



Disciplinary Procedures and Claims for Bullying and Harassment

Ruffley v The Board of Management of Saint Anne's School

“At some level this novel case will set a benchmark for all bullying claims.”

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The Supreme Court has dismissed a claim for bullying and harassment and has deemed an unfair disciplinary process not to be sufficient to amount to bullying.

Proceedings

The case of *Ruffley v The Board of Management of Saint Anne's School* [2017] IESC 33 is a personal injuries claim for bullying arising from a disciplinary process to which the plaintiff had been subjected by her employer. The High Court found that the disciplinary process was so defective as to constitute bullying and awarded the plaintiff damages totalling €255,276.39, including awards in respect of psychiatric injuries and loss of earnings both past and future. The decision was overturned on appeal in a majority decision of the Court of Appeal and that decision was then appealed to the Supreme Court which imposed a partial stay on the High Court award and ordered the employer to pay out the sum of € 100,000.

There was a general acceptance that the disciplinary process was seriously flawed and there appears to have been a consensus amongst the judges in the various courts that the process was so badly conducted that a court would have been readily willing to

For further information on any of the issues discussed in this article please contact:



John Doyle
Partner Litigation

DD: + 353 (0)1 673 1786
john.doyle@dilloneustace.ie



Elaine Healy
Partner Litigation

DD: + 353 (0)1 673 1797
elaine.healy@dilloneustace.ie



Laura Butler
Litigation PSL

DD: + 353 (0)1 673 1850
laura.butler@dilloneustace.ie

declare the process and any disciplinary sanction imposed as a result, invalid. However, the claim was one for personal injuries and ultimately, the Supreme Court, in decision given by O'Donnell J, dismissed the plaintiff's appeal.

Issues

The events giving rise to the claim happened in late 2009 and 2010 and O'Donnell J set out the facts of the case in great detail and he analysed the rationale of the judgments in the Courts below. As O'Donnell J said in his judgment: "*much of the difference of opinion in this case depends on the assessment of the cumulative impact of the individual events, many of them unremarkable in themselves*".

What constitutes bullying?

The definition of bullying set out in the 2000 Code of Practice was considered and ultimately the Court emphasised the fact that in order for behaviour to amount to bullying it must be repeated, inappropriate and must undermine the employee's right to dignity at work. Each of these elements was examined in turn and O'Donnell J suggested that the dignity at work aspect was "*perhaps the most important...because it relates closely to the value which is sought to be protected by the law*." He went on to say that the dignity at work aspect "*limits the claims which may be made to those which can be described as outrageous, unacceptable, and exceeding all bounds tolerated by decent society*".

O'Donnell J considered whether there was a separate tort of bullying and he stated that he considered the view that there is no such separate tort and that cases of personal injuries based on allegations of bullying should be regarded under the general regime of an employer's duty to take reasonable care of their employees to be "*more than a little puzzling*". Where bullying conduct is not itself wrongful (or at least actionable), and is only a subspecies of the employer's duty of care to an employee, certain surprising consequences follow:

- actions for bullying could only occur in the employment context
- where there is individual vindictive bullying by one person of another, and where one employee cruelly and mercilessly torments another, with perhaps serious psychiatric consequences for the victim — the bully would nevertheless have no liability to the victim even if the bully was also sufficiently wealthy to pay compensation
- an employer could escape liability by demonstrating that it had taken all reasonable steps to prevent the bullying
- a victim of concealed bullying would have no remedy even if the bullying was closely connected to the employment and even if in similar circumstances an employer would be vicariously liable for physical rather than psychiatric injury caused to a victim

- there is a difficulty in reconciling the contention that bullying is only actionable as a subclass of the employer's duty of care with the statement that the employer can nevertheless be liable for something labelled as 'corporate bullying'.

Decision

While the procedures adopted in *Ruffley* were seriously flawed, O'Donnell J noted that there had been no allegation of bad faith on the part of the employer and he stated that the employer's behaviour was "*on any view...at the margins of conduct alleged to be bullying*". If there were to be an allegation of lack of bona fides on the part of the employer then O'Donnell J stated that that should be made explicitly so that evidence could be called on that aspect and a determination made. O'Donnell J refers to the hardship and distress caused and the costs incurred as a result of the matter having made its way through three levels of the courts. He suggested that "*this novel case will set a benchmark for all bullying claims*".

O'Donnell J held that the flawed process in itself did not give rise to an entitlement to damages "*even if it is accepted that that the plaintiff's depression, anxiety [and] stress were caused in whole or in part by the treatment she received*". He stated that "*it is not necessary to establish a breach of fair procedures to succeed in a bullying claim, and conversely, the presence of unfair procedures does not establish bullying.*"

O'Donnell J ultimately dismissed the plaintiff's appeal but in doing so he indicated a provisional view that he would be very slow to order the plaintiff to repay the €100,000 or to pay costs and he referred to the fact that the plaintiff would have been justified in seeking a determination that the procedures were flawed. O'Donnell J said that it would be desirable that the case might be resolved between the parties and in default he would make a final decision.

Conclusion

Ultimately the court held that the denial of fair procedures cannot be said to undermine human dignity, particularly when it is the same breach of procedures which is also contended to be inappropriate. The requirement that the procedure be repeated inappropriate and undermining of dignity is a test which uses language deliberately intended to indicate that the conduct which will breach it is both severe and normally offensive at a human level.

Comment

This case was considered to be at the margins of the concept of bullying and harassment and as a result may help define the limits of actionable claims. The claim relates to a disciplinary process, and circumstances which are not encompassed by the classic conceptions of workplace bullying. A flawed disciplinary procedure over a number of months did not amount to "*repeated inappropriate behaviour*" for the purpose of the definition.

To constitute the tort it must include:

- Repeated behaviour;
- Inappropriate behaviour; and
- Behaviour reasonably capable of undermining dignity at work.
- Where the personal injury is not of a direct physical kind, it must amount to an identifiable psychiatric injury.

It was cautioned against viewing these three matters as separate and self-standing issues as if in a statutory definition. It is a single definition and a single test:

“..was the defendant guilty of repeated inappropriate behaviour against the plaintiff which could reasonably be regarded as undermining the individual’s right to dignity at work?”

Ruffley v The Board of Management of Saint Anne's School (Unreported, Supreme Court, O'Donnell J, Charleton J, 26 May 2017) [2017] IESC 33.

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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