Neutral Citation [2013] IEHC 207

THE HIGH COURT

[2009 No. 8510P]

BETWEEN

MARIE CUNNINGHAM

PLAINTIFF

AND

INTEL IRELAND LIMITED

DEFENDANT

Judgment of Mr. Justice Hedigan delivered on 15th day of May, 2013.

1. The defendant has issued this motion seeking to strike out the plaintiff's personal injury summons dated the 22nd September, 2009 as an abuse of process and/or a duplication of the plaintiff's equality claim against the defendant and/or for want of prosecution. The defendant relies upon s. 101(2)(a) of the Employment Equality Act 1998 – 2008 and upon the rule in *Henderson v. Henderson* (1843) 3 Hare 100, both of which are designed to prevent the duplication of proceedings.

2. The plaintiff was employed by the defendant as a senior manager. Having returned to work on the 11th August, 2008 following maternity leave, the plaintiff on the 3rd December, 2008 instituted a claim for discrimination against the defendant in relation to access to employment, promotion/regrading, conditions of employment and harassment.

3. The plaintiff's equality claim was heard in July and September 2011 but was rejected by the Equality Tribunal in a decision dated the 22nd February, 2012. The plaintiff appealed that decision to the Labour Court and the appeal is ongoing.

4. The plaintiff was a Grade 9 GER Workforce Mobility Manager. She was on a combination of maternity leave and sick leave from late June 2007 to the 11th August, 2008. The plaintiff's equality complaint as set out in her Form EE1 dated 3rd December, 2008 was that she had been discriminated against on the grounds of gender. The plaintiff's primary allegation was that the defendant failed to allow her to return to her original job following her maternity leave and/or failed to provide her with a job to match her grade level.

5. In her "brief outline of complaints" attached to Form EE1, the plaintiff claimed that the alleged discrimination significantly affected her "health and wellbeing". Her personal injury claim herein appears to relate to the same alleged damage to the plaintiff's "health and wellbeing".

6. The defendant claims that the same events caused the alleged personal injury claimed in the personal injury summons herein and objects to being required to meet the same claim in High Court proceedings and in the statutory proceedings. They claim that according to submissions filed in her claim to the Employment Equality Tribunal, the plaintiff alleged that she was discriminated against on grounds of her gender on the following basis:

> (a) refusal of Intel to permit her to return to her position;
>
> (b) the retention of her leave replacement in her position after her return from maternity leave;
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> (c) the failure of Intel to keep her informed of all changes within Intel during her maternity leave;
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> (d) the failure or refusal to deal with her complaints after her return;
>
> (e) the failure of Intel to conform to the provisions of its own maternity leave policy.

In submissions dated 31st July, 2009 filed with the Equality Tribunal, the plaintiff claimed that the defendant caused her considerable health difficulties including stress, anxiety, depression and panic attacks. The submissions complained that from the time she announced she was pregnant, she was micro-managed. She claimed that she was treated aggressively, causing her considerable upset. The submissions and her oral evidence to the Equality Tribunal dealt with the entire period referred to in the personal injury summons. There appears to be no part of the claim in the personal injury summons that was not made to the Equality Tribunal.

7. Decision

Section 101 of the Employment Equality Act 1998 – 2008 at (2)(a) provides;

> "Where an individual has referred a case to the Director under section 77(1) and either a settlement has been reached by mediation or the Director has begun an investigation under section 79, the individual –
>
> (a) shall not be entitled to recover damages at common law in respect of the case, and . . .."

The rule in *Henderson v. Henderson* has been described by Lord Bingham in *Johnson v. Gore Wood & Co.* [2002] 2 AC 1;

> "*Henderson v. Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to

> identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not."

Further, in *Woodhouse v. Consignia Plc* [2002] 1 WLR 2558, Brooke L.J. referred to the public interest in the efficient conduct of litigation and stated (at p. 2575):

> "But at least as important is the general need, in the interests of justice, to protect the respondents to successive applications in such circumstances from oppression. The rationale for the rule in *Henderson v Henderson* (1843) 3 Hare 100 that, in the absence of special circumstances, parties should bring their whole case before the court so that all aspects of it may be decided (subject to appeal) once and for all, is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever, and that a defendant should not be oppressed by successive suits when one would do."

8. Thus all matters and issues arising from the same set of facts or circumstances must be litigated in the one set of proceedings save for special circumstances. This is a rule that is of benefit to both plaintiffs and defendants, to the courts themselves and thus to the public interest. Is this the case with the proceedings referred to herein ? Initially, Ms. Cunningham raised her complaints in her application to the Employment Equality Tribunal. Her complaint Form EE1 dated the 3rd December, 2008 states that the first act of discrimination of which she complains was on the 11th August, 2008. At page 1 of the form the grounds on which discrimination is claimed are specified as gender discrimination. On page 2 under description of claim, she included conditions of employment, other and harassment. In paragraph 2 of her submissions to the Equality Tribunal dated 31st July, 2009, she dates her complaints from when she announced she was expecting a baby. From that time, she stated, that her work was micro-managed, she was, she claims, harassed by her then manager. In the conclusions of these submissions, the plaintiff states again that she was bullied and harassed from March 2007 on. She sums up the effects of all her complaints as distress and humiliation, causing her considerable health difficulties, including stress, anxiety, depression and panic attacks. She stated she was then undergoing hypnotic and anti-depressant medication and psychotherapy.

9. When the particulars of bullying, harassment and psychological abuse set out in her personal injury summons are examined at paragraphs 7 – 15, it is clear that the claims set out there start with the announcement of her pregnancy and concerns the same conduct described in Form EE1 and submissions supporting the same. In the particulars of negligence at u, v and w, the claim in this personal injury summons goes on to deal with her post-return to work period, *i.e*. August 2008.

10. Thus, it is clear from her own pleadings and submissions in the two sets of proceedings that both her employment claim and her personal injury claim arise out of the same matters, i.e. alleged mistreatment in her working environment. This she alleges commenced on the announcement of her pregnancy, continued through her commencement of maternity leave, through that leave and culminated in her disatisfaction with the way she was treated on her return to work. The plaintiff in issuing these personal injury proceedings after her employment equality complaints, in my view, drew an artificial distinction which does not stand up to analysis.

11. In terms of the reliefs sought, the claim in the personal injury proceedings is for compensation for the stress and the health problems arising therefrom. It is clear that such a remedy may be awarded by the Labour Court in the employment equality proceedings. See *Ntoko v. City Bank* [2004] ELR 116. In doing this, the Labour Court may chose to consider a complainant's medical reports in assessing the compensation to be awarded. See *McGinn v. Daughters of Charity* EDA9/2003.

12. Thus the plaintiff is not precluded from recovering compensation in the Labour Court in respect of the personal injury she alleges she has suffered. Moreover, the defendant herein has stated unequivocally in open court in this application that they will not oppose the plaintiff bringing into her claim before the Labour Court her complaints dating from her announcement of her pregnancy.

13. When she chose to create this artificial distinction in the one essential complaint to pre and post-August 2008 by issuing these personal injury proceedings, the plaintiff, in my view, breached the provisions of s. 101(2)(a) of the Employment Equality Act 1998 – 2008 and breached the rule in *Henderson v. Henderson*. By confining her complaints in one set of proceedings these statutory and common law requirements do not in any way limit the plaintiff's right to a remedy for those complaints. The Labour Court had and still has at its disposal ample jurisdiction to do so. In particular, as a lay litigant, the plaintiff is far better off having all of her complaints dealt with in the one set of proceedings. Thus the application of the defendant to dismiss these proceedings must be allowed.

14. I would note finally that the practice here readily admitted of issuing proceedings and then leaving them lie for years until other proceedings are concluded is inconsistent with contemporary jurisprudence concerning the obligation of the courts to ensure the expeditious conduct of proceedings.