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NEWS REPORT

Country:	Ireland
Title:	Important High Court judgment on extent of an employer's obligation to provide reasonable accommodation in a disability case
Date:	15 February 2016
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<u>Context</u>	
Issue at stake:	Employer must show that it has considered the possible redistribution of the employee's tasks in order to provide reasonable accommodation
Ground of discrimination:	Disability
Source:	National court decision (High Court)
Field:	Employment
Applicable law:	S 16 Employment Equality Act 1998

Content

Case: High Court case *Nano Nagle School v Marie Daly*¹

Ms Daly was employed as a special needs assistant (SNA) in a school for children with special needs. Following an accident, she was paralysed from the waist down and became a wheelchair-user. The school did not discuss any reasonable accommodation options with Ms Daly, including employing her on a part-time basis, or allowing her to continue with her part-time secretarial role.

Ms Daly claimed that the School had failed in its duty under s.16 of the Act to make reasonable accommodation for her disability. Although the School's failure in this regard had resulted in her dismissal, Ms Daly had not made a claim of discriminatory dismissal. The Equality Tribunal decided against Ms Daly, who appealed to the Labour Court.

The Labour Court decided:

Reasonable accommodation must remain within the boundaries of what is reasonable and proportionate, including having regard to the financial implications involved. There is no reason to exclude in principle extending the duty of reasonable accommodation to include the redesign of a position so as to include those duties that a person with a disability can perform if that is a reasonable and proportionate means by which a person with a disability can be facilitated in exercising their right to work. Section 16(1)(b) of the Act provides that an employer is not obliged to employ or maintain a person in employment in a position the duties of which they cannot perform. However if a job is modified so as to reflect a person with a disability's abilities, they are then able to fully discharge the duties to that position as modified. If there is a difference between the provisions of s.16

¹ [2015] IEHC 785 (11 December 2015).

of the Act and the provisions of Directive 2000/78/EC (the Framework Directive), the provisions of the Directive must take precedence. The duty to provide reasonable accommodation includes an obligation to make an informed and considered decision on what is or is not possible, reasonable and proportionate. A failure to adequately consider all available options on how a person with a disability can be accommodated can amount to a failure to discharge the duty to provide reasonable accommodation. If all available options are not adequately considered then the employer cannot form a bona fide belief that any such options are impossible, unreasonable or disproportionate. *Humphries v Westwood Fitness Club* applied.² The School's refusal to allow Ms Daly return to work was based on the mistaken belief that its duty was confined to providing her with such accommodation as might enable her to undertake the full range of tasks expected from an SNA. The School construed its duty too narrowly and took a mistaken view of what the law required. Reasonable accommodation duties must be construed broadly. The ultimate test is that of reasonableness and proportionality, including practicability, cost, possible disruption to the service that the employer provides, and consequences for the person with a disability of not providing the accommodation required. The decision of the CJEU in joined cases *Ring* and *Werbe* was considered.³ Where an employer reaches an honest and informed decision having considered all of the available options, the court must show a high degree of deference to that decision and should not seek to substitute its opinion on what is possible or reasonable in the particular circumstances of that employment. If, however, the employer fails to properly understand the scope of its duty or fails to adequately consider all of the options that may be available, they will have failed in their statutory duty toward the person with a disability. The case was appealed by the school.

Decision of the Court:

The school had argued that under s.16 of the Act the obligation to provide reasonable accommodation only applied where it would leave the disabled employee in a position to perform the totality of their original job. The court referred to the decision of the CJEU in *HK Danmark, acting on behalf of Ring*, which was that reasonable accommodation extended to altering the hours of work of a disabled worker provided that it did not impose a disproportionate burden on the employer. This included relieving the worker from the obligation to perform certain tasks and considering whether a redistribution of tasks would impose a disproportionate burden.

The court found that it was reasonable that Ms Daly should have been consulted or afforded some opportunity to make submissions on how she could be accommodated before a decision was taken to dismiss her.

Finally, the court found that the issue of disproportionate burden did not arise as the school had not engaged in any meaningful way with the concept of reasonable accommodation because of the wrong interpretation that it placed on s.16 of the Act. It dismissed the appeal.

Key points of analysis:

The judgment of the High Court in this case marks an important development in the law relating to an employer's obligation to make reasonable accommodation under section 16 of the Act. The High Court, roundly endorsing the Labour Court's approach, has clarified that in order to demonstrate that an employer has exhausted its obligations under section 16, it will have to adduce evidence to show, where appropriate, that it has considered the possible redistribution of the employee's tasks.

Internet link source:

<http://www.courts.ie> (Judgments and determinations, p.2) last accessed 27/01/2016.

² [2004] E.L.R. 296 and *A Worker v An Employer* [2005] E.L.R. 159.

³ *HK Danmark, acting on behalf of Ring v Dansk Almennyttigt Boligselskab; HK Danmark, acting on behalf of Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* [2013] I.R.L.R. 571.