

THE HIGH COURT

[2021] IEHC 503

RECORD NO: 2020/22 MCA

**IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 12 AND SCHEDULE 2 OF THE
PROTECTED DISCLOSURES ACT 2014**

BETWEEN:

ANDREW CONWAY

APPELLANT

AND

THE DEPARTMENT OF AGRICULTURE, FOOD AND THE MARINE

RESPONDENT

Judgment of Ms. Justice Niamh Hyland of 16 February 2021 (Costs)

1. The appellant appealed on a point of law on 23 January 2020 against the decision of the Labour Court dated 13 December 2019 made under the Protected Disclosures Act 2014.
2. In my judgment of 14 December 2020, I rejected the appeal on all grounds. I must now deal with costs.
3. The respondent seeks its costs, having successfully resisted the appeal. The appellant argues there are special circumstances and asks that the respondent should pay the appellant's costs or a portion of same or, alternatively, make no order for costs.
4. This is not a case where, absent Order 105 of the RSC, I would depart from the normal rule that the successful party is entitled to its costs.
5. This was not a public interest challenge or a test case. It involved the interpretation and application of a statutory provision. The fact that the statutory provision in question had not been considered previously by the High Court does not mean that the normal costs approach should be departed from. The appellant had a private interest in the outcome of these proceedings. None of the aspects of the case identified by the appellant warrant a departure from the usual rule.
6. However, O. 105 of the RSC contains special provisions applicable to these types of appeals. Up to 7 August 2020, O. 105 dealt with appeals from the Employment Appeals Tribunal to the Court under the Redundancy Payment Acts 1967 and 1971 and the Minimum Notice and Terms of Employment Act 1973. Order 105, rule 6 provided that '*No costs shall be allowed of any proceedings under this Order unless the Court shall by special order allow such costs.*'
7. Order 105 was amended by the coming into effect of S.I. 257/2020 on 7 August 2020 and is now substituted by 'Order 105 Appeals and References from the Labour Court' to take account of repeals of statutory provisions and of new provisions under, or inserted by, the Workplace Relations Act 2015. The new O. 105, r. 7 is identical in terms to O. 105, r. 6 pre- 7 August 2020 and provides that no costs shall be allowed of any proceedings under the Order unless the Court makes a special order.
8. I accept, as submitted by the respondent, that O. 105, r. 7 does not apply to these proceedings as they had been initiated prior to the adoption of the rule on 7 August 2020.

However, the intention of the Rules Committee in making this change is that, in future, the default position is that no costs shall be allowed in appeals from the Labour Court without a special order. This marks a departure from the normal approach to costs set out in s. 168 and 169 of the Legal Services Regulation Act 2015. It was presumably adopted given the special nature of these types of appeals. Disputes before the Labour Court arise in the context of an employment, or analogous, relationship. The Labour Court does not have the power to award legal costs. The Rules Committee presumably wished to ensure that a similar approach applied in respect of appeals against decisions of the Labour Court (subject to a discretion of the Court to make costs orders). That rationale seems equally valid here, despite the appeal being initiated prior to 7 August 2020.

9. Accordingly, in deciding upon the costs of this appeal, it seems to me that regard should be had to the special nature of an appeal from the Labour Court and the approach that now prevails in this respect. I will therefore adopt that approach in the instant appeal and make no order for costs.