some of its procedures were constitutionally flawed, these findings largely stemmed from the Irish courts' well-developed jurisprudence on the constitutional right to fair procedures, a right which applies in civil and criminal law contexts and has particular relevance in administrative tribunals. The Court's affirmation of the "delegalising" agenda of the WRC is also significant. Without wishing to water

down the significance of labour rights, taking lawyers out of highly-conflictual industrial and workplace disputes, where possible, is to be welcomed.

The Supreme Court finalised its order on 15 April 2021. However, the changes envisaged by the Supreme Court's judgment to the WRC's procedures have yet to be adopted by the Government of Ireland. On 4 June, Leo Varadkar TD, the Minister for Enterprise, Trade and Employment, stated that [emergency legislation addressing the outstanding unconstitutionality will be published in the next couple of weeks](#). It is hoped that this will indeed happen to allow the WRC to continue functioning as Ireland emerges from the pandemic.

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