



Entitlements to Annual Leave during Periods of Sick Leave*

The European Court of Justice has confirmed in the Decisions in the joined cases C-520/06 and C-350/06 *Stringer and Others –v- HM Revenue and Customs Commissioners of Inland Revenue –v- Ainsworth and Others and Schultz – Hoff –v- Deutsche Rentenversicherung Bund* there is an entitlement to accrue Annual Leave in respect of a period during which an employee was on sick leave and not at work.

In the case of *Seclusion Properties Limited and Kieran O'Donovan DWR14114* the issue came on for hearing before the Labour Court.

The Labour Court held that the OWTA when it is literally construed does not afford an employee the entitlement to accrue Annual Leave during periods of sick leave.

There was no issue in the case as to what the European Law was. The issue being determined was whether the Labour Court could construe the Irish legislation in line with the European Decisions. In this case the submission for the employee did draw the Courts attention to the Decision of the High Court in *Minister for Justice Equality and Law Reform –v- The Equality Tribunal [2009] 20 E.L.R 116* and in particular the Decision of Mr. Justice Charleton. The issue raised the question as to whether the Labour Court had Jurisdiction to apply the doctrine of conforming interpretation at all. The Court held that the correct application of National Law involved the interpreting of that law in light of the wording and purpose of the Directive upon which the law is based. The Court properly held that it is founded in part on the presumption that that National Legislature intended to transpose a Directive faithfully. The issue therefore was whether the Court is circumscribed in applying the law of the EU and could this offend against the principles of effectiveness and equivalence. The Court decided to reserve its position on that question. The Court however held that it is clear that the domestic Courts and Tribunals must interpret National Law in conformity with the Directive as far as possible. The Court held that it cannot interpret the legislation *contra legem*. The Court in this case held that it could not through the legislation avoid a *contra legem* and therefore allowed the appeal by the respondent employer against the Decision of the Rights Commissioner who had awarded €2000 in compensation.

This case is interesting. It opens up the potential for any such claims, which are currently before the Labour Court or the Rights Commissioner Service for a claim against the State for failing to



properly implement the Directive. Once the new Workplace Relations Bill is passed, taking into account the amendment to the legislation concerning sick pay, which the Minister has announced will be included this will become a moot point. However in the interim there is the potential for a significant number of claims against the State.

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