

Record compensation in unfair dismissal claim against X (formerly Twitter) in Ireland

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In a recent decision, the Workplace Relations Commission (**WRC**) mandated X to award former employee Gary Rooney (**the Complainant**) the substantial sum of €550,131 for an unfair dismissal claim against the company. This ruling sets a new benchmark for compensation in Ireland in the employment sphere.

The "Fork in the Road" email

The case centres around the notorious email sent by Elon Musk to 270 Irish employees on the 16th of November 2022. Entitled the "Fork in the Road", Musk's message stated "...to build a breakthrough Twitter 2.0 and succeed in an increasingly competitive world, we will need to be extremely hardcore". The email gave a choice to the employees, stating that "if you are sure that you want to be part of the new Twitter, please click yes on the link below. Anyone who has not done so by 5pm ET tomorrow will receive three months of severance". Musk's email presented an ultimatum to employees; to accept new, undefined contract terms by ticking a box within the email, or face immediate termination by leaving the box unticked. Within the 24-hour window of acceptance, a further email was issued stating "If you do not confirm that you wish to stay at Twitter, you are resigning. You will not be entitled to statutory redundancy or other termination payments, unless otherwise required by local law".

The Complainant, who had been employed with the social media giant since September 2013, refrained from ticking the "yes" box within the email without further clarity on changes to salary, benefits, his stock options, working hours and more. As a result, he was deemed to have resigned, with his access to work systems revoked.

The WRC's verdict

While legal representatives for X maintained that the conditions outlined in Musk's email were within the bounds of existing employment contracts and work practice allowances, this was contested by the Complainant's legal team as unreasonable, given the abruptness of the demand, and his nine-year

tenure and contributions to the company. The WRC found the dismissal to be unjust, stating that failing to click "yes" in an email could not constitute a resignation. The adjudication officer (**AO**), Michael MacNamee, declared in a detailed 73-page ruling that the email aimed to modify employment terms or encourage redundancy without providing reasonable notice. The AO criticised the 24-hour response window as insufficient for making an informed decision, even with HR support available, and deemed it unfair to expect unconditional agreement from employees.

The AO in his decision referenced various legal authorities to determine that a valid resignation is defined by the use of clear and unambiguous words of resignation from an employee to an employer, which the employer must understand as such.

Reference was made to Redmond on Dismissal Law and the UK case of *Sothorn v Franks Charlesly & Co [1981]*, which both establish that the fundamental rules of contract law assert that silence or inaction cannot be interpreted as an unambiguous indication of resignation. A genuine resignation requires a clear communication of intent, usually in the context of a discussion.

In *Sandhu v Jan de Rijk Transport [2007] IRLR 519*, the UK Court of Appeal stated, "resignation, as the authorities indicate, implies some form of negotiation and discussion; it predicates a result which is a genuine choice on the part of the employee".

Additionally, it was quoted that a resignation induced under duress, such as through a threat, ultimatum, or misstatement, is not deemed valid. This perspective is supported by recent discussions in the Irish Employment Law Journal in 2022, emphasising the importance of genuine intent and clarity in the resignation process.

Calculation of the award

At the time of his dismissal, the Complainant's role was Director Source to Pay. His compensation package included a basic salary and a 30% performance bonus. Post-dismissal, the Complainant faced difficulties finding comparable employment, eventually joining a bank in September 2023 with a significantly lower compensation package. The Complainant also held substantial stock options within the company, along with benefits. These factors influenced the total award, which was calculated as follows:

- full losses from January to July 2023: €188,741
- partial losses August 2023 to date of hearing in May 2024 (inclusive): €161,390
- estimate of prospective future loss future loss: €200,000
- total: €550,131

Conclusion

Mr Kenny, the Complainant's representative, said that "it is not okay for Mr Musk, or indeed any large company, to treat employees in such a manner in this country / jurisdiction. The record award reflects the seriousness and the gravity of the case."

The AO's ruling not only provides clarity on the interpretation of resignation but also serves as a cautionary tale for employers about the critical importance of clear communication and the provision of a fair and reasonable time frame for employees to make informed decisions regarding their employment, ensuring that any changes to these relationships are conducted with explicit consent and understanding from all parties involved.

While this ruling marked a pivotal moment in the realm of Irish employment law, Twitter International UC does have the option of appealing the WRC ruling to the Irish Labour Court. It will be interesting to see how the matter progresses in the coming months.

How Ogier can help

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Meet the Author



Bláthnaid Evans

Head of Employment and Corporate Immigration

Ireland

E: blathnaid.evans@ogier.com

T: [+353 1 632 3113](tel:+35316323113)

Key Contacts



Laura Higgins Mulcahy

Trainee Solicitor

Ireland

E: laura.higginsmulcahy@ogier.com

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