

Redundancy – Lay-Off and Right to Claim Redundancy

Case ADJ12935 is an extremely interesting case when it comes to the issue of a lay-off and the rights of an employee to claim redundancy and also the issue of wages.

In this case the company got into trading difficulties. However, it continued to operate and made plans to move to a new location but which required planning permission. It was expected that this would occur but it did not happen. The employee had been placed on temporary lay-off on August 25th. The employee in this case sent a letter stating that she had been on lay-off since the 28th August 2017 and that she was given notice to terminate her employment and stated her last day of employment was the 1st January 2018.

The AO in this case pointed out that the relevant provisions of Sections 11 and 12 of the Redundancy Payment Act as amended in Section 12 specifically provides that the employee must give the notice of intention to claim redundancy in respect of the lay-off or short time. Part B of the RP9 Notice Form, as the AO correctly pointed out, provides one means to do this. The employee in this case did not indicate a notice of intention to claim the redundancy payment. The AO had pointed out that this is clear and a simple statement of intention to resign does not comply and indeed indicates a voluntary resignation. The AO in this case held against the employee under the claim for redundancy. The employee in this case may well have been able to bring a claim under Section 9 of the Redundancy Payment Acts if she had resigned without giving notice. It is an unusual provision. In the alternative, if the employee had given the employer the required notice in the RP9 Form, the employer would have had an option to give a counter notice within 7 days. If that counter notice had not been given then the employee would have been automatically entitled to the redundancy. If a counter notice had been given then after a period of 4 weeks the employer would have been obliged to give the employee 13-week continuous employment. If that was not done, the employee would have been able to lodge a further claim for redundancy and claim 13 weeks wages. This case is a prime example of why employees should use the relevant statutory forms. The redundancy legislation is complex. It is one where individuals do need assistance from somebody who is trained in Employment Law.

There is another aspect of this case which is interesting, and that is in relation to the issue of pay. The AO in this case quoted the case of

Law -v- Irish County Meath (Pig Meats) Limited 1988 ELR266 which held that unless there is an expressed or implied term permitting the lay-off without pay then it is a breach of the employee's contract of employment to do so. An implied term would include Custom and Practice as was set out in the case of Petkevicius -v- Goode Concrete Limited, 2014 IEHC66. The AO set out that case related to the construction industry where there would be ups and downs rather than this type of industry. The AO held that there was no expressed term in the contract of employment allowing lay-off without pay. The AO set out the provisions of Section 5(1) and as there was no express term the AO held the employee was entitled to payment. The AO then turned to the issue in relation to the position of the employee during the notice period. The AO held that the deciding question was that the employee was still under a contract of employment so she was entitled to payment during this period also.

This part of the case raises a significant issue for employers. Contracts of Employment do need to cover the provision of lay-off without pay. If a contract has a provision that an employer is entitled to lay-off an employee without pay, then in those circumstances the employer is entitled not to pay. If the employer does not do so, the employer is obliged to pay. The case law referred to previously would, however, cover situation where an exceptional circumstance arose. This would be for example where premises flooded or was destroyed by fire or some other reason that was highly unusual then in those circumstances there would be a right to lay-off while repairs were put in place. Let us take a situation where a premises is damaged by flood. The employer is advised that it is going to take 4 weeks to dry out the premises and make them fit for business again. Of course, the employer in that case, even if there is no provision to lay-off without wages, is entitled to lay-off the staff and not to pay them because that would be an exceptional situation. If however, the employer decides that instead of just drying out the premises and getting them back operational to put in place improvements that would take a further 6 weeks then that further 6 weeks would not be exceptional circumstances and the employees would be entitled to be paid.