

HOLDING DISCIPLINARY HEARINGS*

The issue of fair procedures in disciplinary matters has recently been decided by the High Court in a judgment by Mr Justice Barton delivered on the 16th July 2018 in the case of Towerbrook Limited T/A Castle Darrow Country House Hotel and Eugene Young.

The facts of the case are interesting in themselves but what is probably more interesting for employment lawyers is the view of the Court in relation to the law on this matter.

The employer in this case had a number of policies including dignity and disciplinary policies and a grievance procedure. It was submitted on behalf of the employee that in the particular circumstances of the case the managing director should not have involved himself in conducting the investigation, making a determination and imposing a disciplinary sanction on foot of his own complaint particularly in circumstances where he himself was a subject matter of a complaint of assault by the employee.

In setting out the law His Honour held that the High Court was bound by the decision in the case of *Mooney -v- An Post* 1998 4IR288.

His Honour set out that it was significant in the context of this case that the application of the rules of natural and constitutional justice which include the entitlement of an employee to the benefit of fair procedures to be informed of the charges of complaint against him and to be given an opportunity to respond and make submissions were broadly incorporated in the employer's grievance, disciplinary and dignity policies. It was pointed out that the judgment of Keane J in *Mooney* is particularly apposite of the circumstances of this case. While the Court pointed out while recognising the two great central principles - *audi alterem partem* and *nemo iudex in causa sua* cannot be applied in a uniform fashion to every set of facts and certainly not in a way which would result in an employer never being able to dismiss an employee the Court in that case went on to state:

“... where, however, natural justice requires a hearing by an impartial Tribunal before an employee is dismissed, the presence on the Tribunal of somebody who has hitherto being in a prosecution role may be a violation of the principles - see Connolly -v- McConnell 1983 IR 172 and O’Donohue -v- Veterinary Council 1975 IR398.”

The employee in this case objected to attending a disciplinary process being conducted by a person whom the employee considered had subjected him to verbal and physical abuse.

The Solicitors for the employee had suggested an independent third party. The employer’s Solicitors responded agreeing to this but put forward the idea that the employee would have to pay the portion of the costs. His Honour pointed out that this might not be an unreasonable condition. However, His Honour pointed out that taking account of the employee’s strained financial circumstances it was likely to prove problematical for the employee and so it transpired. His Honour pointed out that in his judgment this betrayed a lack of bona fides on the part of the employer in the apparent acceptance of the proposition. His Honour pointed out that it would have been possible probably to have reached some form of amicable arrangement in respect of same.

His Honour pointed out that he was satisfied that the investigations and disciplinary meeting which resulted in the dismissal was fundamentally flawed and contrary to the principles of natural justice to which the employer had expressly committed itself by its policies. His Honour pointed out that he was satisfied that the Court found that the investigation and ultimate decision-making process involved neither independent, thorough, impartial nor objective and it had to be if it were to comply with the policies the employer had adopted.

This case is extremely interesting in restating the importance of fair procedures.

It is a reminder to employers that where the employer is the moving party in relation to a particular complaint it is not appropriate for the employer to be involved in the process and that it is necessary that there would be an independent investigation by somebody who is

independent of same particularly where there has been a complaint against the employer themselves that the employer has been in breach of their own policies relating to fair procedures or their dignity in workplace policies. This is an extremely important decision of the High Court.

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