



High threshold for workplace bullying – being cruel to be kind?

Ruffley -v- The Board of Management of St. Anne's School¹

Supreme Court upholds decision to overturn €255,276 award of damages to an SNA in an action for workplace bullying.

Introduction

The appellant claimed that the disciplinary process she underwent while employed as an SNA in the respondent school amounted to bullying. The appellant succeeded in the High Court where she was awarded €255,276.39. However, this decision was overturned by the Court of Appeal ("CoA"). The appellant was subsequently granted leave to appeal by the Supreme Court.

Supreme Court decision

The Supreme Court unanimously upheld the CoA decision. In its principal judgment², the Court outlined what is required to constitute workplace bullying, ie behaviour that is:

- repeated
- inappropriate
- reasonably capable of undermining dignity at work³

The Court emphasised that each of these elements are "separate and self-standing" yet they "take their colour from each other and the concepts are incremental" and comprise a "single definition and a single test".

Repeated

The Court noted that repeated behaviour is not simply "two different events", but rather, "what must be repeated is inappropriate behaviour undermining the personal dignity of the individual". The Court found that such behaviour was not present in this case, noting that "it is not enough that what is alleged to constitute unfair procedures is comprised of a number of different steps unless each of those steps can be said in themselves to be inappropriate and undermine human dignity".

Inappropriate

The appellant claimed that the behaviour involved in the disciplinary process was inappropriate because it breached fair procedures. However, the Supreme Court stressed that "*inappropriate behaviour does not necessarily need to be unlawful, erroneous or a procedure liable to be quashed or otherwise wrong in law: it is instead behaviour which is inappropriate at a human level*". Following this definition, the Court found that there was no repeated inappropriate behaviour in this case.

Undermining dignity at work

Of particular significance in this case, is the importance the Supreme Court attached to the third component of the bullying definition. The Court remarked that the High Court and CoA had not approached this part of the test as a separate limb, which it disagreed with, noting that it is a "separate, distinct and important component" of the test which "identifies the interests sought to be protected by the law, and just as importantly limits the claims which may be made to those which can be described as outrageous, unacceptable, and exceeding all bounds tolerated by decent society". The Court concluded that while the denial of fair procedures is "never a trivial matter", it cannot comfortably be said to be undermining of human dignity. For a disciplinary process to undermine dignity there would have to be evidence that such a process was not pursued bona fide "but rather as a form of punishing and perhaps humiliating the individual concerned", which the Court found was not the case here.

¹ Ruffley -v- The Board of Management of St. Anne's School [2017] IESC 33.

² Principal judgment delivered by O'Donnell J.

³ This was approved in the previous decision of Quigley -v- Complex Tooling & Moulding Ltd [2009] 1 IR 349.

Comment

In this case, the Supreme Court appears to establish a stricter test for bullying, holding that what is involved is conduct that is “both severe and normally offensive at a human level” and “outrageous, unacceptable, and exceeding all bounds tolerated by decent society”. This was elaborated on in Charleton J’s judgment, where he noted that:

“Correction and instruction are necessary in the functioning of any workplace and these are required to avoid accidents and to ensure that productive work is engaged in. It may be necessary to point to faults. It may be necessary to bring home a point by requesting engagement in an unusual task or longer or unsocial hours. It is a kindness to attempt to instil a work ethic or to save a job or a career by an early intervention. Bullying is not about being tough on employees. Appropriate interventions may not be pleasant and must simply be taken in the right spirit. Sometimes a disciplinary intervention may be necessary.”

The case offers important clarification for employers as to what constitutes workplace bullying, with Charleton J summarising the test as:

“Behaviour completely beyond the tolerable, that undermines dignity at work, and which is repeated so that it forms a pattern which genuinely undermines a person’s ability to come to work and serve in his or her position.”

The Supreme Court also noted that a claim of breach of fair procedures and a claim of bullying are separate matters and that the presence of unfair procedures does not establish bullying and vice versa. Notably, the Court also stated that the appellant would have been justified in coming to court to have it determined that the procedures applied to her were flawed.

This case is a welcome clarification of the law from an employer’s perspective, especially as many disciplinary procedures are often met with a claim of alleged bullying.

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