Neutral Citation: [2014] IEHC 262

THE HIGH COURT

[2013 No. 153 M.C.A.]

BETWEEN

ARNOLDAS RUSKYS

APPELLANT

AND

GEM PACK FOODS LIMITED

RESPONDENT

AND

LABOUR COURT

NOTICE PARTY

JUDGMENT of Mr. Justice Birmingham delivered the 21st day of May 2014

1. This case was heard in tandem with the case *Piotr Bryszewski v. Fitzpatricks and Hanleys Limited Trading as Caterway & Anor.* (Record No. 2013/154 M.C.A.), in which I have just given judgment, and this judgment should be read in conjunction with that judgment.

2. I will deal only with the facts that are specific to this case and will not repeat what I said in relation to how I view such appeals in the earlier case.

3. The appellant commenced employment as a general operative with the respondent, Gem Pack Foods Limited, on 7th April, 2011. He was employed on the national minimum wage. The appellant lodged complaints with the Rights Commissioner Service alleging that his employer had breached a number of provisions of the Organisation of Working Time Act 1997 ("the Act of 1997"), and had also failed to comply with the requirements to supply him with the written statement of the terms of employment contrary to the Terms of Employment Information Act 1994 ("the Act of 1994"). Specifically, the appellant alleged that (i) he had not received his full annual leave entitlement during the annual leave year 2011; (ii) that he had not received compensation for working on Sundays; (iii) that he had been required to work regularly in excess of the maximum 48 hour average weekly limit; and, (iv) that there were a number of specific occasions when he was not afforded a minimum daily break of eleven hours between shifts.

4. The Rights Commissioner rejected the complaints under the Act of 1994, but upheld, in part, the claim under the Act of 1997 and awarded €2,500 in compensation.

5. Perhaps slightly surprisingly, the appellant appealed and a Labour Court hearing took place and a determination issued on 2nd May, 2013.

6. The Labour Court concluded that so far as the complaint under s. 11 of the Act of 1997 was concerned, there had been one occasion when a breach had occurred in that there was an interval of only eight hours between two shifts. The claim pursuant to s. 12 of the Act of 1997 was noted to have been withdrawn at hearing, and so far as the claim pursuant to s. 14 of the Act of 1997 was concerned, it was noted that there was no evidence that the appellant worked on any Sunday. So far as the claim under s. 15 of the Act of 1997 was concerned, the Labour Court concluded that the appellant probably worked an average of 49.7 hours per week and, therefore, there was a breach of this provision.

7. So far as claim pursuant to s. 19 of the Act of 1997 is concerned, the Labour Court was satisfied that in the leave year April 2011 to March 2012, the appellant received three weeks annual leave and that two of these were consecutive. However, one of these weeks extended into the leave year which commenced on the 1st April, 2012. The court accepted that he was allocated his leave at the time that he asked to take leave. It was also accepted that the appellant was paid in respect of his carried over annual leave, when his employment terminated.

8. The court stated that ss. 11, 15 and 19 of the Act of 1997 had been contravened. The court recorded that, in its view, the breaches of ss. 11 and 19 of the Act were minor and technical. The breach of s. 15 of the Act, according to the Labour Court, could not be described as technical, but it was at the lower end of seriousness.

9. The court awarded compensation of €250 for the breach of s. 11 of the Act of 1997 and the same amount of s. 19 of the Act, which was also categorised as minor and technical in nature. So far as s. 15 of the Act was concerned, which had not been described as merely technical but which was seen as at the lower end of seriousness, an award of €500 was made, giving a total award to the appellant of €1000.

10. In relation to s. 11 of the Act of 1997, for what was a single breach on one occasion, it would seem to me very difficult to argue that the award was inadequate. So far as s. 19 of the Act was concerned, in a situation where the employee actually got holidays during the period that he was looking for, the designation of the breach as minor and technical could not be challenged. In relation to the award of €500 in respect of the breach of s. 15 of the Act, it must be said that this was a modest award and that the appellant might well have hoped for more. However, for the reasons that I referred to in *Piotr Bryszewski v. Fitzpatricks and Hanleys Limited Trading as Caterway & Anor.,* the Labour Court is particularly well-placed to identify where on the scale of seriousness a breach lies. In this case the Labour Court concluded that it was at the lower end of seriousness. That was a finding that cannot be interfered with. It seems to me that an award of €500, which is based on that finding and reflects that finding, cannot be interfered with either.

11. Accordingly, I must disallow the appeal.