

## **Know Your Rights – Victimised for helping a colleague.**

Roisin recently gave evidence at the Equality Tribunal on behalf of Vicky, a close friend and ex work colleague. Vicky was awarded €50,000 for discriminatory dismissal on the grounds of gender where it was found that the real reason for Vicky's dismissal was not her lack of performance on the canning machine line in the food processing plant, as originally claimed by the employer, but the fact that she was pregnant. Roisin's evidence was crucial because, as a supervisor, she testified that the company began to put pressure on Vicky with regard to her performance only after she had informed them that she was pregnant. Roisin also told the Equality Officer that the management data for Vicky's alleged lack of performance was not plausible. Vicky is now gone and Roisin feels vulnerable. She'll never forget the comments of the HR manager in the hotel after the hearing when he said; rather sarcastically "You showed some loyalty in there". Last week, two weeks after the hearing, Roisin was demoted back to process operator with a loss of €50 per week. The excuse given was that there was a breakdown of "trust and confidence" in her ability to continue to operate in a supervisory role because it was felt she was too close to the process operators.

### **What can Roisin do?**

Roisin may be able to take a case of victimisation under the Employment Equality Acts.

### **Is this victimisation as we usually know it?**

No, the ordinary, everyday meaning of victimisation is harassing someone or generally picking on someone or bullying them. Victimisation under the Employment Equality Acts is defined in somewhat narrower terms where an employer is not allowed to punish or penalise an employee who has complained about discrimination or taken a case to the Equality Tribunal, or appealed it to the Labour Court.

### **But it was Vicky who took the case and she's gone. Roisin's role was confined only to giving evidence.**

The protection under the victimisation clause would extend to those who give evidence at a an Equality Hearing or even at the internal grievance stage, so Roisin would be covered. The protection from victimisation is not concerned with discriminatory treatment under any of the nine grounds of the Act but it protects people who were associated with the enforcement of the Act.

### **What's the first step for Roisin?**

Roisin should contact her Union representative who may advise that she should make a formal grievance of her complaint. This may mean the drafting of a letter, with Union assistance if necessary, raising her concerns at the beginning. Roisin should be made aware that strict time limits apply and that she has only six months from the act of victimisation i.e. the demotion, to take a claim to the Equality Tribunal. SIPTU Advocates from the Membership Information and Support Centre (MISC) can be called upon to make specialist representation which would include advice on correspondence to ensure that false or exaggerated claims are avoided at this stage. Such misconceived correspondence may come back to bite at the Tribunal!

### **What happens if Roisin's employer ignores the representation/grievance?**

A claim is then processed to the Equality Tribunal through the appropriate form but it is crucial that the six months limit is observed. It can happen that efforts are made to sort out an issue informally but there should be an acute awareness that the clock is ticking all the time. The tribunal will not look favourably at an application of extension of time in such circumstances

### **Isn't there a mediation step in this process?**

Yes, mediation is on offer to both Roisin and the employer after submission of the complaint form. A designated officer will assist parties in coming to an agreed solution in a confidential and non-threatening environment. There is no compulsion to take part but if an agreement is reached it is binding and may be enforced at the Circuit Court.

### **What happens if mediation is unsuccessful?**

If the mediation began and was unsuccessful or the mediator decides that it cannot be resolved by mediation, he/she will issue a notice to Roisin and/or her Union representative. If Roisin still wishes to pursue the case she has 42 days to respond to a notice from the mediator signifying her wish to her case to continue to the Equality Tribunal for investigation.

### **What happens there?**

An investigation by an Equality Officer at a hearing is a quasi-judicial process. The officer will consider written submissions from each party and will conduct the hearing in accordance with the principles of fairness and natural justice. It is always advisable that Union assistance would be sought in the drafting of submissions and Union members should never go to the tribunal without representation.

### **What does Roisin have to prove at the Tribunal?**

Initially Roisin has to show a *prima facie* case *i.e.* primary, basic evidence that she was victimised. In this instance evidence of the remarks of the HR manager and the demotion shortly afterwards should suffice to shift the burden to the employer. The employer would then need to prove that the demotion was based on factors other than the evidence Roisin gave in favour of Vicky's claim.

### **What are the remedies?**

The redress available for victimisation is the same as that for discrimination: maximum 104 weeks remuneration or €40,000 whichever is the greater or an order that the employer take a specified course of action e.g. to reinstate Roisin back in the supervisor's role. There is an appeal to the Labour Court within 6 weeks of the Equality Tribunal decision.

As always, this column should never be taken as a legal guide to the legislation. Advice should first be sought from your Union official.

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