

	Complainant	Respondent
Parties	Geraldine Baxter	Little Sisters of The Poor
	Complainant	Respondent
Anonymised Parties	{text}	{text}
Representatives	Tiernan Lowey BL instructed by Áine Curran O'Mara Geraghty McCourt	Roberta Urbon, Peninsula

Complaint(s):

Act	Complaint/Dispute Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under Section 8 of the Unfair Dismissals Act, 1977	CA-00059753-001	01/11/2023
Complaint seeking adjudication by the Workplace Relations Commission under Section 12 of the Minimum Notice & Terms of Employment Act, 1973	CA-00059753-002	01/11/2023

Date of Adjudication Hearing: 16/10/2024 Workplace Relations Commission Adjudication Officer: Breiffni O'Neill

Procedure:

In accordance with Section 8 of the Unfair Dismissals Acts, 1977 - 2015, following the referral of the complaint to me by the Director General, I inquired into the complaint and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaint.

The Complainant as well as two witnesses on behalf of the Respondent gave evidence on oath/affirmation and the opportunity for cross -examination was afforded to the parties.

As there was a dispute at the outset of the hearing around the Complainant's remuneration, the parties agreed on a figure of €2,730 per month.

Background:

The Complainant commenced employment with the Respondent as a Payroll Administrator on 25 April 2008. In 2016, she was promoted to the position of HR Manager. She was dismissed on the grounds of gross misconduct on 17 July 2023.

Summary of Complainant's Case:

The Complainant commenced employment with the Respondent on 25 April 2008. Pursuant to her contract of employment, she was originally employed as a Payroll Administrator. In 2016, she was promoted to the position of HR Manager. Her contract of employment originally provided that she was employed to work 30-35 hours per week. In practice, the Complainant normally worked 30-32 hours per week.

On or around 2016, the Complainant's working hours were reduced from a 5 day working week to a 4 day working week. At the time, it was agreed and understood that the Complainant would retain her contractual right to 20 days annual leave. These changes to her contract of employment were not confirmed in writing by or on behalf of the Respondent.

During her employment, the Complainant and the Respondent agreed that the Complainant was entitled to work from home. This agreement was made orally and developed as an established custom and practice.

On 10 January 2022, a new Director of Nursing (DON) was appointed by the Respondent. Shortly after her appointment, by email dated 28 February 2022, the DON wrote to all of the Respondent's staff, including the Complainant, seeking to implement certain changes to the Respondent's rules in relation to the taking of sick leave, the approval of annual and other types of leave and any requested roster changes. The email referred to new staff arrangements in relation to working from home and the taking of overtime (or extra hours) and attached new forms to be submitted by staff in this regard.

Notably, the email made explicit reference to the fact that the Respondent did not have any working from home policy and, as such:

"[a]ny work at home that was approved/arranged prior to [the DON] taking up the DON post will remain until further notice."

The Complainant understood it to indicate that any existing arrangements between the Complainant and the Respondent in relation to working from home would continue unchanged.

Shortly after this communication, by email dated 29 April 2022, the Respondent's National HR manager wrote to the Complainant to invite her to an investigation on 5 May 2022. Attached to the email was a letter containing two allegations made against the Complainant. The first concerned the alleged falsification of timekeeping/overtime records and the second related to her alleged falsification of annual leave records. There was no reference in the letter to the Complainant being entitled to be accompanied at the meeting or that a note taker would also be present. On 5 May 2022, the Complainant attended the investigation meeting and met with the National HR Manager who quizzed her in relation to her working from home arrangements, whether she had records in relation to the hours she worked from home and whether she had received authorisation to work overtime.

The Complainant explained that she had always worked from home for the Respondent. She referred to the fact that the parties had operated on the basis of an ethos of trust, that no one had ever complained about her working from home which she had always done. The Complainant explained that she worked from home because it offered a calmer environment in which to do some of her more involved paperwork. The Complainant confirmed her working from home and overtime arrangements were known at all times to other members of staff. She had always been completely transparent and accountable in relation to such matters.

In relation to annual leave, the Complainant informed her that following her move in 2016 from full time (5 days) to part-time (4 days) she had retained her entitlement to 20 days annual leave, together with her three additional service days. She also asserted that her annual leave had been approved and signed off by Sr A. She acknowledged that there was no agreement in writing in relation to her entitlement to retain 20 days annual leave but that it had been the open and transparent practice for some six years.

During the meeting, the Complainant strongly rejected the allegations put to her and expressed her concern that the Respondent was trying to remove her from her role and replace her with a younger member of staff on a lower salary. The Complainant did not receive a copy of the notes of her interview until September 2022 and only after she had lodged a separate grievance complaint.

By letter dated 23 May 2022, the National HR Manager wrote to the Complainant referring to their meeting on 5 May 2022 and stated that she had decided to suspend the Complainant "to allow an investigation to take place." The letter included the two allegations contained in the letter dated 29 April 2022 inviting the Complainant to an investigation meeting on 5 May 2022 but added two further additional allegations that had no formed part of the said investigation meeting, namely her alleged failure to follow correct procedures when requesting overtime and a

general allegation of ‘breach of trust.’

The letter also stated that “*the duration of the suspension will only be for as long as it takes to complete the investigation.*” No explanation was provided in the letter as to the necessity of such a serious measure or as to why the Respondent had decided to implement it at this particular time. Further, the Complainant was never given any opportunity to make any submission in relation to any proposed decision to suspend her before that decision was implemented. The matter of her suspension was thus presented to her as a *fait accompli*. The letter concluded by stating that if the investigation indicated “there was some substance to the allegations you will be required to attend a disciplinary hearing.” The Complainant was not advised of any steps being taken pursuant to any investigation following receipt the said letter. The Complainant was never provided any concluded investigation report or any terms of reference in relation to the said investigative process.

Subsequently, by letter dated 15 June 2022, the DON wrote to the Complainant requesting her attendance at a disciplinary hearing on 23 June 2022. The letter confirmed that the disciplinary hearing related to the four allegations contained in the letter of suspension dated 22 May 2022 notwithstanding the fact that the Complainant had only been interviewed in relation to two of the said four allegations. For the first time, the letter referred to the allegations and any failure on the part of the Complainant to attend the disciplinary hearing as constituting gross misconduct. In addition to her not being provided any investigation report, the Complainant was never provided any explanation as to why or who decided that it had been established that a disciplinary hearing was necessary. Shortly thereafter, the Complainant became unwell and commenced a period of sick leave due to work-related stress.

On 16 August 2022, the Complainant lodged a grievance pursuant to the Respondent’s Code of Practice on Grievance and Disciplinary Procedures. Her grievance related to the mistreatment to which she had been subjected concerning her suspension and the purported disciplinary process leading to same. Amongst the many criticisms of the disciplinary process to which she was subjected, the Complainant expressed concerns about the DON hearing the disciplinary meeting on the grounds of bias. Specifically, the allegations that were being levelled against the Complainant related to a significant degree to the DON’S email dated 28 February 2022 and the interpretation of same. In her letter, the Complainant referred to the fact that these matters had caused her great stress and that she felt she was being bullied and harassed by her employer. She called for the disciplinary process to be abandoned. By email dated 29 September 2022, an employee of Graphite HRM Limited wrote to the Complainant in relation to her grievance letter dated 16 August 2022 and informed her that she had been appointed to the role of “independent grievance officer” to investigate her complaint. She asked the Complainant to attend a formal grievance investigation meeting on 4 October 2022, remotely via Microsoft Teams. By a grievance investigation report dated 9 December 2022, the Complainant was informed that her grievances had not been upheld and that she had a right of appeal to another employee of Graphite HRM.

On 22 December 2022, the Complainant filed her appeal listing a number of grounds. The appeals hearing took place on 9 January 2023. By a report dated 24 January 2023, it was found that by lodging her grievance, the Complainant had acted “prematurely” in circumstances where the related disciplinary process had not yet taken place. The Appeals Officer also concluded that she did not deem it:

“appropriate, or within scope, to address the above 25 points and recommends that the disciplinary is readjourned without delay, to provide both the organisation and Ms Baxter to have said grounds heard during this separate process.”

Notwithstanding the foregoing, the report then proceeded to address the Complainant’s two grounds which were not

upheld.

By email dated 13 January 2023, the Complainant wrote to the National HR Manager referring to the fact that she had been suspended from her employment since 23 May 2022 and “no further investigation has been carried out since my suspension date.” The Complainant asked that she therefore be reinstated into her position as HR manager. By email dated 18 January 2023, the National HR Manager replied to the Complainant confirming that she remained on paid suspension “*pending the disciplinary hearing within the investigation process into the allegations highlighted to you in the suspension letter.*”

Following the email of 18 January 2023, the Respondent made no contact whatsoever with the Complainant until by email dated 1 June 2023, the Respondent’s UK HR Director wrote to the Complainant to advise that she had been asked to conduct the Complainant’s disciplinary hearing. The email attached a letter confirming that the Complainant was “required to attend an online disciplinary hearing on Wednesday 7th June 2023 at 10.00 am.” The letter made reference to the same four allegations raised a year earlier.

The Complainant replied to advise that she was unable to attend on the scheduled date. By email dated 7 June 2023, the Respondent’s UK HR Director wrote to the Complainant to advise that if she did not confirm her availability or provide alternative dates she would set a new date without the Complainant’s input. By email dated 9 June 2023, the Complainant wrote to the Respondent’s UK HR Director to advise that she was getting legal advice and that she would revert in due course.

By email dated 16 June 2023, the UK HR Director wrote to the Complainant to advise the Complainant that she was required to attend a disciplinary hearing on 22 June 2023. In fact, the disciplinary hearing was held on 26 June 2023 during which the Complainant again raised her concerns about the numerous procedural flaws that had characterised this disciplinary process. During the hearing, the HR Director confirmed, for the first time on behalf of the Respondent, that she was not aware of any findings or outcome following the National HR Manager’s initial investigation. A number of other flaws were raised by the Complainant but the UK HR Director simply stated “I’m sorry. I will be going ahead with this process today.” The interview notes revealed that the UK HR Director was completely unsuited to the task at hand. In addition to ignoring the legitimate concerns raised by the Complainant, the UK HR Director made a number of references to her lack of familiarity with how things worked in Ireland and the fact that she was based in the UK and not in this jurisdiction.

Following the said hearing but before the outcome letter issued, the UK HR Director interviewed a number of other witnesses in relation to the Complainant’s disciplinary process. By interviewing these additional witnesses, the UK HR Director purported to revert to the investigative process even after the Complainant’s disciplinary hearing had concluded.

By email dated 17 July 2023, the UK HR Director wrote to the Complainant attaching an outcome letter. The UK HR Director apologised for her delay referring to the fact that “the Peninsula advisor I was working with was unexpectedly not in.” The email referred to the Complainant’s right to an appeal to the Mother Provincial. The outcome letter made reference to only some of the four allegations and found that the Complainant’s: “*conduct has resulted in a fundamental breach of your contractual terms which irrevocably destroys the trust and confidence necessary to continue the employment relationship. The appropriate sanction to this breach is summary dismissal.*”

In the said outcome letter, the UK HR Director found the Complainant guilty of ‘gross insubordination’ despite the fact that she had not been accused of gross insubordination at any stage of the disciplinary process and the first

reference to same was in the outcome letter when she was found guilty of it. The UK HR Director sought to pick apart the Complainant's explanations rather than providing any objective analysis of the evidence and purported to put the onus of proving her innocence on the Complainant rather than seeking to uncover all exculpatory evidence too. By letter dated 31 July 2023, the Complainant appealed the Respondent's decision to summarily dismiss her, listing several grounds of appeal. By letter dated 1 August 2023, the Respondent wrote to the Complainant to advise that it had engaged the services of an external HR consultancy service to conduct the Complainant's formal appeal. The letter did not identify the said third party. When the Complainant asked for the name of this external party, the Respondent confirmed that once again it was Graphite HRM.

On 30 August 2023, an appeal hearing took place chaired by an employee of Graphite HRM Limited. This process was a farce. A review of the related appeal hearing notes reveals that Graphite HRM made absolutely no effort to engage in any of the details or the Complainant's grounds of appeal.

By email dated 22 September 2023, the Respondent wrote to the Complainant to advise that she had received a report from Graphite HRM into the Complainant's appeal. The email went on to provide that having considered its findings and conclusions, the Respondent had:

"made the decision to accept the conclusions of the report, I have therefore sent you an outcome letter for your disciplinary appeal which details my decision."

The said outcome letter, also dated 22 September 2023, confirmed that the Complainant's appeal was not upheld.

Summary of Respondent's Case:

CA-00059753-001: The Complainant was employed by the Respondent as a HR Manager.

On 29 April 2022, the Complainant was invited to attend an investigation hearing scheduled for the 5 May 2022. On 23 May 2022, the Complainant was suspended on pay pending the outcome of the investigation. On 15 June 2022, the Complainant was invited to attend a disciplinary hearing. On 16 June 2022, the Complainant raised a grievance related to disciplinary matters. Hence, the hearing was paused until the grievance investigation could conclude. On 6 October 2022, the Complainant's grievance hearing took place. On 9 December 2022, a grievance outcome hearing report was issued. On 22 December 2022, the Complainant advised the Respondent of her intention to appeal the outcome of her grievance as outlined in the Grievance Hearing Outcome Report dated 9 December 2022. On 3 January 2023, the Complainant was invited to to an appeal hearing with Graphite HRM scheduled for 5 January 2023. On 9 January 2023, an Appeal Hearing Meeting Transcript was provided. On 24 January 2023, an appeal hearing outcome was issued which did not uphold the Complainant's appeal.

On 23 June 2023, a disciplinary hearing was held. On 17 July 2023, the Complainant was dismissed from her employment for gross misconduct. On 31 July 2023, the Complainant lodged an appeal. On 1 August 2023, the Respondent engaged Graphite HRM to hear the Appeal of the Complainant. On 31 August 2023, an Appeal Hearing took place. On 21 September 2023, an Appeal Hearing Outcome Report was provided.

It was submitted that the Respondent followed the correct procedures and that the decision to dismiss the Complainant on the grounds of gross misconduct was substantively fair. Lastly, it was submitted that the Complainant was provided a right to appeal.

Findings and Conclusions:

THE LAW

Section 6(1) of the Unfair Dismissals Act, 1977 provides that "*the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial*

grounds justifying the dismissal.”

Section 6(4) of the Unfair Dismissals Act, 1977 provides as follows:

4) Without prejudice to the generality of subsection (1) of this section the dismissal of an employee shall be deemed, for the purposes of this Act, not to be an unfair dismissal, if it results wholly or mainly from one or more of the following:

- (a) the capability, competence or qualification of the employee for performing work of the kind which he was employed by the employer to do,*
- (b) the conduct of the employee, (c) the redundancy of the employee, and*
- (d) the employee being unable to work or continue to work in the position he held without contravention (by him or by his employer) of a duty or restriction imposed by or under any statute or instrument made under statute.*

Section 6(6) of the Act states as follows:

“In determining for the purposes of this Act whether the dismissal of an employee was an unfair dismissal or not, it shall be for the employer to show that the dismissal resulted wholly or mainly from one or more grounds specified in subsection (4) of this section or that there were other substantial grounds for justifying the dismissal”.

Section 6(7) of the Act states as follows:

Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the adjudication officer, considers it appropriate to do so—

- (a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and*
- (b) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in section 14 (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the Unfair Dismissals (Amendment) Act, 1993) of section 7 (2) of this Act.*

ANALYSIS

In deciding if the Complainant’s dismissal was fair or otherwise, I have examined the fairness of the entire disciplinary process, namely the suspension, the investigation as well as the disciplinary hearing and outcome.

(i) The Suspension

In examining the fairness or otherwise of the Respondent’s decision to suspend the Complainant, I note that Noonan J in *Bank of Ireland v Reilly* stated that:

“while the full panoply of fair procedures may not have been engaged at [this stage of holding suspension],... basic fairness [required] at least a rudimentary explanation of the reason for the suspension which admitted of the possibility of some exculpatory response.”

This position was endorsed by Dunne J in *O’Sullivan v HSE* where she stated as follows:

Obviously, a person who is being suspended must be informed of the reason for his suspension... a power of suspension must be viewed as permitting a suspension to continue only for the period of time during which would not be reasonably practicable to hold a full hearing into the matter... a short period of suspension with pay against a clearly defined backdrop of consecutive steps to resolve the disciplinary issue is less likely to warrant the courts’ intervention on the basis that the procedures, or their application, is unfair to the person concerned...

Where it is clear that a decision to [suspend] is being contemplated, that person should be so informed and should be afforded the opportunity to make representations as to why that should not occur. That is no more than fairness requires. That does not mean the “full panoply” of fair procedures... but it is a basic level of fairness that is required

Having regard to the instant case, I note both that the Complainant was not given any reasons behind the decision to suspend her in the letter of 23 May 2022 and there was no suggestion at the investigation meeting of 5 May 2022 that suspension was even being contemplated. In addition, she was not afforded the opportunity to make any representations as to why the suspension should not have occurred.

I also noted that contrary to the Respondent's own policies and procedures as well as the letter from the National HR Manager of 23 May 2022, which stated that the Complainant would only be suspended for as long as it took for the investigation to be concluded, the suspension was not lifted and no written explanation was provided to the Complainant to explain why it had been continued.

This prolonging of the suspension, the length of which the UK HR Director accepted in her evidence was very unfair, was also particularly concerning given that the investigation presumably concluded prior to 15 June 2022, the date on which the DON initially invited the Complainant to attend a disciplinary hearing, and the Complainant remained suspended until her dismissal on 17 July 2023.

(ii) The Investigation

Turning to the investigation itself, I note that the National HR Manager conducted an audit on foot of an instruction from the DON during which apparent irregularities were uncovered around both the way in which the Complainant submitted her overtime hours and the number of holidays she was paid. As part of her ongoing audit, the National HR Manager subsequently met with the Complainant on 5 May 2022 to seek explanations for these apparent irregularities.

Following this meeting, the National HR Manager wrote to the Complainant on 23 May 2022 and suspended her. In this correspondence, she referred to the two allegations she had spoken to the Complainant about in their meeting on 5 May 2022 and inexplicably added two further additional allegations that were not raised during the investigation meeting, namely an alleged failure to follow correct procedures when requesting overtime and a general allegation of "breach of trust."

This decision by the Investigator to change or alter the allegations is at odds with the suggestion of Mr Des Ryan BL at para 13.72 of *Redmond on Dismissal Law* (3rdEd., Bloomsbury Professional, 2017) where he stated:

"Heavy emphasis has been laid in recent case law on the duty on an employer to set out clearly allegations made against an employee from the outset, with the employer not being permitted to augment the allegations as the investigation progresses. This is because an employee is entitled to be informed at the outset of the complaint(s) being made against him or her in order to ensure he or she has a meaningful opportunity to prepare and present his or her defence."

This suggestion was echoed by the Labour Court in the case of *Ibrahim Salah v RCI Call Centre (Ireland) Ltd (UDD 202)* where it was stated that:

"It appears to the Court that the Complainant was not informed at the outset of the investigation of all of the allegations ultimately raised against him. This raises a question in the Court's mind as to whether or not he was afforded a proper and meaningful opportunity to present his defence to them."

Incredibly in this case, the National HR Manager chose not to meet the Complainant again as part of her investigation into the two additional allegations that were outlined for the first time in the suspension letter of 23 May 2022 and the only meeting she had with her was on 5 May 2022, where they discussed the two initial allegations.

In relation to these two initial allegations made against the Complainant—that she had falsified timekeeping and annual leave records—I noted that the National HR Manager, who formulated all the allegations against the

Complainant, conceded under cross-examination that the first allegation, namely that the Complainant had falsified timekeeping records, was incorrect. She accepted therefore that the Complainant had not, in fact, falsified any timekeeping records as alleged.

Regarding the allegation that the Complainant had falsified her holiday entitlements, the Investigator stated that Sister A informed her that she did not recall allowing the Complainant to continue taking the allocation of a full-time employee's hours when she reduced her working hours. I also noted however that the National HR Manager accepted in her evidence that Sister A's memory was declining when they met in May 2022.

It was also concerning from a procedurally fair point of view that despite the investigation letter issued to the Complainant on 23 May 2022 clearly stating that, "*if.. the investigation indicates there is some substance to the allegations, you will be required to attend a disciplinary hearing*", it was never explained either verbally or in writing which, if any, of the allegations had been substantiated or how this finding had been made given that the matter progressed to a disciplinary hearing.

(iii) The Disciplinary Hearing

Focusing on the disciplinary hearing and the evidence of the UK HR Director, I noted that she placed considerable weight on the email from the DON dated 28 February 2022, emphasising repeatedly that the Complainant allegedly breached its instructions. I believe however that the instructions in the email could have been reasonably misunderstood by the Complainant and that the Respondent should have provided clarification—whether verbally or via email—regarding the email when they became aware of the Complainant's alleged breach of the instructions contained therein. Instead of initiating disciplinary proceedings, a reasonable employer would have sought clarification from an employee when it was discovered during an audit that they were seemingly operating outside of procedure and would have dealt with the matter informally, especially when the allegations concerned an employee of such long standing as the Complainant.

I also found that the disciplinary outcome letter issued on 17 July 2023 was totally incoherent and disjointed. In the first instance, I noted that at the start of the disciplinary outcome letter, the UK HR Director referred to only three of the four allegations set out in her original disciplinary invite letter of 31 May 2023. I further noted that she made a finding of insubordination against the Complainant even though no such allegation had been put to her at any stage prior to the outcome letter being issued. When questioned about this at the hearing and also why she had also altered the wording of the allegations presented in the disciplinary outcome letter, the UK HR Director stated that she changed the allegations on the basis of all of the documentation provided to her.

I find that such changes, effectively mirrored the actions of the National HR Manager, who also altered allegations after the investigation commenced and are contrary to fair procedures, as highlighted in the case law above.

I also noted that the UK HR Director made no finding in the outcome letter in relation to the allegation that the Complainant had falsified timekeeping records even though this allegation was clearly set out both in her 31 May 2023 invite and on page 1 of the outcome letter. While she stated in her sworn evidence that she was unable to make a finding in this allegation, she inexplicably failed to address this in the outcome letter.

Given the incoherence of the outcome letter, I could discern only one finding in relation to one of the three allegations presented on page 1 of the outcome letter, namely a finding that the Complainant had falsified annual leave records. Incredibly, I noted that the UK HR Director made this finding without seeking to interview Sister A, a crucial witness in this regard, on the basis that her memory was fading and relied instead on the evidence that Sister A gave to the National HR Manager during the investigation. This was even though she stated in her sworn evidence

that she had decided to re-investigate the matter herself and that she was not aware of any findings or outcome following the National HR Manager's initial investigation.

What was equally concerning from a procedural fairness perspective was not only that she effectively decided to re-investigate the matter herself—though she did not, as I mentioned, choose to re-interview Sister A—but also that she interviewed a number of witnesses after the Complainant's disciplinary meeting had concluded, without providing the Complainant any opportunity to respond to what they said before issuing the outcome letter.

Moreover, I also noted that UK HR Director inexplicably disregarded the testimony of the HR Administrator, who provided witness statements to her on two separate occasions and who informed her that she had witnessed Sister A signing the Complainant's annual leave slip on a number of occasions, from which the HR Administrator stated it was clear that the Complainant could take her full holiday entitlement after reducing her working hours to four days per week. The decision to disregard the evidence of the HR Administrator raises the question of why UK HR Director chose to interview to her at all. She also overlooked the Complainant's annual leave request form, produced by the Complainant herself and referred to by the HR Administrator, wherein the Complainant's 20 days annual leave had been clearly approved in writing by Sister A. Moreover, I find it puzzling that this annual leave form had not been presented to Sister A at any stage of the disciplinary process.

Having heard her evidence and reviewed the disciplinary outcome letter I am also of the view, that as well as relying on the statement given by Sister A to the Investigator without interviewing her, in deciding to uphold the allegation that the Complainant had taken excessive annual leave, the UK HR Director became utterly fixated on the fact that the Complainant had not obtained written authorisation to take a full time employee's allocation of annual leave even though she worked part-time. This fixation is extraordinary given that practices operate in every organisation I am aware of which are not written down. I am entitled to make such a finding in line with the decision of the Court of Appeal in England where it was stated that expert tribunals, such as the WRC *"do not sit in blinkers and are entitled to make use of their own knowledge and experience in the industrial field"*. (*London Underground v Edwards* (No.2) [1998] IRLR 364 – Applied in *Benedict McGowan and ors v The Labour Court and Ors* [2010] 21 ELR 277).

Moreover, there was no policy in the Respondent organisation which stated that every single practice had to be written down or approved in writing. Furthermore, the UK HR Director seemed to place undue emphasis on the fact that the Complainant had not amended her own contract of employment to reflect her entitlement to a full-time employee's holiday allocation despite working four days a week. This is an unreasonable view because in this jurisdiction it is clearly the Respondent's responsibility to ensure that contracts are accurately issued.

Finally, I should highlight that as well as being suspended for 14 months and not being informed of the investigation outcome, or indeed if there was an investigation outcome, the Group HR Director informed the Complainant that her employment was being terminated via email instead of being afforded the basic human courtesy of a face-to-face meeting. While the callous nature of the Complainant's treatment and the disregard shown to her, both as a human being and an employee of long service, in relation to the termination of her employment was insignificant in terms of my ultimate findings, it is nonetheless indicative of the Respondent's treatment of her throughout the entire process and is not the conduct of a reasonable employer.

Considering all of the foregoing, I find that the Complainant was unfairly dismissed. CA-00059753-002:

Section 4 of the Minimum Notice and Terms of Employment Act, 1973, states:

4.—(1) *An employer shall, in order to terminate the contract of employment of an employee who has been in his continuous service for a period of thirteen weeks or more, give to that employee a minimum period of notice*

calculated in accordance with the provisions of subsection (2) of this section.

(2) The minimum notice to be given by an employer to terminate the contract of employment of his employee shall be—

(a) if the employee has been in the continuous service of his employer for less than two years, one week,

(b) if the employee has been in the continuous service of his employer for two years or more, but less than five years, two weeks,

(c) if the employee has been in the continuous service of his employer for five years or more, but less than ten years, four weeks,

(d) if the employee has been in the continuous service of his employer for ten years or more, but less than fifteen years, six weeks,

(e) if the employee has been in the continuous service of his employer for fifteen years or more, eight weeks.

ANALYSIS

It was not disputed by the Respondent that the Complainant did not receive her minimum notice entitlements when she was dismissed. Consequently, I find this complaint to be well-founded. Specifically, considering her length of service, which exceeded fifteen years, she is entitled to eight weeks' notice.

Decision:

Section 8 of the Unfair Dismissals Acts, 1977 – 2015 requires that I make a decision in relation to the unfair dismissal claim consisting of a grant of redress in accordance with section 7 of the 1977 Act.

CA-00059753-001: Section 7 of the Unfair Dismissals Act, in relevant part, states that:

(1) Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the adjudication officer, considers appropriate having regard to all the circumstances:

(a) re-instatement by the employer of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or

(b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances, or

(c) (i) if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances,

(2) Without prejudice to the generality of subsection (1) of this section, in determining the amount of compensation payable under that subsection regard shall be had to—

(a) the extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer,

(b) the extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employee,

(c) the measures (if any) adopted by the employee or, as the case may be, his failure to adopt measures, to mitigate the loss aforesaid,

(d) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in subsection (1) of section 14 of this Act or with the provisions of any code of practice relating to procedures regarding dismissal approved of by the Minister,

(e) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the said section 14,

(f) the extent (if any) to which the conduct of the employee (whether by act or omission) contributed to the dismissal.

3) In this section—

“financial loss”, in relation to the dismissal of an employee, includes any actual loss and any estimated prospective loss of income attributable to the dismissal and the value of any loss or diminution, attributable to the dismissal, of the rights of the employee under the Redundancy Payments Acts, 1967 to 1973, or in relation to superannuation;

“remuneration” includes allowances in the nature of pay and benefits in lieu of or in addition to pay. Analysis:

In deciding on a remedy, I must highlight, for the reasons set out above, that this is an extraordinary case, representing one of the most egregious examples of the mistreatment of an employee by an employer that I have encountered in my professional life.

While I firmly believe that reinstatement would be the most appropriate remedy in this case, as it is the only form of redress that would, in my view, fully vindicate the Complainant—a long-standing employee who it was not disputed was an excellent performer prior to these allegations being made—I must, albeit with great reluctance, respect her preference for an award of compensation.

In deciding on the quantum, I have regard to the decision of the Adjudication Officer in ADJ 32667, where she stated, *inter alia*, that:

“in considering compensation, regard must be had to all of the subsection of Section 7-and the tests are not confined to the efforts of the former employee-or the Complainant in this case. In circumstances where the Respondent is found not to have met the tests set out in subsections (c) and (d) and the Complainant made no contribution to the decision to dismiss her under (a) (b) or (f) It would be wholly unjustified to penalise the Complainant solely for a conclusion that she did not make a sufficient effort of mitigate her losses where the balance of unfairness and failure to comply with the terms of Section 7 as a whole lie squarely with the Respondent.”

In examining section 7(2)(a), I find, as outlined above, that the Respondent acted wholly unreasonably in dismissing the Complainant. In considering section 7(2) (b) and (f), I find both that the Complainant made no contribution to the termination of her employment and that any reasonable employer would simply have spoken to her about the misunderstanding of the email of 28 February 2022 and would not have instigated any disciplinary action, let alone dismissed her. Furthermore, I determine that section 7(2)(d) and (e) of the Act do not apply in this case. Considering section 7(2)(c), I find that the Complainant’s efforts to find employment were adequate and am not surprised that she has still not found alternative employment given that job seekers are invariably asked in interviews why they left their most recent employment and the difficulties she would have in explaining the circumstances behind her departure from the Respondent to perspective employers.

I also have regard to the wording of section 7(1)(c)(i) which states that I may make an award of compensation not exceeding 104 weeks’ remuneration to an employee who has been unfairly dismissed the amount of which I deem to be *“just and equitable having regard to all the circumstances”*.

Considering all of the foregoing, I make the maximum award of 104 weeks’ remuneration and direct that the

Respondent pays the Complainant the sum of €65,520.

CA-00059753-002:

I find this complaint to be well-founded for the reasons set out above and direct that the Respondent pays eight weeks' notice to the Complainant in the amount of €5,040.

Dated: 23-01-25 Workplace Relations Commission Adjudication Officer: Breiffni O'Neill Key Words: