

Aldi worker awarded compensation for dismissal following criminal conviction for sexual assault

20 September 2024

Overview

The Workplace Relations Commission (**WRC**) has ordered Aldi to pay €5,000 as compensation to a former store assistant whose employment was terminated following the discovery of a sexual assault conviction. Patsy Doyle, Adjudicator of the WRC, determined that the German supermarket group's decision to dismiss Mr. Muhammad Kashif (the **Complainant**) had "*veered outside the band of reasonableness for a reasonable employer faced with the cumulative factors of what occurred*". The Complainant, whose employment was terminated in March 2023 following the discovery of his criminal conviction was awarded compensation by the WRC in the amount of two months gross salary for a dismissal which was deemed by the WRC to be "*disproportionate*".

Background

The Complainant, who had worked with Aldi since October 2020, was convicted of sexual assault before the District Court in December 2022. The Complainant claimed that he had disclosed his conviction to his line manager the day after his conviction, and he was permitted to remain in his job until he received formal notification of the disciplinary investigation on 13 February 2023. The Complainant was dismissed effective 2 March 2023 for gross misconduct. The Complainant alleged that he had been dismissed for a matter which occurred outside of his workplace and that his dismissal was unfair and disproportionate. He also denied placing Aldi's reputation into disrepute. The Complainant alleged that the issue of sexual assault had been dealt with in the courts but that Aldi had subjected him to another process where alternatives to dismissal were not afforded adequate consideration in circumstances where the Complainant had performed in his employment without issue to date.

Representatives for Aldi submitted that a full and fair disciplinary procedure had been applied prior to the Complainant's dismissal. Notwithstanding his disclosure to his line manager, Aldi claimed that senior management did not become aware of this until February 2023. Aldi claimed that the Complainant had been dismissed following a finding of gross misconduct on foot of his criminal conviction for sexual assault. Aldi maintained that the decision to dismiss was reasonable and proportionate having regard to the facts and circumstances. Aldi relied on its contractual right to summarily terminate the employment contract for gross misconduct, specifically for behaviours involving a "*conviction of any criminal offence (other than a minor motoring offence)*" and advanced its defence pursuant to Section 6(4)(b) of the Unfair Dismissal Act 1977 (as amended) being a lawful dismissal justified by the conduct of the employee. Alternatives short of dismissal were claimed to have been considered however, as a store assistant in a

public facing role, working alongside female employees, some in their first jobs, Aldi was concerned about the potential for recurrence.

Finding

In her decision, the Adjudication Officer acknowledged that the conviction presented a monumental management challenge for Aldi and its relevant workforce. However, members of management within Aldi had demonstrated a clear lack of cohesion in approaching the investigation and sanction of this concern. There were a number of procedural defects identified by the Adjudication Officer such as a clear lack of paperwork and records of meetings held. The Adjudication Officer placed emphasis on the fact that no controversy or inquiry arose from customers or staff during December 2022 to February 2023. In fact, the Complainant had remained in work following the immediate aftermath of his disclosure for a period almost 8 weeks until his suspension pending formal investigation. The Adjudication Officer was critical of the fact that no regard had been afforded to the Complainant's unblemished employment record and/or his 8 weeks of uneventful service post declaration prior to implementing the decision to dismiss. She found that Aldi had acted in "*fear of anticipatory harm rather than actual harm*". The Adjudication Officer determined that the facts presented on behalf of Aldi were not, as a whole, conclusive proof of substantial grounds for dismissal. The dismissal was considered disproportionate, and the Complainant was declared to have been unfairly dismissed.

Despite finding in favour of the Complainant, the Adjudication Officer was critical of the Complainant's actions which was considered far short of the mitigation expected and the Complainant was awarded limited compensation in the sum of €5,000, the value of two months gross salary in respect of the unfair dismissal.

Practical Guidance for Employers

This case acts as a reminder for employers to:

- **Implement and Enforce a Disciplinary Procedure:** Employers must have a clear Disciplinary Procedure in place which should include clear procedures for investigation.
- **Timely Investigation of Concerns:** When a concern is reported, employers must act swiftly to investigate the matter. Delays or failure to investigate can lead to further harm and potential legal liability, as seen in the case.
- **Take Threats Seriously:** Employers should not ignore or downplay the severity of concerns raised. Immediate action, including potential holding sanctions (e.g. suspension with pay) is essential for protecting staff and mitigating legal exposure.
- **Maintain Interns Reporting:** It is important to ensure that all levels of management are clear in their lines of report and that employees are aware of the need to report matters of this nature.
- **Provide Training:** Regularly train employees and management on workplace policies and procedures to foster awareness and create a safer workplace environment.
- **Document Actions:** Keep thorough records of complaints, investigations, and actions taken. Proper documentation can protect the employer and demonstrate compliance with legal obligations.

For more information, please contact [Patrick Waters](#) or your usual contact on the Beauchamps Employment Team.

[Muhammad Kashif v Aldi Stores Limited ADJ- 00045886](#)