

Protected Disclosure Act 2014: Court of Appeal confirms prohibition on seeking alternate remedies

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The Court of Appeal has determined that redress under section 13(1) of the Protected Disclosures Act 2014 (**Act**), which allows for a claim in damages where harm has been suffered because of the making of a protected disclosure, is not available to a person who has made a penalisation complaint in respect of the same matter to the Workplace Relations Commission (**WRC**).

In *Hosford v The Minister for Employment Affairs and Social Protection [2024] IECA 294*, the court considered that the proceedings, which sought relief pursuant to section 13(1) of the Act, were "doomed to fail", even though the earlier WRC complaint had not resulted in a substantive adjudication on the dispute between the parties.

Background

The plaintiff is involved in a long-standing dispute with his previous employer, the Minister for Employment Affairs and Social Protection (**Minister**), which has resulted in 24 different hearings before the WRC, the Labour Court and the Superior Courts. A number of protected disclosures were made by the plaintiff, which he has alleged lead to penalisation by his employer and to his constructive dismissal. He brought complaints to the WRC, but these were dismissed on a preliminary basis as they were deemed to be statute barred. He then issued proceedings before the High Court seeking redress in tort pursuant to Section 13(1) of the Act.



The Minister issued a motion seeking to have these proceedings dismissed on the grounds that they were barred in light of the plaintiff's earlier WRC complaint. This application was made pursuant to Section 13(2) of the Act, which requires a person to choose between seeking relief under Section 13(1) or seeking redress before the WRC pursuant to protections against penalisation contained in section 12 of the Act.

The plaintiff argued that Section 13(2) did not apply to his proceedings as the WRC did not adjudicate on his unfair dismissal complaint, instead disallowing the claim on a preliminary issue basis.

In the High Court, the judge refused the Minister's application to dismiss the proceedings on the grounds that it was a novel and complex issue, which could not be determined by way of a motion. This decision was appealed by the Minister.

Threshold for Striking Out Proceedings

An application to strike out proceedings, as allowed for pursuant to Order 19 Rule 28 of the Rules of the Superior Courts and the court's inherent jurisdiction, imposes a high threshold as the court must be satisfied that a claim is devoid of merit or clearly cannot succeed. The jurisdiction to strike out cases is used sparingly in only clearcut cases.

The Court of Appeal noted that in order to determine the Minister's application to dismiss, it must consider the argument that the plaintiff's claim was bound to fail and/or have no reasonable chance of succeeding and then consider whether the level of certainty in that regard was sufficient to justify a dismissal before a full hearing of the action.

Court of Appeal Decision

The Court of Appeal noted that the plaintiff's Statement of Claim set out explicitly that the complaints the subject matter of the proceedings were precisely the same complaints as were the subject of the WRC complaint and furthermore, they were issued against the same party, the Minister.

It found that section 13(2) of the Act establishes alternate paths for redress for persons seeking to assert harm following the making of a protected disclosure. A person cannot avail of both. Further, there is no conditionality in the legislative provisions, which requires, for example, that the substantive claim be adjudicated before an action pursuant to section

13(1) is prohibited. Section 13(2) only requires a case to be made or presented to the WRC.

The court opined that when interpreting legislative provisions, it must consider the ordinary and natural meaning of the words rather than seeking to construe an act by reference to what it thinks the legislature ought sensibly to have wished to achieve. Here, the Court of Appeal held that the meaning and purpose of section 13(2) of the Act is "*crystal clear*".

The court acknowledged that the alternate routes for redress under the Act have very different time limits, with the WRC route pursuant to section 12 of the Act being subject to a six-month time limit extendable to a maximum of a further six months, whereas the s13(1) relief is subject to a six-year time limit. However, the court found that this difference cannot be used to undermine the clear language of the statute.

Consequently, the court was of the view that the high threshold to dismiss proceedings was met in this application as the claim was one that clearly could not succeed and nothing would change if it was argued at a substantive hearing.

Conclusion

The Court of Appeal decision is clear. Section 13(2) of the Act obliges a complainant seeking redress in respect of harm resulting from a protected disclosure to elect to proceed before the WRC or to take a section 13(1) action, with no exception arising where there has not been a substantive decision resulting from the election. In practical terms, the fact that a claim need only be made or presented to the WRC for an action under section 13(1) to be barred means that the binding choice between the different routes must be taken at an early stage in the complaint process.

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