

## Who is the employer? Breaching the boundaries

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### Introduction

The recent Supreme court case of *The Minister for Education and Skills v Anne Boyle*<sup>1</sup> has addressed one of the unusual employment relationships within the education sector. It concluded that the Minister for Education and Skills (the “**Minister**”) was not an employer of a teacher<sup>2</sup> for the purposes of the Protection of Employees (Part-Time Work Act) 2001 (the “**2001 Act**”).

### Triangular/Tripartite Relationship

The relationship between schools, teachers and the Minister is somewhat complex. A school has the right to hire, discipline, dismiss and generally direct a teacher in the day-to-day running of the school. However, the Minister is responsible in many cases for paying the salaries of teachers and fixing the terms and conditions of their employment.

This triangular system means that, for the purposes of ordinary day-to-day control, teachers have their contractual relations with a board of management (“**BoM**”). However, a teacher’s relationship with his/her paymaster (the Minister) can complicate matters to the extent that legal issues can arise as to who fixes the terms on which payments to a teacher are made, which is what occurred in this case.

The issue to be addressed by the Supreme Court in this case was whether the Minister could be regarded as an employer of a teacher for the purposes the 2001 Act, insofar as it related to financial or pay matters.

### The Facts

Ms Boyle (the “**Teacher**”) was the only teacher employed in a grant-aided pre-school for children of members of the Traveller community. She was employed by the school for over 20 years until it 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 pre-school in respect of the Teacher’s salary.

The case was protracted and went from a hearing before a Rights Commissioner all the way up to the Supreme Court, as follows;

### Rights Commissioner

The Teacher made a complaint to a Rights Commissioner in 2009, pursuant to the provisions of the 2001 Act, claiming that she was treated less favourably than full-time workers by not being admitted to the National School Teachers’ Superannuation Scheme. The Teacher claimed that both the chairperson of the management committee and the Minister were her employers and she chose a national school teacher as her comparator.

The Rights Commissioner concluded that the Minister was neither the employer of the Teacher within s.3(1) of the 2001 Act nor the associate employer of the Teacher within the meaning of s.7(5) of the 2001 Act. This was appealed to the Labour Court.

<sup>1</sup> [2018] IESC 52

<sup>2</sup> In a particular context i.e. who was not paid directly by the Minister and who was employed in a pre-school.

## Labour Court

The Labour Court found that the Teacher was an employee of the Minister and that she had been treated less favourably than a full-time comparator in relation to her pension rights. The Labour Court found that the comparator and the Teacher were both employed by the Minister and that, while not engaged in the same work, they were engaged in work of equal value.

## High Court

The Minister sought to challenge the decision of the Labour Court by way of judicial review in the High Court. The High Court concluded that publicly-funded school teachers must be deemed, for the purposes of the 2001 Act, to be employed by the Minister and upheld the finding of the Labour Court.

## Court of Appeal

The Court of Appeal (the "CoA") agreed with the conclusions of the High Court regarding the status of the Minister as employer of the Teacher.

## Supreme Court Decision

The Minister appealed the decision to the Supreme Court, which held that in order for the Teacher to succeed in her claim under s.7(2)(a) of the 2001 Act, it must be found that she had a contract of service with the same employer as the comparator, ie the Minister. As such, "the net question was whether the unusual relationship existing between a teacher, a board or committee of management and the Minister can properly be construed as involving, at least in part, a contract of service between a teacher and the Minister". The Supreme Court stated that an additional consideration was that the Minister did not pay the Teacher directly, but rather paid a grant to the school based on a calculation by reference to the teacher's salary.

Although it was true that the Teacher's salary was fixed by the Minister, Clarke CJ noted that other teachers involved in traveller pre-school education, who were employed in schools run by a charity, were admitted to that charity's pension scheme. As such, the fact that the school did not provide for a pension for the teacher was not dependent "on any rule or practice emanating from the Minister", but was a result of the lack of resources available to the school and not any issue connected to the Minister.

Clarke CJ placed particular regard on the Supreme Court decision of *O'Keefe v Hickey*<sup>3</sup>, where it was accepted that the contract of a teacher was with the management of the school rather than the Minister. Clarke CJ stated that there was no reason to depart from that rationale.

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<sup>3</sup> [2008] IESC 72

Clarke CJ concluded that it was not possible to characterise the relationship between the Minister and the Teacher as involving a contract of service to which the Minister was a party and that to do so "would involve an extension of the law of contract beyond any known boundaries". Clarke CJ allowed the appeal, stating that the finding of the Labour Court was wrong in law and should be quashed.

## Conclusion

This decision is of particular importance because it means that the categories of persons 'employed' by the Minister has narrowed. However, it is important to point out that the Minister remains the paymaster for the vast preponderance of teachers employed in primary and post primary schools, and that the teacher in this case was in an unusual position as she was not paid directly by the Minister.

In reality, the case is more applicable to members of staff employed and paid by schools but whose salaries are fully or partly funded (rather than paid) by the Minister, ie most secretaries and caretakers employed in the sector. Thus, it is critical that schools have appropriate contracts in place for all staff.

We have extensive experience in advising education bodies on all aspects of employment relationships, both contentious & non-contentious, including employment contracts, pension entitlements as well as complex Industrial Relation disputes.

## Contacts

For more information, please contact:



**Margaret Gorman**

Partner & Head of Education

+353 1 6644 325

MargaretGorman@eversheds-sutherland.ie



**Kara Turner**

Consultant, Education

+353 1 6644 222

karaturner@eversheds-sutherland.ie



**Bernard Martin**

Solicitor

+353 1 6644234

bernardmartin@eversheds-sutherland.ie

## eversheds-sutherland.ie

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