Redundancy – How an Employee Can Fall Foul of the Redundancy Payments Acts

In case RPD197 being a case of Anita Olejniczak and Glenbeigh Fire & Flood Limited the issue arose as to whether or not the employee had the requisite service.

The employee contented that she had been employed by the group from March 2009 until her post was made redundant in May 2018. In May 2017 the employee contended she had been promoted within the group of companies.

There are a number of provisions in the Redundancy Payment Acts which can catch an employee out in these situations.

Section 9 (3) (a) of the Act states that a dismissal under the terms of the Act will not be deemed to have taken place if an employee moves from one part of a group to another, a reengagement took place with the agreement of the employee, the previous employer and the new employer. The legislation provides that the employment will not be deemed to be a dismissal if the employee is reengaged by another employer immediately on the termination of the previous employment. What is important however is before the commencement of the period of employment with the new employer the employee must receive a statement in writing on behalf of the previous employer and the new employer which sets out the terms and conditions of the contract of employment with the new employer, specifying that the employees period of service with the previous employer will be regarded by the new employer as service with the new employer and contains particulars of the service mentioned previously. The employee must also notify in writing the new employer that the employee accepts the statement required by that sub-paragraph.

Rarely if ever does this actually happen.

Section 16 refers to a situation where a person is reengaged by an associate company.

In this case the Labour Court looked at the definition of subsidiary which is set out in the Redundancy Payment Acts and Section 7 of the Companies Act 2014. The Labour Court set out that no evidence was offered to support the idea that either company was a subsidiary of the other or that both were subsidiaries of a third company. The

Labour Court helpfully set out Section 7 of the Companies Act 2014 in this decision.

The case does turn on the fact that the employer in this case contended that the particular company was not part of a group company. It would now appear effectively that employees in cases are going to have to produce evidence where they are claiming that there is a subsidiary company as part of a group of the relevant shareholdings of compositions and boards. The new reporting requirements relating to companies will make this a lot easier. The beneficial owner's numbers of shares are now going to have to be disclosed in records.

This case indicates one of the difficulties that happens when an employee moves from one group company to another group company. We use this in the widest possible sense. Where an employee believes that they are moving from one group company to another group company it is absolutely imperative that the employee has the appropriate contract put in place which complies with the provisions of Section 9 of the Redundancy Payment Acts and ensures that same is in place before moving. Where the employee fails to do so, as in this case, the employee may lose out on their entitlement to a redundancy payment.