A&L Goodbody

EMPLOYMENT

Employee equity plans under the spotlight:

How the WRC and Labour Court are approaching forfeited equity in unfair dismissal claims

Two recent decisions, one from the WRC and one from the Labour Court, have brought into sharp focus the question of whether forfeited restricted stock units (**RSUs**) and other equity-based awards should be considered part of 'financial loss' for the purposes of calculating compensation under the Unfair Dismissals Acts (**UDA**).

The answer has significant implications for employers operating equity incentive plans.

8 MIN READ

Under the UDA, compensation is assessed by reference to an employee's financial loss attributable to their dismissal, up to a maximum of two years' remuneration, as is just and equitable having regard to all the circumstances. Remuneration is calculated in accordance with the Calculation of Weekly Remuneration Regulations, 1977 (the **Regulations**). Perhaps unsurprisingly for legislation that is nearly 50 years old, neither the UDA nor the Regulations explicitly address whether equity awards should be included in those calculations. As demonstrated by the cases discussed below, the approach taken can dramatically affect the amount of any award made to an employee who has been unfairly dismissed.

Rooney v X (formerly Twitter)

In 2024, the Workplace Relations Commission (**WRC**) issued a seminal decision in *Rooney v Twitter*[1]. It awarded Mr. Rooney, a former 'Director of Source to Pay', a headline grabbing €550,131 in compensation for unfair dismissal. However, in April 2026, the award was substantially reduced by the Labour Court on appeal[2], as a result of a divergence of approach when it came to the treatment of forfeited equity when assessing Mr Rooney's financial loss.

What happened in the case?

Mr Rooney claimed he was unfairly dismissed by Twitter (now X), after he failed to tick a box in response to an email from the company's new owner, Elon Musk. The "Fork in the Road" email, of 16 November 2022, to all staff outlined:

"Going forward, to build a breakthrough Twitter 2.0 and succeed in an increasingly competitive world, we will need to be extremely hardcore. This will mean working long hours at high intensity. Only exceptional performance will constitute a passing grade.[…]

If you are sure that you want to be part of the new Twitter, please click yes on the link below. Anyone has not done so by 5pm ET tomorrow (Thursday) will receive three months of severance.

Whatever decision you make, thank you for your efforts to make Twitter successful.

Elon."

An FAQ document followed the email. It effectively stated that a failure to click on the link in the email would be considered a resignation but was somewhat lacking in detail, for example, it stated *"Benefits changes: additional information forthcoming in the coming days"*.

Mr Rooney did not respond to the email by the specified deadline and on 18 November 2022, his access to the company's systems and network were cut off. On 19 November 2022 Mr Rooney received an automated email acknowledging his *"decision to resign and accept the voluntary severance outlined to you"* and his employment terminated on 18 December 2022. While the company tried to argue Mr. Rooney's failure to click *"Yes"* constituted a resignation, Mr Rooney argued it was an unfair dismissal.

1 ADJ-00044246
2 UDD2612

What did the WRC decide?

The WRC found Mr Rooney was unfairly dismissed and made the €550,131 award. The WRC found that his failure to click *"Yes"* did not constitute a resignation, as there were no unambiguous words or actions indicating an intention to resign, and that no justification was provided by the company for his dismissal.

When it came to assessing the appropriate level of compensation, it was agreed that Mr. Rooney's annual basic salary, pension contributions and dental and health insurance amounted to €151,225.

Mr Rooney also received a performance bonus of €39,901 in March 2022 (in respect of 2021), and an impact award of $240,000 in RSUs from May 2022 on the condition that he was in continuous employment on the designated vesting dates. Shares awarded were converted into cash and their value was paid out through payroll.

The WRC found that the equity grants fell within the meaning of 'remuneration' in the UDA.

A clause in Mr. Rooney's employment contract stated that if he had a claim for unfair dismissal, he would not *"become entitled to any compensation for the loss of any rights or benefits or anticipated rights or benefits under any scheme or plan (including any equity or share option plan) operated by Twitter or by any associated company in which you participate".*

Central to the arguments before both the WRC and Labour Court was section 13 of the UDA, which provides that *"A provision in an agreement… shall be void in so far as it purports to exclude or limit the application of, or is inconsistent with, any provision of this Act."*

The WRC was of the view that, notwithstanding that section 13 may well render the clause in Mr. Rooney's employment contract void, the company could not rely on the clause *"for a more basic reason"*: - that it would undermine the purpose of the compensation jurisdiction, which is to compensate for losses which are attributable to the dismissal.

The WRC excluded Mr Rooney's performance bonus from the calculations, as it found that it was not a guaranteed contractual entitlement for 2022, nor was it earned that year, or paid through payroll to a comparable employee the next year, 2023.

Both parties appealed the WRC's decision to the Labour Court.

What did the Labour Court decide?

The Labour Court upheld the determination of the WRC that Mr. Rooney's dismissal was unfair and reached the same conclusion as the WRC in respect of the performance bonus, but approached the issue of the impact of the automatic forfeiture of Mr Rooney's RSUs somewhat differently.

The RSUs were granted by the parent company, Twitter Inc. Mr Rooney received 11 grants of RSUs between 2013 and 2022. The Labour Court focussed on the fact that on each occasion he had received an RSU grant, he had to sign a contract containing a disclaimer to the effect that: unvested RSUs be forfeited upon termination for any or no reason (including if the termination were later found to be invalid or in breach of employment law); the RSUs were not part of normal or expected compensation for the purposes of calculating any severance, resignation, termination, redundancy, dismissal or end-of-service payments; no claim or entitlement to compensation or damages would arise from such forfeiture.

Significantly, the Labour Court found that the RSU agreements did not offend section 13, because they did not prevent him from bringing an unfair dismissal claim, but only excluded RSUs from being considered part of Mr Rooney's remuneration for the purposes of the UDA.

Crucially the Labour Court, taking a very different approach to the WRC, found that having had the opportunity over a number of years to receive legal advice on the RSU agreements (and it being open to Mr Rooney to decline the awards if he was not agreeable to the terms on which they were to be awarded), Mr. Rooney was bound by the terms he signed up to.

The maximum compensation the Labour Court determined it could award was therefore limited to €302,449. It awarded Mr Rooney's full losses to the date of hearing (€169,417) and prospective losses of €32,041, bringing the Labour Court's total award to €201,458.

O'Connell v Lionbridge International Unlimited Company[3]

What happened in the case?

Ms O'Connell commenced employment on 6 June 2000. Her employment, as Managing Director, EMEA GLT, was terminated on 8 November 2024 by reason of redundancy. She disputed her redundancy and brought a claim for unfair dismissal under the UDA. The company conceded that Ms O'Connell had been unfairly dismissed.

Her base salary was confirmed at €275,000 and she participated in a company management bonus plan and an equity programme.

What did the WRC decide?

Given that the company accepted Ms O'Connell had been unfairly dismissed, the WRC solely concerned itself with determining the level of compensation to be awarded. In calculating Ms. O'Connell's 'remuneration', the WRC drew a distinction between guaranteed, or contractual earnings, on the one hand, and payments which remain contingent on the exercise of employer discretion, and found Ms O'Connell's bonus was not 'remuneration' within the meaning of the UDA.

When it came to the RSUs, the WRC simply found that in light of the fact that the RSU agreement was with a different company, Lionbridge Technologies LLC, a Delaware limited liability company, it could not find that RSUs formed part of her 'remuneration' from her Irish based employer, Lionbridge International Unlimited Company, and did not engage in any further analysis of the matter. This case preceded the Labour Court decision in *Rooney v X* by a few weeks and surprisingly, given the subject matter, did not refer to the WRC's decision in Rooney.

What are the key takeaways for employers from these cases?

The *Rooney v X* decision is now the leading decision on the treatment of discretionary equity awards when it comes to calculating employee remuneration and relatedly, the position on unvested equity when it comes to calculating financial loss that flows from an unfair dismissal. While it is a helpful decision from an employer's perspective, academic commentators have questioned the reasoning behind the decision and suggested the position on the issues considered by the Labour Court in the case is not fully settled. In particular it has been suggested that section 13 of the UDA can be read more broadly than the Labour Court read it and that the section could be relied upon to challenge the effectiveness of contractual waivers along the lines contained in the RSU award agreements issued to Mr Rooney each year.

In *O'Connell v Lionbridge*, the WRC did not consider the legal implications of section 13 at all; rather, it simply excluded RSUs from consideration on the narrower basis that the RSU agreement was with a foreign parent company, rather than the employing entity and that therefore the RSUs were not part of the employee's remuneration from their Irish based employer. It is commonplace for employees of multinational companies, in the course of their employment, to be issued equity in their Irish employer's parent company directly and it may come as a surprise to these employees that the WRC did not consider equity awards of this nature to be remuneration related to their employment.

Employers in Ireland who issue stock via foreign parent companies will no doubt seek to rely on Lionbridge in future claims before the WRC in support of their position that such equity awards should not be considered remuneration. However, there are undoubtedly arguments that can be made to the effect that such awards should be considered remuneration and, indeed, in the *Rooney v X* decision, the Labour Court did not accept that the fact the equity was issued by a US parent company automatically precluded it from potentially being part of Mr Rooney's remuneration

3 ADJ-00057077

in respect of his Irish employment. Therefore, we do not recommend employers operate on the assumption that if employee equity is issued by a foreign legal entity, that is the end of the matter when it comes to assessing whether such equity could be part of an employee's "remuneration" under the UDA.

A further takeaway from these cases relates to the treatment of discretionary performance bonuses when it comes to determining annual remuneration and relatedly, financial loss. Both the WRC and the Labour Court in *Rooney v X* excluded the performance bonus on the basis that it was not a guaranteed contractual entitlement and had not been earned or paid in the relevant period. Similarly, the WRC in *O'Connell v Lionbridge* drew a distinction between guaranteed contractual earnings and payments contingent on employer discretion, finding that Ms O'Connell's bonus fell outside the definition of "remuneration". This treatment suggests that truly discretionary bonuses are unlikely to be treated as remuneration under the UDA. That said, there is no 'one size fits all' position and employers therefore need to be alive to the risk that discretionary bonus awards could be considered part of employee remuneration in certain circumstances, such as where bonus arrangements may have become "custom and practice" through consistent payment over time, or where the contractual language suggests an entitlement to a bonus.

Conclusion

While some welcome clarity has been brought by these cases to the treatment of unvested equity when it comes to calculating remuneration and financial loss under the UDA, the position is not set in stone. With the increasing prevalence of equity awards to employees, in the tech sector in particular, there will undoubtedly be future cases before the WRC and Labour Court in which employees will seek to circumnavigate the decisions in *Lionbridge* and *Rooney* and may well succeed in doing so.

In the meantime, prudent employers should ensure their grant agreements contain broad contractual waivers that make clear annual discretionary equity awards do not form part of employee remuneration and that, on termination, an employee accepts any unvested equity will be forfeit and that the consequent financial loss is not loss that the employee can seek to recover in any subsequent employment related litigation. Ensuring robust contractual waivers are contained in annual grant agreements, on which employees should be advised they can take independent legal advice, will put employers in the best possible position to argue that loss flowing from equity forfeited on termination cannot be recovered in unfair dismissal claims under the UDA.

Get in touch

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