



The danger of dismissing without procedures *

In a recent case in which this office was involved the employer who had employed the employee for only a short period of time dismissed the employee without any procedures whatsoever. The individual in question is a non-Irish national. The dismissal took place when the employee had raised questions about being paid monies that were due. The employee in this case had previously bought claims before the Rights Commissioner service for non-payment of wages and the Organisation of Working Time Act and the Terms of Employment (Information) Act. The Adjudication Officer issued an award of €8,000. The Adjudication Officer took into account the case of Campbell Catering Limited as regards procedures applying to a non-Irish national. In addition the Adjudication Officer took into account the issue of serious Tax Evasion and Social Welfare Fraud which had been reported by the employee to the relevant authorities. Under the new Workplace Relations Act the issue of the Tax Evasion and Social Welfare Fraud undertaken by the employer must also be reported by the Adjudication Officer to the appropriate authorities in this case the Revenue and the Department of Social Protection.

It is our experience that non-Irish national can be the subject of Tax Evasion and Social Welfare Fraud Schemes put in place by employers. They are less likely to notice them. Often these only come to light when they obtain professional advice. It often comes as quite a shock to the non-Irish national that their tax affairs are not in order.

The interesting part of the case from our point of view in representing the employee was the approach that the Adjudicator took to the fact of fair procedures not having been applied and in fact no procedures having been applied in the case of non-Irish national.

As this case issued under the new Workplace Relations Act and the complaint had issued under the new legislation then in those circumstances the full enforcement provisions of the WRC can be requested by the employee to seek payment by the employer.



Where cases go to a Sheriff the issue is that often the employer might return the marks say marked “no goods”. Where it goes to the WRC it is much quicker procedure and if it comes back that the employer contends that they are not in a position to discharge the monies then it is far easier for the employee relying on what was said to the WRC for the employee to seek through the Courts to wind up the company. In this case the employee received additional awards under other legislation which will be sufficient to bring the claim within the jurisdiction of the Companies Act for the purposes of bringing a winding up application.

***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.**