



CONSTRUCTIVE DISMISSAL - LABOUR COURT CLARIFICATION*

In the case of EXPD8 Ireland trading as Tradewins and Brian McGovern the Court in this case importantly stated

“There is an onus on an employee contending that they have been constructively dismissed to demonstrate that they have made efforts to resolve the matter other than by termination of employment. In particular there is an onus on the employee to utilise all available procedures to address the issue with the employer”.

This is an important reinstatement of the Law on Constructive Dismissal. The case reference is UDD1617.

The Court has properly, in our view, stressed the importance of an employee utilising all available procedures. This would mean for example using the grievance procedure. There may be occasions where an employee is, because of the activities of an employer, entitled to simply deemed themselves to be constructively dismissed. However, it would be our view that employees need to be very careful as the Burden of Proof in a Constructive Dismissal case is on the employee rather than on the employer. Therefore the employee must be in a position to show that they used all reasonable efforts in the circumstances of the particular case.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**