

GOING THE UNION ROUTE OR “GOING LEGAL”

Employer bodies such as IBEC often make the tendentious claim that, with a multiplicity of statutory rights, employees do not need the support of trade unions any more, they can simply ‘go to law’.

The stark reality is that, with the huge fees charged by lawyers and the lengthy time-periods involved “going legal” is simply not a viable means of tackling most work-related problems and grievances.

Trade unions have always provided a cheap and (relatively) speedy alternative means of addressing work-related issues. Trade unions are by legal status “friendly societies”. They are financed almost 100% by weekly or monthly contributions from their members. This money is used to finance the employment of union officials who offer professional representation which is completely free to the member at the time of need. The solidarity payments of the majority who do not require individual assistance finance the service provided to those who do.

Apart from the (lack of) costs and the timeframes involved, there are significant differences between availing of union representation and going to a lawyer.

- Union officials, by definition, deal exclusively with employment related issues including those where legal remedies are available. The vast majority of lawyers, on the other hand, spend only a small portion of their time on such issues. Most legal practices will spend much more time on conveyancing and property issues, driving and traffic laws, family disputes, inheritance issues etc. Thus, in a very real sense, union officials are much more deserving of the appellation “employment law specialist” than most of those who assert such claims.
- Union officials deal with issues, not in isolation, but in their true and relevant context. A lawyer takes up issues on a case by case basis and when it is over (successful outcome or not) the file is closed (and the fee notes despatched). The union official on the other hand continues to be the representative on an

ongoing basis and is there to deal with issues such as delivery of the settlement as agreed, combating retaliatory victimization etc. And, because the union is financed by, and available to, all of the people in the particular workplace, there is unlikely to be an outcome which causes the person who has been in dispute to be isolated and/or to feel that they have differentiated or isolated themselves from work colleagues. The maintenance of an ongoing sense of community in a workplace is crucial. Without it, even those who have achieved “success” in their legal claims often feel that they are made to pay an ongoing, hidden, but real cost afterwards.

- Additionally, since most solicitors are not employment law specialists it is almost automatic for them to recommend to clients that a Barrister’s Opinion should also be sought. It is at this stage that costs begin seriously to escalate.

For the reasons which are set out above it will be obvious that, notwithstanding the common legal or statutory issues which may be involved, the approach and modus operandi of union officials is likely to be different to that of lawyers. In a real sense, “going legal” or “going the union route” are alternative choices. It rarely makes sense to avail of both. The practices and ethos are subtly but significantly different and they do not combine well. Anyway, why would a union member pay for one type of representation when another, equally (at least) efficacious alternative is available for free?

All of this is not to say that union members do not have the right to consult with, and engage the services of, lawyers. Of course, as citizens, they have an inalienable right to do so. But the question which is frequently asked is; “will the union pay for me to see a lawyer?” For reasons which should be clear from what is set out above, the answer in almost all cases will be “no, that is a waste of the money contributed by the members”. And furthermore, what is the point, of employing two professionals to do the same job? It is as uneconomical, and as unjustified by results, as paying two solicitors practices to deal with the same problem.

Even if trade unions could negotiate very low-cost fees by using certain legal practices, it would not necessarily mean that members should be directed along this route. The reason for this is the growth of the phenomenon in recent years which is

often referred to as “lawyerisation”. The industrial relations machinery provided by and financed by the State to provide a cheap (free) and user-friendly grievance-resolving service for workplace disputes has increasingly been dragged more and more into procedures and approaches which bear more resemblance to the High Court than to the informal, pragmatic, ethos which has been the traditional role and approach of bodies such as the Labour Court, Conciliation Service etc. The more that lawyers are the agents acting in such forums the more ‘legalistic’ and ‘legalised’ the system will become.

In conclusion, it should be stressed again that every citizen has the right to go to law as and when he/she sees fit. But equally, people should be conscious of the fact that, for work-related issues and claims, there is a different option available, one that is free at the point of delivery, that is informal, user-friendly and which provides an ongoing aftercare service by way of ongoing support.

“Go legal” by all means, if you wish. But think about your options before you do so.

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