

Bullying in the Workplace

**An Analysis of Cases at the
Employment Appeals Tribunal under the
Unfair Dismissals Acts (1977-2007)**

Research Committee

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Glossary of Terms

Employment Appeals Tribunal: The Employment Appeals Tribunal (EAT) was established as a component of the Labour Relations Commission (LRC) to provide a relatively informal process for adjudication of disputes on employment rights under sixteen different Acts including The Unfair Dismissals Acts (1977-2007). Under the Workplace Relations Act (2015) from the 1st October 2015 the work of the Employment Appeals Tribunal will be subsumed into the Workplace Relations Commission.

Claimant: 'The person who asserts a claim'.

Respondent: 'A person against whom a petition is sought, a summons issued, or an appeal brought'.

Bullying 'Workplace Bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a once off incident, is not considered to be bullying'.

(Code of Practice for Employers and Employees for the Prevention and Resolution of Bullying at Work, 2007)

Harassment: It is 'unwanted conduct', being conduct which 'has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person', under 9 discriminatory grounds: gender; civil status; family status; sexual orientation; religion; age; disability; race; or membership of the Traveller community. Such conduct may consist of 'acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material'.

(Employment Equality Act 1998, sec. 14A, inserted by Equality Act 2004, sec. 8)

Victimisation: It occurs where 'dismissal or other penalisation of the claimant was solely or mainly occasioned by the claimant having, in good faith' done any of the following: a complaint of discrimination; any proceedings by a claimant; an employee having represented or otherwise supported a claimant; the work of an employee (a comparator) having been compared with the work of another employee; an employee having been a witness under equality legislation; an employee having opposed by lawful means an act which is unlawful under equality legislation; or an employee having given notice of an intention to do any of these things.

(Employment Equality Act 1998, sec. 74(2), amended by substitution by Equality Act 2004, sec. 29)

Introduction

This following report has been developed by ABC – National Anti-Bullying Research and Resource Centre (ABC) at Dublin City University arising from research on the profile and outcomes of work-related cases taken to the Employment Appeals Tribunal (EAT) under the Unfair Dismissals Acts (1977–2007) between June 2013 to September 2015 in which bullying is referenced by claimants.

ABC is a research and resource facility founded in 1996 by Professor Mona O’Moore and re-launched in 2014 jointly by the Tánaiste, Mr. Eamon Gilmore TD and the Minister for Education & Skills, Mr, Ruairí Quinn TD as a National Anti-Bullying Research and Resource Centre at DCU. Researchers at ABC were the first in Ireland to undertake research on school bullying (1996), workplace bullying (1999), homophobic bullying (2004) and cyberbullying (2009). ABC leads the field of research, resource development and training in bullying in Ireland and is an internationally recognised centre of excellence in bullying research.

The Centre's activities are currently funded by the Department of Education & Skills under the National Action Plan on Bullying, the Department of Children and Youth Affairs under the National Lottery, the EU's Erasmus+ Framework Program for Education, Training, Youth and Sport and DCU Research and Innovation Unit. ABC works in partnership with other public bodies including the Health and Safety Authority (HSA).

The current research piece is concerned with the profile and outcomes of cases taken under the Unfair Dismissals Acts (1977–2007) to the Employment Appeals Tribunal (EAT) in which bullying is referenced by claimants. This research was undertaken between June and September 2015 and examined data for a period of time from 1st June 2013 to 30th September 2015 which had bullying as a component of the case.

Ninety-nine cases were taken under the Unfair Dismissals Acts (1977–2007) during this period of time representing just 10% of the total number of cases (n=1,018) taken to the EAT. As you will note from the following pages, bullying was a sole or joint feature of 96 % of the 99 cases taken to the EAT during the period under review. This means the word bullying was used in the application to describe an aspect of the complaint. Some cases referred to bullying alone; others referred to bullying and harassment or bullying, harassment and victimisation. For the purposes of this report the use of the term bullying may also imply harassment and victimisation.

Harassment in Ireland is legally distinct from bullying. Harassment is defined in relation to nine specific grounds outlined in the Employment Equality Acts (1998-2011) and the Equal Status Acts (2000-2011), whereas bullying spans a number of legislative areas including labour law and health and safety legislation, depending on the context and mechanisms used by respondents. All of the cases examined for this report were taken by claimants under the Unfair Dismissal Acts (1977-2007).

The structure of this short report should bring the reader through the various types of respondent and claimant based on gender. It is worth noting that whereas there is an even breakdown of male and female claimants, males are

more likely to be respondents, as both males and females in the sample take more cases against males.

The report then highlights the profile of cases that were successful (i.e. found in favour of claimant) over the period of time in question. An award is where the tribunal has found in favour of the claimant. A fail is where the tribunal has not found in favour of the claimant.

Finally, relying on the Tribunal's published decisions, the report analyses the reasons why a case may have been successful (i.e. award made) or failed. We found that claimants were less successful in obtaining awards where responding employers were found to have developed and implemented appropriate policies and procedures. There is also a breakdown of the fails and awards categories along gender grounds.

This research starkly highlights the evidence from the EAT; that to protect against losing an EAT case for bullying and harassment, employers are well advised to have robust procedures and to utilise them. Having procedures might well be a factor in preventing or discouraging people from taking EAT cases, as the tribunal is heavily influenced, in making its judgement, on the proper use of robust procedures, and the recording of same.

Breakdown of Cases Claiming Bullying

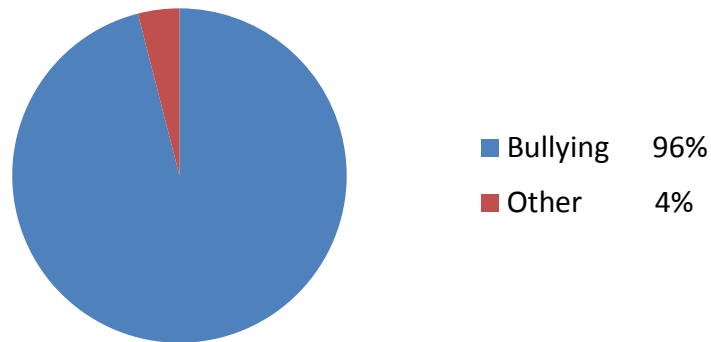
The Health and Safety Authority's definition of bullying is that it is: "repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work." (Code of Practice, 2005).

Examples of bullying in the workplace include but are not limited to:

- Social exclusion and isolation
- Damaging someone's reputation by gossip or rumours
- Intimidation
- Aggressive or obscene language
- Repeated requests with impossible tasks or targets

When a case is taken to the Employment Appeals Tribunal (EAT) under the Unfair Dismissal Acts (1977-2007) the claimant will argue that an employer terminated his/her contract of employment, with or without notice or that the employee had to terminate his/her contract of employment, with or without notice, due to the conduct of the employer. Out of the total number of cases (n=99) taken under the Unfair Dismissals Act (1977-2007) between June 2013 and September 2015, 96% cited bullying as the cause of constructive dismissal.

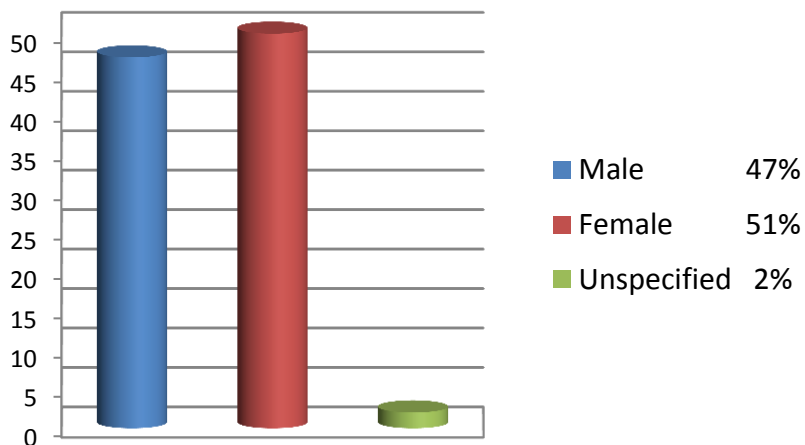
Figure 1: % of Cases Citing Bullying



Breakdown of Cases according to Gender

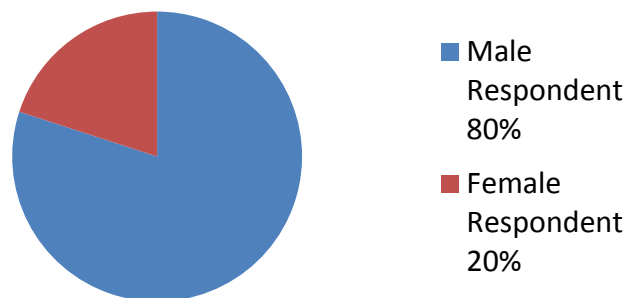
While gender inequalities in the workplace are well documented in other research this is not reflected to any great extent in the breakdown of cases taken to the EAT by male and female employees under the Unfair Dismissals Acts (1977-2007). Out of the total number of cases (n=99) brought to the EAT between June 2013 and September 2015, 47% were brought by males and 51% were brought by females.

Figure 2: % of Claimants by Gender



However, further examination of the data reveals that while there is almost an even split between the number of male and female employees who take cases to the EAT, males are more likely to be named as a respondent in a case of bullying in the workplace by both male and female employees. It was also found that male employees are also less likely to take a case against a female. Further research is required to understand these differences.

Figure 3: % of Respondents by Gender



Breakdown of Cases according to Outcome

The data from the EAT shows that more than half (53%) of employers against whom a case was taken did not have appropriate policies or follow appropriate procedures when dealing with complaints from employees. In fact, many of the companies did not have any policies or procedures in place at the time the alleged bullying had occurred; however, some subsequently produced new procedures into their company.

Overall, awards were made by the EAT in favour of employees in 51% of cases. However, this figure rises to 86% among employers who had not implemented adequate policies and procedures. Furthermore, an examination of those cases

were the claimant was unsuccessful revealed that 62% of their employers had followed appropriate policies and procedures.

Consequently, we can conclude that employers that have developed and are implementing appropriate policies and procedures are less likely than those who do not have policies and procedures to have a case taken against them in the EAT and if they are taken to the EAT they are less likely to lose the case.

Figure 4: % of Cases that are Awarded or Fail

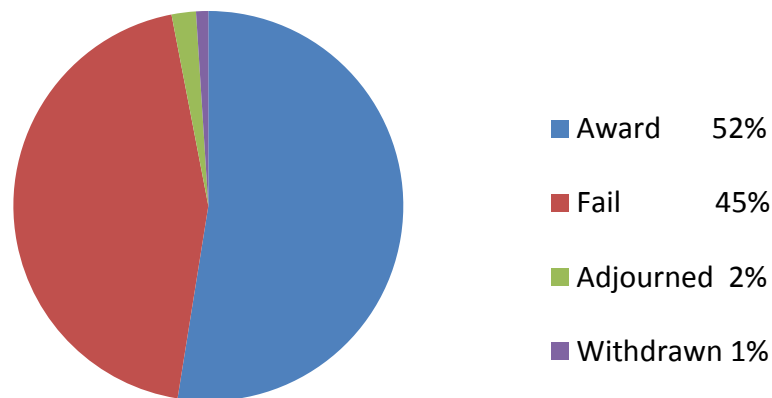
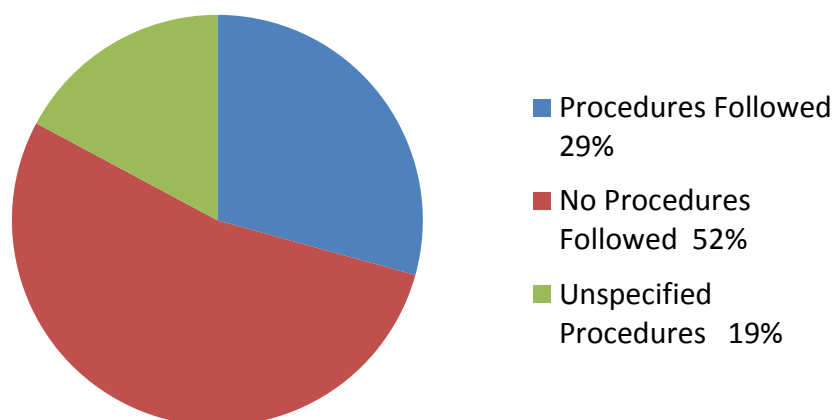


Figure 5: % of Employers with Policies/Procedures



From the point of view of the effort required to develop and implement appropriate policies and procedures, employers may reconsider any tardiness in this area when they measure it against the possible financial awards that the EAT can make against them should a bullying case be successful under the Unfair Dismissals Acts (1977-2007).

Between June 2013 and September 2015 the largest award made against an employer was €1.25 million. However, this was not typical of the other awards made by the Tribunal during the period concerned and was considerably higher than the next nearest award which was €110,000. Consequently, when we exclude the €1.25 million award, the average award during this period was €20,285.

Conclusions

This brief report is based on an examination of decisions made at the Employment Appeals Tribunal between June 2013 and September 2015 in relation to the Unfair Dismissals Acts (1977-2007). We found that bullying in the workplace is the cause of one in ten dismissal cases in Ireland which points to the need for employers to develop more positive working environments where dignity and respect are promoted. It was particularly interesting to find that more than half of the companies/employers named as respondents in bullying cases at the Tribunal did not have appropriate anti-bullying policies and procedures in place at the time of the complaint. This highlights the need for many companies/employers in Ireland to double their efforts in relation to creating policy frameworks to facilitate mechanisms for bullying prevention and intervention in the workplace. Bullying can result in individuals developing poor health and increased absence from work which apart from the personal costs involved for the employee also results in significant costs for companies/employers through sick leave cover and decreased productivity.

While there is no significant gender differential in terms of who is likely to take a case to the Tribunal, males are significantly more likely to be named as a respondent in cases of bullying. It was not possible to understand the reason for this within the scope of this study but further qualitative research may provide a deeper understanding of the issues involved here.

The work of the Health and Safety Authority and the newly established Workplace Relations Commission will be of continued importance in assisting companies/employers to develop positive work environments.