

Unfair Dismissal*

Normally when dealing with unfair dismissal cases we only cover those where there is a substantial or important piece of law referred to. There are exceptions. The case ADJ14669 is a case which we would encourage practitioners to read. It is a very well set out decision dealing with the factual background where the AO in great depth set out the lack of insight, sense of proportion, fairness and justice and the detachment from the normal principles applicable in a disciplinary process in awarding €35,000. This is an excellent decision dealing with facts and is an extremely good guideline as to what an employer should not do.

Dismissal due to incapacity

In case ADJ-11070 the AO quoted a case of Dunnes Stores Limited -v- O'Brien UDD1714. It was pointed out that in this case the Labour Court concluded that there was no prospect of the Complainant returning to work from her absence on sick leave in the foreseeable future. The Respondent have been entitled to dismiss her on the grounds that she was incapable of performing the duties for which she had been engaged. In coming to this conclusion, the Labour Court declared itself satisfied the Respondent had afforded the claim a fair notice regarding the possibility of her dismissal. The Claimant had not been in a position at any stage to provide an indication of a return to work date and lastly the Claimant had been afforded the opportunity to be heard by the Respondent.

These cases are arising at the present time. It is important employees engage fully with employers. It is necessary for employees to produce medical evidence giving a return date to work. This is only that they need to give an indication of a likely return date and that this would be reasonable in all the circumstances.

Equally, employers must produce all medical documentation to the employee. The employer must give an employee an opportunity to challenge same and for the employee to produce their own medical documentation.

Equally, the employer must give due regard in respect to the medical evidence from the employee.

****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 as a proportion or percentage of any award or settlement.***