

Constructive Dismissal – Change of Location

In the case of Joe Lawlor Limited and Guerin the Labour Court in this case dealt with an appeal relating to an employee who had worked in one location and was being required to move to another location.

There was no employment contract in this case. The employee contended that there was a verbal agreement that he would not be required to work outside Limerick or the surrounding area and an issue arose about him being required to work in Dublin. The employer strongly denied that there was any agreement that the employee would be limited to working in Limerick.

In this case the Court pointed out that if there was a clear commitment given to the employee prior to his acceptance of the job then this forms a part of the employment contract. The Court pointed out that it is often argued that minor breaches of contract do not constitute a basis to ground a claim for constructive dismissal. The Court however stated that if the Court accepts an employee's version and their understanding of the contractual terms the Court then has a reason to examine if the breach goes to the root of the contract so that the employer's action can be said to have sundered the contract and have caused the constructive dismissal of the employee. The Court pointed out in this case there was a clear conflict of evidence the court quoted the decision of Lord Denning and Western Excavating (ECC) Limited –v- Sharp 1978 ICR221 which set out clearly that

“If an employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance.”

In this case the Court upheld the view that the employee had been subject to constructive dismissal. The Court however pointed out that they found it difficult to understand how the employee who had many construction skills struggled for so long to find employment and this was taken into account in the compensation which was awarded.

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The reality of matters is, in our view, as expressed by the Court on many occasions that an employee has an obligation to minimise their loss. With the current economic environment, it is hard to understand, in many cases how employees will find it difficult to obtain new employment.