

Redundancy – Employer ceases trading

In case ADJ8826 the Adjudication Officer had to deal with a situation where a company had ceased trading. The Adjudication Officer in this case held that the employee had not resigned. The Adjudication Officer held that the employee had not been dismissed. The Adjudication Officer then went on to find in a claim that the employer should engage with the employee on the basis of paying the employee redundancy.

We find this decision hard to countenance. The claim was brought under the Redundancy Payment Acts. Either it is a redundancy or it is not a redundancy. Where a company goes into Liquidation and ceases trading then the employee's employment has effectively been terminated and it is a redundancy.

It is not clear what notices were served on the employer. If a notice had been served under the Redundancy Payments Acts, being the RP9 then clearly the notice has been served and the employee would be entitled to a ruling one way or another as to whether it was a redundancy. Alternatively, if it was a lay off situation that was only contemplated and the employee had served the appropriate notice without a counter notice the employee would have been entitled to claim redundancy.

In this case the Adjudication Officer has issued a decision which is difficult to fathom. If the employee or the employer appealed there is no decision to appeal. Now it is probably arguable that the employee can contend that the decision which issued was such that it was sufficient for the employee to bring an appeal to the Labour Court. This should not be necessary, in our view. If a redundancy situation arises then in those circumstances the employee should receive the redundancy by way of an appropriate decision.

That is just our view.