

Protected Disclosure Act 2014.

An issue arose in relation to this Act in the case of Connemara Marble Industries Limited and Frances Murphy. The reference is PDD2006. In that case the employee referred to the case of *Babula -v- Waltham Forest College 2007 ICR1026* where the UK Court of Appeal determined that the fact an employee may be wrong in their belief is not relevant provided their belief is reasonable and the disclosure to the employer was made in good faith. The case of *Aidan and Henrietta McGrath Partnership -v- Anna Monaghan PDD162* was referred to on the 'but for' test and said that the employee would not have been refused but for her refusal to operate an illegal act and reported that to her employers which related to being treated poorly in work, locked out of the office or suspended.

The Court referred to the relevant Legislation in particular Sections 2,5,6 and 12 of the Act. The Court stated that it follows that a complaint under the 2014 Act must demonstrate firstly that they made one or more Protected Disclosures, secondly that they suffered a detriment and thirdly that there was a causal connection between the first two matters.

The Court pointed out that the fact that no mention was made of the term protected disclosure prior to this does not mean that matters raised before this time are not protected and referred to the decision of Mr Justice Humphreys in the case of *Clarke -v- CTI Food Services Limited 2020 IEHC368* where the Court stated;

"One can make a Protected Disclosure without invoking the 2014 Act or without using the language of 'Protected Disclosure'. It is often only after the victimisation, dismissal or other adverse consequence arise that one has to retrospectively figure out what really happened and analyse it in the statutory language. There is nothing wrong with that process and it is certainly different from retrospectively creating a case from nothing"

The Court looked at the question as to whether refusing to work a cash till amounted to a Protected Disclosure within Section 5. The Court referred to the case of *Baranya -v- Rosderra Irish Meat Groups Limited 2020 IHC560* where Mr Justice Regan stated;

"Although the concept of a Protected Disclosure is effectively a term of art as defined by the 2014 Act, the word 'Disclosed' has the ordinary meaning of to 'reveal' or 'make known'. In this context the statement

that the communication did not disclose any wrongdoing on the part of the respondent is, in fact, factually correct as the communication by the appellant, as found by the Labour Court, did not reveal or make known any wrongdoing on the part of the respondent. In those events it was not possible to read into the communication any reasonable belief of a relevant wrongdoing on the part of the employer".

This is a very useful decision for setting out the law in some detail.

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