

THE HIGH COURT
SOUTHERN CIRCUIT COUNTY OF CORK

[2005 No. 397 CA]

BETWEEN

MICHAEL O'CALLAGHAN

PLAINTIFF

AND

BUS ÉIREANN/IRISH BUS

DEFENDANT

Judgment of Mr. Justice de Valera delivered on 23rd day of January, 2013.

It is necessary, initially, to set down a brief chronology of the relevant proceedings:

- (a) civil bill dated 24th May, 2004;
- (b) defence dated 24th July, 2004;
- (c) Circuit Court order dated 4th November, 2005 (stating at paragraph 3 "The plaintiff was not entitled to proceed in the Circuit Court");
- (d) notice of appeal dated 14th November, 2005;
- (e) notice of cross-appeal dated 15th November, 2005;
- (f) notice of motion by the defendant dated 12th October, 2006.

In the notice of motion referred to above dated 12th October, 2006 at paragraph 2, an order is sought seeking a direction as to the jurisdiction of the Circuit Court to hear, at first instance, proceedings pursuant to s. 21 of the Equal Status Act 2000, the learned Circuit Court Judge having held that the plaintiff was not entitled to bring his complaint in the first instance before the Circuit Court.

I have been asked by both parties to deal with this matter as a preliminary issue prior to embarking, if such should be the case, on the appeal from Judge Kenny's decision of 4th November, 2005.

Prior to the issuing of the civil bill herein the plaintiff had claimed, before the Equality Tribunal on the 25th November, 2003, pursuant to the Equal Status Act 2000, in respect of the incident alleged in the civil bill.

On the 13th May, 2005 the Equality Tribunal issued a determination ruling the complaint inadmissible.

This decision by the Equality Tribunal was not appealed by the plaintiff. Such an appeal is provided for in the said Act at s. 28:

- (1) Not later than 42 days from the date of a decision of the Director under section 25, the complainant or respondent involved in the claim may appeal against the decision to the Circuit Court by notice in writing specifying the grounds of the appeal.
- (2) In its determination of the appeal, the Circuit Court may provide for any redress for which provision could have been made by the decision appealed against (substituting the discretion of the Circuit Court for the discretion of the Director).
- (3) No further appeal lies, other than an appeal to the High Court on a point of law.

The defendant maintains that having unsuccessfully made a claim to the Equality Tribunal, as set forth above, and having failed to appeal the Equality Tribunal decision, it is not open to the plaintiff to initiate and maintain a claim in the Circuit Court.

Section 21 of the Equal Status Act 2000 provides as follows:

- (1) A person who claims that prohibited conduct has been directed against him or her may, subject to this section, seek redress by referring the case to the Director.
- (2) Before seeking redress under this section the complainant –
 - (a) shall, within 2 months after the prohibited conduct is alleged to have occurred, or, where more than one incident of prohibited conduct is alleged to have occurred, within 2 months after the last such occurrence, notify the respondent in writing of –
 - (i) the nature of the allegation,
 - (ii) the complainant's intention, if not satisfied with the respondent's response to the allegation, to seek redress by referring the case to the Director.

(3) If, on application by the complainant, the Director is satisfied –

(a) that exceptional circumstances prevented the complainant from notifying the respondent in accordance with subsection (2), and

(b) that it is just and equitable, having regard to the nature of the alleged conduct and to any other relevant circumstances, that the period for doing so should be extended beyond the period of 2 months provided for in that subsection,

the Director may direct that, in relation to that case, subsection (2) shall have effect as if for the reference to 2 months there were substituted a reference to such period not exceeding 4 months as is specified in the direction; and where such a direction is given, this Part shall have effect accordingly.

Section 21(1) above specifically requires a claimant to proceed before the Equality Tribunal. There is no provision, other than by appeal, to bring the matter before the Circuit Court.

The plaintiff claims that he is entitled to proceed by way of Circuit Court proceedings in this matter and that this Court should find “that Judge Kenny was wrong in all the circumstances in striking out these proceedings”.

I do not accept this proposition. I accept the defendant/respondent’s submission that the Oireachtas has provided, in the Equal Status Act 2000, an express statutory scheme for redress which is exercised by the Director under the Act and that the Oireachtas has conferred on the Director of the Equality Tribunal exclusive jurisdiction (subject to the appellant procedure provided for) in the determination of decisions under the Act.

In coming to this conclusion I have considered, and accepted the findings in:

Ward v. Kinahan Electrical Ltd. [1984] I.R. 292;

Philip Tormey v. Attorney General and Ireland [1985] ILRM 375;

Grianán an Aileach Interpretative Centre Co. Ltd. v. County Council of the County of Donegal [2005] ILRM 106;

and particularly,

Criminal Assets Bureau v. Hunt [2003] 2 ILRM 481.

In the *Hunt* case, it is stated:

“There is today in existence a huge range of tribunals and other bodies, of which the appeal commissioners in revenue cases are just one example, which determine matters in controversy between parties and whose functions and powers are properly categorised as ‘limited functions and powers of a judicial nature’. It is not uncommon for the legislation establishing such tribunals to provide for a limited form of appeal to the High Court from its decisions, usually confined to questions of law. However, in every case, the High Court retains its power under the Constitution to determine whether such bodies have acted in accordance with the Constitution and the law and such a jurisdiction cannot be removed from the High Court by statute. Subject to that qualification, it is clear, as was found in *Tormey v. Ireland* [1985] I.R. 289, that the Oireachtas may confer on such bodies, expressly or by implication, an exclusive jurisdiction to determine specific issues.” (Emphasis added)

I accept this as being directly applicable to the question that I have been asked to determine and therefore I find that the learned Circuit Court Judge was correct in his determination that the plaintiff did not have an entitlement to bring a complaint directly before the Circuit Court pursuant to the Equal Status Act 2000.