

## **Unfair Dismissal Cases – Fair Procedures**

This issue regularly arises in Unfair Dismissal cases. It was referred to in the case ADJ-00012704. In this case the Adjudication Officer pointed out that the High Court in the case of Shortt -v- Royal Liver Assurance Limited 2008 EIHC332 is one where Laffoy J outlined that a central consideration to a fair process in an Unfair Dismissal case is whether or not any purported breach of natural justice was “*likely to imperil a fair hearing or a fair result*”. The Adjudication Officer noted also the determination of the EAT in the case of Murphy -v- College Freight Limited UD867/2007 where the EAT noted that a disciplinary process does not need to be “*a counsel of perfection*” but rather “*they must be fair*”. The Adjudication Officer pointed out that the complainant did receive fair procedures even though there were shortcomings identified but they were not likely to imperil a fair hearing or a fair result.

The issue in relation to these type of cases, and this would be our view, is whether there is a disciplinary process within the organisation. If there is a disciplinary process within the organisation then following the decisions of the Labour Court it is vital that an employer follows those procedures. If they do not then there is certainly an issue that these are not fair procedures. If they do follow their own procedures fully but those procedures do not comply with the Code of Practice on Grievance and Disciplinary procedures then the issue arises as to whether the procedures were in themselves fair so as not to imperil a fair decision.

This case does not set out whether or not the employer had procedures and whether they followed them or whether just the procedures themselves were not fully in line with a Code of Practice.

**\*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.**