

Employment Unit



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EMPLOYMENT LAW UPDATE THE IMPLICATIONS OF THE GOODE CONCRETE CASE

By Dawn Carney, Solicitor

The Dublin based company Goode Concrete Limited has been ordered by the Equality Tribunal to pay the sum of €90,000-00 to foreign members of its staff because it failed to translate work contracts and safety documentation.

The action was taken by 58 employees who were foreign nationals and were largely employed by Goode Concrete Limited as truck drivers. The claims related to discriminatory treatment, discriminatory dismissal, harassment and victimisation. The claimants also sought equal pay on the grounds of race, the comparator being a named driver of Irish nationality. All allegations were denied by the company.

The Equality Officer awarded each complainant the sum of €5,000-00 finding that each of them had been subjected to discriminatory treatment on the grounds of race in relation to their contracts of employment and safety documentation. However, the claims of harassment, victimisation and equal pay were not upheld by the Equality Officer.

Furthermore, Goode Concrete Limited was ordered to put in place clear procedures for ensuring that non-national employees understand their terms and conditions of employment and all safety documentation. They were also ordered to maintain better records of disciplinary meetings and to provide training to management on the provisions of the Employment Equality Acts, 1998-2007. The main points of the case are considered below. It has been indicated by the Company that it intends to challenge the decision in the Labour Court.

Contract of Employment.

The employees claimed that the employer's failure to furnish some employees with any contract documentation in accordance with their obligations under the Terms of Employment (Information) Act, 1994 amounted to discrimination. Those claimants who had been furnished with contracts contended that such contracts were defective because they were not in the language of the foreign national. They contended that this failure to provide employees who were foreign nationals with translated documentation amounted to discrimination.

For further information please contact: Dawn Carney, Solicitor, Employment Unit, Lewis C. Doyle & Co., Solicitors, Augustine Court, St. Augustine Street, Galway. Tel: 091 549300; E-mail: dawncarney@lewiscdoyle.com

The company told the Tribunal that some complainants had been supplied with a contract of employment and others had been supplied with contracts but refused to sign them or return them to the employer and that the company had therefore discharged its statutory duties in furnishing same. The company further claimed that there was no requirement in law nor was it common practice for an employer to provide contracts in the language of the foreign national. To accept the argument by each of the complainants would result in the company having to produce contracts in 13 different languages and this would pose an enormous financial and logistical burden, not only on it, but also on all employers. The company denied that there was discrimination between any nationalities regarding their contracts of employment.

Safety Documentation.

The employees also alleged that Goode Concrete were in breach of their obligations under the Safety Health and Welfare at Work Act, 2005 in that they failed to bring the company's Safety Statement to their attention in a manner, form and language which would be likely to be understood by them. They further claimed that the company failed to provide safe systems of work and risk assessment documentation and that the company failed to provide proper training. According to each of the employees involved foreign nationals coming to Ireland encounter special difficulties in employment arising from lack of knowledge concerning statutory and contractual employment rights together with differences of language and culture. The Tribunal learned that when foreign nationals come to this country they are in a particularly vulnerable situation particularly when they have limited English. Each of the employees contended that the failure by their employer to furnish health and safety documentation and to comply with the provisions of the Safety Health and Welfare at Work Act, 2005 amounted to discrimination on the grounds of race.

The company rejecting these arguments advised the Tribunal that each of the employees received two weeks training by a fellow employee and that the training had been conducted by an employee who spoke the same language as the complainants. The Company also argued that each of the employees had been provided with shortened particulars regarding health and safety issues in Russian and the existence of a safety statement was brought to their attention. The Tribunal was also told that all employees were advised that an interpreter was available to interpret the Health and Safety Statement. Furthermore all drivers were provided with a driver safety handbook as part of their induction and training that had been prepared in both Russian and English.

Working Time.

Claims were also made by the employees that they were working in excess of 48 hours per week and on a number of occasions were working in excess of 60 hours per week and that the company did not take steps to ensure that they received their appropriate rests and breaks claiming that there was an obligation on their employer to explain the law to them and to ensure that they got their breaks at the right time. They claimed that this failure on the part of the employer amounted to discrimination.

The company pointed out that claims in respect of breaches of the Organisation of Working Time Act had been lodged before the Rights Commissioner and submitted that the Equality Tribunal did not have jurisdiction to determine this claim. It accepted that some of its employees had worked in excess of maximum working hours; however, it contended that that, in itself, was not evidence of discrimination.

The company told the Tribunal that following receipt of a number of complaints the company carried out an investigation into the claims being made against it and submitted that despite interviewing approximately 30 employees, no one employee informed the HR Manager that they felt that they were being treated in a racist manner or discriminated against on the basis of their race or nationality. The respondent advised that none of the complainants had made any complaint directly to it in respect of any of the issues raised and that no employee had ever made a complaint about discrimination.

Conclusion by Equality Officer.

The Equality considered the issues and determined whether the complainants had been subjected to discriminatory treatment, discriminatory dismissal, harassment and victimisation on the grounds of race in terms of section 6 of the Employment Equality Acts, 1998-2007 and contrary to section 8 of those Acts.

Contracts of Employment.

The Equality Officer found that the employees were treated less favourably than Irish employees in relation to their Employment Contracts. She noted that other company documentation had been translated into a common language (i.e. Russian) and that it could be considered reasonable for the respondent to provide employee with contracts of employment in either English or Russian. Alternatively, if the employer is not in a position to provide contracts of employment in different languages the employer should undertake to have the contract of employment explained to all employees irrespective of their nationality. In relation to non-national employees this would mean that a translator acting on behalf of the employer (not another employee) should explain the terms of the contract of employment and employees (irrespective of nationality) should be asked to sign a document confirming that the contract of employment has been explained to them.

Safety Documentation.

The issue to be determined by the Equality Officer was whether or not the complainants were treated less favourably than Irish nationals in relation to their access to and understanding of safety documentation. The Equality Officer found that there was an onus on the company to ensure that all safety documentation was set out in whatever language or languages that all employees would understand and found that each of the complainants were treated less favourably on the grounds of race when all safety documentation was not translated into a language they understood. She pointed out that employees (irrespective of nationality) should be obliged to sign a document confirming that they have received training in a language that is understood.

Working Time.

The issue for the Equality Officer to determine was whether or not each of the employees had been treated less favourably than Irish nationals in relation to the hours worked and found no evidence of different treatment in relation to hours worked finding that the breach in itself did not constitute evidence of discrimination under Equality legislation.

Equal Pay.

The Equality Officer was satisfied that, having considered the evidence, that there were grounds other than race for the difference in pay and so held in favour of the company in that regard.

Decision.

The Equality Officer ordered Goode Concrete Limited to undertake to pay each of the complainants the sum of €5,000-00 for the effects of the discriminatory treatment and also directed that they put in place clear procedures for ensuring that non-national employees understand their terms and conditions of employment and all safety documentation. They were also ordered to maintain better records of disciplinary meetings and to provide training to management on the provisions of the Employment Equality Acts, 1998-2007.