

Employment Update - Recent Workplace Relations Commission award highlights importance of employee rights

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In a noteworthy decision highlighting the critical importance of employee rights, the Irish Workplace Relations Commission (the "WRC") awarded €143,268.00 in the case of Sharanjeet Kaur v Bombay Bhappa Limited t/a Bombay House. This significant award has been regarded as the largest the Migrant Rights Centre Ireland has seen in a decade. This case not only exposes the vulnerabilities faced by workers, particularly migrants, it serves as a reminder of the WRC's role in enforcing fair employment practices.

Background

This case, brought by Indian national Ms Kaur against her former employer Bombay House included allegations of discrimination, harassment, and sexual harassment. Ms Kaur began working for Bombay House in 2021 after being approached by another Indian national in Malaysia. She accepted the work opportunity on the pretence of a life-changing experience working as a "Chef de Partie" earning €30,000 per year, provided that she financed the cost of her flights and work permit at a cost of €17,000. Ms Kaur's father took out a loan for the permit costs and the Respondent's director travelled to India to collect the fees prior to Ms Kaur travelling to Ireland in September 2021. Ms Kaur's accommodation was with one female and six male employees. Ms Kaur was summarily dismissed in November 2022. Additionally, a member of An Garda Síochána provided evidence of a potential risk of human trafficking in this case, a criminal investigation into the matter is ongoing.

The Respondent failed to present any evidence as they took issue with the presence of the Gardaí and withdrew from the hearing despite being on notice.

The case

The two tables below outline the Complainant's case and the Adjudicator's decisions.

The following decisions related to the Organisation of Working Time Act 1977:

Complainant's claims	Adjudicator's decisions
No Sunday premium received despite working every Sunday.	€1,410 gross was awarded for the financial loss and €2,500 compensation was awarded for breach of statutory rights.
Only one five-minute work break provided per day.	€10,000 was awarded as this was a serious breach of the statutory right to rest breaks.
No public holiday benefit received despite Ms Kaur's contract stating she was entitled to double pay on such days.	€345 gross awarded for financial loss suffered and €2,400 compensation awarded for breach of statutory rights to additional pay or time off in lieu, for public holidays.

No annual leave pay received throughout her employment.

€1,150 gross awarded for financial loss suffered and €10,000 compensation for breach of statutory right to paid annual leave.

Working approximately 50 hours per week over six days.

€10,000 compensation for breach of the Complainants' statutory rights, working over the maximum permitted hours. (On one occasion she was forced to sign and confirm that she worked 39 hours a week on threats of deportation and the exposure of a false "inappropriate relationship" to her family if she did not do so.)

The following decisions related to other relevant legislation and the adjudicator's decisions in

this case:

Relevant Legislation:	Complainant's claims	Adjudicator's decisions
Unfair Dismissals Act 1997	On 25 November 2022, the Complainant was informed that there was no work for her and when she showed up the following day she was dismissed in front of her colleagues.	The Complainant was out of work for approximately one year after she was unfairly dismissed. €30,000 compensation was awarded in line with one year's gross salary.
Minimum Notice & Terms of Employment Act 1973	Dismissed with no prior notice and received no pay in lieu of notice.	€575 equal to one week's pay was awarded for failure to comply with the minimum notice periods under the legislation.
	Ms Kaur was paid €500 per week from May 2022 and subsequently had to withdraw €290 of this to be returned to the	

Payment of Wages Act 1991

Respondent's Director or to "Mr Happy" when the Director was away, meaning she earned €4.46 per hour. There were instances where larger sums were lodged into her account but in these circumstances, she had to withdraw and return all the monies to the Director.

€7,540 net awarded for breach of the Complainant's statutory rights to section 5(1) of the Act.

Employment Equality Act 1998

Discriminated against on gender grounds, harassed and sexually harassed on an almost daily basis by three main perpetrators but that all other employees except for one knew of the harassment and were complicit.

€60,000 compensation was awarded due to the serious nature of the allegation. This was the maximum award of 2 years that she could be given under this legislation.

There was no grievance procedure or sexual harassment procedure.

National Minimum Wage Act 2000

Ms Kaur was paid approximately €200 per week while working 50 hours. Her approximate earnings were €4.46 per hour. Her representative requested a statement of Ms Kaur's hourly pay but received no response.

€7,248 was awarded for arrears on the grounds that the National Minimum Wage Act does not require election between complaints.

Key takeaways

One key significance of this case stems from the continuing pattern of considerable awards conferred by the WRC in recent years. In 2022, the WRC awarded €329,199 and earlier this year a record-setting €464,000 was handed down, both concerning unfair dismissal cases. These decisions highlight the importance of adherence to fair and lawful procedures when dismissing employees. Employers should afford their employee's the right to appeal the decision to dismiss whilst also providing adequate notice for same. The most effective way to implement this is with an up-to-date Disciplinary Policy. Pursuant to the Unfair Dismissals Act 1997, the WRC can award up to 104 weeks remuneration to an employee in relation to their financial losses attributable to the dismissal.

This case also serves as a reminder regarding migrant workers' rights. An employer must bear responsibility to ensure all employees are treated equally, regardless of their migrant status or otherwise. Discrimination and exploitation of migrant workers is illegal and as is evident in this case, the WRC can award large sums where such inequality has occurred. Under the

Employment Equality Act 1998, up to two years remuneration can be awarded which in many cases can be substantial. To prevent mistreatment and to provide a recourse for employees who feel they have been unjustly treated, employers should implement comprehensive Equality and Grievance Procedure policies.

Lastly, another notable aspect of this case is the award of €7,540 for breach of the Payment of Wages Act 1991 along with the award of €7,248 under the National Minimum Wage Act 2000 (the "2000 Act"). Despite both claims being for similar circumstances, the Adjudicator awarded the Complainant under both statutes as they determined that there were no stipulations in the 2000 Act preventing an award for breach of minimum wage along with an award for a breach in the payment of wages. These two sums were awarded in conjunction with compensation for excessive working hours, and for non-payment of public holidays and annual leave. Employers must guarantee proper rest breaks, refrain from imposing excessive working hours, and remunerate employees correctly, to adequately uphold the rights of workers.

For further information on employees' rights or for assistance in preparing or updating company policies to ensure worker's rights are adequately upheld, please contact our team via their contact details below.

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