Verizon EWC appeals rejected by Court, questions remain over law

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Appeals by a lead member of the Verizon European Works Council (EWC), in the first EWC case of its kind in Ireland, have been rejected by the Labour Court – an outcome likely to be mostly welcomed by multinational companies but with uncertainty still hanging over aspects of the Transnational Information and Consultation Act, 1996 (TICEA).

The two decisions of the Court are concerned with the non-payment of a disputed invoice by the EWC Academy for services it provided to the Verizon EWC in 2021 *(TID241)*, and the payment of costs incurred by the complainant in attending an unapproved training session as well as his legal costs *(TID242)*.

The Court rejected both appeal aspects of WRC adjudication decision ADJ-00034402, finding the claim in respect of the invoice was a "collective" issue, which is not permitted under section 17 of TICEA – as it affords protections to "individual members" only – and that the company's refusal to reimburse Mr JP Charpentier for attending training in Hamburg was not unreasonable in the circumstances (this included Mr Charpentier being told in advance of attending the session that he would not be paid for it).

The core issue of *TID241* further highlights the long running question of whether TICEA adequately transposes the EWC Directive. The Court's determination shows that under section 17 of TICEA, only individual complaints can be pursued – not collective complaints.

Here, the Court focused on the complainant's submission, that he is acting in a representative capacity in bringing the complaint, which "is effectively a concession that the issues in dispute are collective in nature and are not particular to him as an individual."

"Section 17 [of TICEA], in the Court's view, is framed so as to afford statutory protection to individual members of EWCs *qua* individuals. It is not – and was not intended by the legislature – to be a means of progressing disputes that are collective in nature."

This illustrates a problem with TICEA, highlighted for some time by experts such as BEERG's Tom Hayes and SIPTU's Denis Sheridan, that there is no collective remedy for 'subsidiary requirement' EWCs in Irish law.

This will likely be observed by the European Commission, which had initiated infringement proceedings against Ireland over its transposition of EWC law. The EWC Directive is expected to be updated later this year, which will force a change in Irish law, if none such occurs before any revised Directive's transposition deadline.

In losing this appeal, the Court also varied the WRC's 2023 decision, no longer awarding Mr Charpentier €5,610 – which was part payment of the EWC Academy's invoice.

TRAINING PROVIDED

In *TID242*, the Court's decision identifies another problem with TICEA, regarding section 17(6) of the Act. Counsel for the complainant, Tony Kerr SC, argued that this section is not compatible with Recital 33 and Article 10.4 of the Directive, because TICEA adds the qualifying words that training be provided "by their employers" yet these qualifying words do not appear in either Recital 33 or Article 10.4.

The Court accepted Mr Kerr's argument in this regard but also accepted the argument of counsel for Verizon, Tom Mallon BL, that the decision on determining the training to be provided to EWC members should be a "collaborative activity with input from both the EWC members themselves and representatives of management."

The Court also backed the employer's view that the training provided to the EWC in May 2021, by Kevin Duffy and Bryan Dunne, met the definition of training, with the Court adding it "is also cognisant, in arriving at this conclusion, of the recognised expertise of both presenters in the area Irish and EU employment law generally".

It was the complainant's assertion that the May 2021 training session was not adequate, hence he sought to attend – and be reimbursed for – the Hamburg session that occurred later in 2021.

What will be welcomed by employers generally is the Court's line that the employer should not be liable for the complainant's costs of attending the Hamburg conference "in circumstances where he had been unequivocally informed in advance that the company would not fund his attendance."

"The complainant's decision to attend the conference was a unilateral one made in the full knowledge that his attendance would not be supported by his employer." Mr Charpentier had also been advised by Mr Voinescu of Verizon

that if he were to attend the Hamburg conference he would be doing so on his own time, yet he did not take annual leave to attend the event.

The Court also backed Mr Mallon's view that a company is not required under the Directive or the Act "to furnish its EWC with a blank cheque".

COSTS QUESTION

Counsel for the complainant sought for legal costs to be paid by management – an application resisted by the company and rejected by the Court, in both decisions.

The Court, which is a "cost-neutral" tribunal (it does not award costs, unlike the superior courts), rejected the costs application on the basis that the complainant's appeals were not upheld.

Mr Kerr based the costs application on Article 10.1 of the Directive (transposed in s.17(1A) of TICEA and par 6 of the Second Schedule) and further contended that, based on CJEU caselaw, the lack of any costs provision in the Act "is clearly an effective deterrent to enforcing EWC members' rights."

The complainant was represented by Tony Kerr SC, instructed by Sherwin O'Riordan Solicitors. The respondent was represented by Tom Mallon BL, instructed by Lewis Silkin Solicitors. *(TID241, 242, Deputy Chairman: Alan Haugh)*

AUSTRIAN CASE

As of this week, it is not known whether the complainant will appeal the Labour Court's decisions, which he can do so, on a point of law, to the High Court, within 42 days of the Labour Court's decisions.

For more background on the Verizon EWC case, see *European Works Councils* in IRN 22/2024, 24/2024 and 27/2024.

One of the cases cited during the Verizon case hearings was the Austrian Supreme Court case of *Mayr-Melnhof Packaging*. An expert witness, Professor Martin Gruber-Risak, was called to give evidence on that case.

On 30 August, after the *Verizon* rulings of the Labour Court, a court in Austria made a costs order against central management of Mayr-Melnhof Packaging of €80,000 in legal fees (plus interest and additional costs, understood to total almost €100,000).

The Austrian court drew a distinction between an obligation of a defendant central management bearing costs with the obligation of a party who has lost a civil action to reimburse costs, and pointed to Annex I, par 6 of the current EWC Directive, which states that the "operating expenses of the European Works Council shall be borne by the central management."

Other jurisdictions provide for legal costs of an EWC to be paid by management, such as the Dutch EWC Act (Article 20).