EVERSHEDS SUTHERLAND

Who is the employer?

The relationship between teacher, school and Minister

The Court of Appeal ("**CoA**") recently considered this issue[1] and upheld a decision of the High Court that a part-time teacher in a pre-school was an employee of the Minister for Education and Skills (the "**Minister**") in relation to pay-related matters, even if she was not considered the Minister's employee for other purposes. The CoA also held that a national school teacher, the claimant's chosen comparator for the purposes of establishing less favourable treatment[2], was an employee of the Minister in this context.

Background

Ms Boyle was employed as a teacher in a grant-aided pre-school[3] until the school closed in 2011. A grant amounting to 98% of the salary payable to a primary school teacher was paid by the Minister to the management committee of the school in respect of her salary. In 2009, Ms Boyle made a complaint to a Rights Commissioner claiming that she was treated less favourably than full-time teachers by not being admitted to the National Teachers Superannuation Scheme. She claimed that both the Minister and the chair of the management committee were her employers and she chose a national school teacher as her comparator. Before her complaint could be processed, Ms Boyle was made redundant as a consequence of the school's closure. The redundancy payment was made by the Minister through the management committee.

In 2011, the Rights Commissioner held that the Minister was not Ms Boyle's employer. However, on appeal, the Labour Court found for Ms Boyle, concluding that she was the Minister's employee and should be included in the pension scheme, as well as awarding her €10,000 in compensation for discrimination.

The High Court confirmed the decision that Ms Boyle was an employee of the Minister for pay-related matters. However, it also concluded that the Labour Court had no jurisdiction to direct that Ms Boyle be admitted into the pension scheme. The Minister appealed the finding that Ms Boyle was an employee of the Minister to the CoA.

Court of Appeal Decision

The CoA noted that "there is in part a conventional contract of employment between the school and the teacher", as the school decides to hire the teacher and the teacher is subject to the day to day control and direction of the principal of the school and its board of management. However, the teacher's salary and all other employment benefits are paid by the Minister. In this respect, the Court noted that the salaries of teachers were reduced along with other public servants under the Financial Emergency Measures in the Public Interest (No.2) Act 2009, and "that in itself should be a powerful practical indicator that the national school teachers are, indeed, employees of the Minister, at least for the purposes of pay-related issues".

The CoA agreed with the High Court's conclusion that for teachers whose salaries are paid by the State, "the role of the employer, is, uniquely, split" between the management of the school and the Department of Education and Skills. It also noted that the Minister organised and paid for the claimant's redundancy.

The CoA concluded that, while there was no express contract of employment between the parties, there must have been an implied contract. The claimant's comparator for the purposes of the 2001 Act, a full-time national school teacher, was also held to be an employee of the Minister for pay-related matters. In addition, the CoA upheld the High Court's conclusion that the Labour Court was not entitled to order that Ms Boyle be admitted to the pension scheme.

[1] *The Minister for Education and Skills v Anne Boyle, [2017] IECA 39.*
[2] *under the Protection of Employees (Part-Time) Work Act, 2001 (the "**2001 Act**").*
[3] *for children of members of the travelling community.*

Commentary

This case is of considerable importance because it clarifies, not only that national school teachers are employees of the Minister in the pay-related context, but also the categories of person "employed" by the Minister has potentially been considerably widened. The case also usefully discusses the "tripartite relationship" between the teacher, the school and the Minister.

The CoA emphasised that there are specific contexts in which the Minister has no role in relation to the teacher's employment, especially those aspects of the teacher's role which give rise to vicarious liability, that is, issues surrounding hiring, discipline and dismissal. However, in pay-related matters, the Minister has a significant role, which is not confined to simply handing over funds to schools and setting the rules according to which the salaries of teachers are to be paid.

In arriving at its conclusion, the CoA acknowledged the reality of the relationship between the Minister and teachers rather than focusing on the absence of a formal contract of employment between the two parties.

This case demonstrates the importance of education providers having proper contracts of employment for staff which, while recognising the tripartite relationship, also give the employer sufficient scope regarding performance and discipline issues. It remains to be seen if further cases will be taken by employees who were initially not thought to fall within the tripartite relationship.

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