



Reasonably accommodated?

Cahill -v- Department of Education and Science¹

Supreme Court rules annotation accompanying spelling waiver on Leaving Certificate results is not discrimination.

Introduction

The appellant undertook the Leaving Certificate examination in 2001, availing of a spelling waiver in English, French and Irish because of a “reasonable accommodation”, which she was granted by the Department of Education and Science (the “Department”)² on the grounds of her dyslexia. Accordingly, her Leaving Certificate results included an annotation indicating that she had not been examined in core elements of those exams.

The appellant claimed this annotation was discriminatory and in violation of the Equal Status Act 2000 (the “Act”)³ as she had been treated less favourably than another similar person would have been treated in a comparable situation. She also claimed that there had been a failure to provide reasonable accommodation to her as a person with a disability contrary to the Act.

She alleged that this treatment stigmatised her disability and obligated her to disclose her learning disability to future employers, thereby, placing her at a life-long disadvantage.

Previous findings

The appellant was successful in the Equality Tribunal, which awarded her €6,000 compensation and directed the Department to issue a fresh Leaving Certificate free of the notation and to formally investigate the feasibility of creating and implementing a system of individually suited accommodation or group of accommodations to meet the needs of each particular student. However, this decision was successfully appealed by the Minister for Education and Science (the “Minister”)⁴ to the Circuit Court.

The Circuit Court held that the requirement to provide reasonable accommodation is without prejudice to the provisions of the Education Act 1998, insofar as they relate to functions of, inter alia, the Minister in respect of students with a disability and accordingly, the Minister was exempt from the obligation to provide reasonable accommodation. The Circuit Court also stated that:

“different treatment is not synonymous with ‘less favourable’ treatment”.

The appellant appealed this decision to the High Court which upheld the Circuit Court decision. The High Court held that, at all times, the Department had acted in accordance with best international standards in annotating the Leaving Certificate which reflected the exemptions that the appellant received. The High Court held that it would be “unacceptable” if there was no indication on the appellant’s Leaving Certificate of the exemptions she obtained.

The Court continued by noting that nowhere in the previous case law:

“is there any suggestion to the effect that equality rights must be absolutely guaranteed without limitation in the name of reasonableness even in cases where the requirements of reason and common sense require the taking of some action which may not be to the complete satisfaction of the person asserting them”.

The Supreme Court heard the case on 24 May 2017, with lawyers from the Irish Human Rights and Equality Commission acting on behalf of the appellant.

¹ Cahill -v- Department of Education and Science [2017] IESC 29

² The Department of Education and Skills was known as the Department of Education and Science at the time the case was taken

³ Now the Equal Status Acts 2000-2015

⁴ Now the Minister for Education and Skills

The Supreme Court Decision

All five Supreme Court Judges upheld the High Court's decision on the basis of the expert evidence, which concluded that the Irish system was "generous" when compared to other jurisdictions. The Supreme Court also took into account the Department's desire to maintain the integrity of the nationally organised state examination system.

However, the Court also held that the Act does not preclude the Minister from the requirement to provide reasonable accommodation.⁵

The Court noted that the standard of reasonableness, as regards "reasonable accommodation", imports the concept of proportionality.

"It envisages that a balance is to be maintained between the needs of the disabled person and how those needs are met by the provision of special treatment or facilities to the extent necessary to enable the disabled person to avail of the service, or to do so, without undue difficulty, on the one hand, and the effect of such provision on the service provider...on the other hand".

The Court went on to state that:

"the interest of a third party vis-à-vis the service provider may be a relevant factor...the end user might be an employer who is relying on the Leaving Certificate submitted by the Appellant in connection with an application for an employment position as evidence of her capability for the position. In that type of situation, the burden on the Minister would be to ensure that the prospective employer was not misled".

Commentary

The Supreme Court decision makes it clear that the Minister is required to provide reasonable accommodation as per the Act. This may have an effect on the level of future assistance and reasonable accommodation which the Department/HEA⁶ may have to provide to those availing of a service in the education sector.

The Supreme Court's finding that what is "reasonable" must take into account proportionality, is an important clarification and will be welcomed by education providers.

Another important aspect of the judgment is the consideration of the effect that the reasonable accommodation will have on third parties, such as future employers in this case. Education providers will now presumably be able to rely on the potential impact on third parties when providing reasonable accommodation and defend cases that may arise on this point.

⁵ The Supreme Court observed that s4(5) of the Act, which was relied upon by the Department, does not provide a defence in the education context. The terms "without prejudice" indicate that the provision applies without detriment to any existing right or claim, such as the functions of the Minister under s.7(2) of the Education Act 1998. It is not intended as an exemption for the Department. Such an exemption would preclude protection under the Act entirely for children with disabilities in the education context

⁶ Higher Education Authority

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