

Mitigation of Loss in Unfair Dismissal Cases

This issue of mitigation of loss in Unfair Dismissal cases was very clearly set out by the Labour Court in case UDD2028 being a case of Connemara Marble Industries Limited and Anne Marie Lally.

The Court in that case stated

"The other factor that the court must take into account in determining compensation is the extent to which the complainant sought to mitigate her losses. From the time of her dismissal to June 2019, the only job secured by her was for one day per week from March 2017 to October 2017. In a period of significant growth in employment opportunities, this is difficult to understand. While the complainant noted she had made many informal enquiries at the time, the only actual evidence of active job seeking in that period produced to the court were 13 written job applications. As the respondent pointed out, the level of requirement on a dismissed employee to seek alternative employment is very significant and was put very well by the Employment Appeals Tribunal in Sheehan -v- Continental Administration Company Limited where the tribunal noted that "the time that a claimant finds on his hands is not his own, unless he chooses it to be, but rather to be profitably employed in seeking to mitigate his loss".

The above is a very clear and definitive statement by the Labour Court as to the manner in which a dismissed employee must act to mitigate their loss.

Effectively, once an employee is dismissed their new job is looking for a job. If they cannot do so or do not do so or cannot produce evidence of having applied for jobs then in those circumstances this has to be taken into account in setting compensation.

It is therefore imperative if any employee is dismissed that they not only look for work but keep a detailed record of having looked for work. Employees who are dismissed must show their efforts to mitigate their loss in Unfair Dismissal cases. Failure to show mitigation of loss in Unfair Dismissal cases may result in a Court or Tribunal being limited to giving just 4 weeks salary due to the way the Unfair Dismissal Acts 1977 – 2015 are drafted.

***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.**