



## **Compensation in Equality and Associated Cases\***

The Labour Court decision in the case of G4S Secure Solutions (Ireland) Limited and Tiina Villi EDA1718 is an important decision in that the Court has taken the time to set out the legislation and the case law relating to the issue of compensation to be awarded. In this case the Adjudication Officer had awarded €6,000 which the Labour Court increased to €8,000 and reaffirmed the decision of the Adjudication Officer that the employee should be placed on a roster in accordance with the terms of her contract of employment. An argument was made by the respondent employer that while they accepted that the Employment Equality Act had been breached that the employee in this case has not suffered any economic loss.

The Court importantly considered the case of Von Colson and Kamann case C-14/83, the decision of the Labour Court in C&F Tooling Limited and Cunniffe DWT15125 and a case of Watters Garden World Limited and Panuta EDA098.

The Labour Court has confirmed in this case that the Von Colson and Kamann principles do apply.

The Court in this case pointed out that they have been asked to take into account the financial standing of the respondent in determining the awarded of compensation. The Labour Court referred to the case of Watters Garden World Limited and Panuta EDA098. That is a case where Richard Grogan of this firm was involved as the Solicitor in charge of that case being a Partner in the firm of PC Moore & Co. Solicitors at that time for the employee. In that case the employee was represented by Ms. Marguerite Bolger who is now a Senior Counsel. In the Panuta case the employer had contended that the Court should take into account the financial circumstances of the employer in setting compensation which in that case was €20,000. The Court rejected that position. In this case again the issue of the financial standing of the employer was raised but in this case it was raised by the employee. The Court again referred to the case of Watters Garden World Limited –v- Panuta in holding that the financial circumstances of the employer is not an issue to be taken into account in setting compensation. The Court held that while the size of any award intended to have dissuasive effect may, for its effectiveness, have to take account of the financial capacity of the enterprise. The other



elements of the award are related solely to the pecuniary loss suffered by the complainant and the gravity of the transgression. The Court held that the financial capacity of the respondent is neither an aggravating nor a mitigating factor in measuring compensation under those headings.

In this case the Court held that there had been no financial loss but increased the compensation to €8,000.

The Labour Court is being very consistent in assessing compensation for a breach which comes under the Von Colson and Kamann principles by which we mean a breach of European Legislation. It is clear that in setting compensation an Adjudication Officer or the Labour Court on appeal may take into account the financial circumstances of an employer as regards the element of an award which is intended to be dissuasive as regards the financial capacity of the enterprise. This makes perfect sense and is in line with the jurisprudence of the Court. An element of an award which is to be persuasive of an employer for even the same level of breach is going to be different for a multinational than it is going to be for a corner shop. That makes perfect sense. The Labour Court is consistently applying that. However, as regards the compensation for the breach itself as regards the financial loss which the employee has suffered or the gravity of the transgression then in those circumstances the financial ability of the employer to pay is not relevant. The Court in those circumstances is setting compensation for the transgression and/or the financial loss. That makes no difference to whether the employer is a multinational or a corner shop. Again, this makes perfect sense and is in line with the jurisprudence of the Labour Court. While it would not be relevant to this particular case let us take an example of a situation where you have an employee who does not receive rest breaks at work. Let us assume that the level of breach is exactly the same for two employees one of whom is employed by a multinational and one of whom is employed by a corner shop. Neither is probably going to have any economic loss. Therefore there is simply going to be the compensation for the transgression. That will be the same as it is the same breach. However, as regards the persuasive element of any award the level of an award which will be persuasive of a multinational going forward not to allow this to happen again is going to be substantially higher than would apply to a corner shop. That equally makes absolute sense.



When it comes to European Legislation the compensation must be set at a figure which is effective proportionate and dissuasive. The dissuasive element is the only element where the size or ability of the enterprise to pay is a relevant factor. The effective and proportionate element is not a factor where ability to pay would have any bearing on the compensation. The decision which we refer to above is an extremely useful decision for setting out the law. It is well thought out and clearly set out. It is a decision which anybody interested in employment law particularly those representing employers or employees should read.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**