

Redundancy – Suitable Alternative Job

This arose in the case of ADJ-00020231. The Adjudication Officer pointed out that Section 15 of the Act provides that an employee shall not be entitled to a redundancy payment if the employer has offered to renew the employees contract of employment or to reengage the employee under a new contract of employment and that the provisions of the contract is renewed or of the new contract as to the capacity in place in which the employee would be employed and as to other terms and conditions would not differ from the corresponding provisions of the contract in force immediately before the termination of the contract and the renewal or reengagement would take effect on or before the date of termination of the contract and that the employee had unreasonably refused the offer.

The Adjudication Officer pointed out that under Section 15 the employer must make this in writing and it must be a suitable employment in relation to the employee and the renewal or reengagement must be notified to take effect not later than four weeks from the date of termination of the contract where the employee has served the relevant notice.

The Adjudication Officer pointed out the case of Cinders Limited -v- Byrne RPD 1811 the Labour Court held that the issues to be considered where the suitability of the offers of alternative employment made on behalf of the respondent to the complainant and whether the complainants decision to refuse each of those offers was reasonable in all the circumstances. The Labour Court in that case relied on the case of Cambridge & District Co-Operative Society Limited -v- Ruse 1993 IRLR156 where the Labour Court referred to the suitability of the employment is an objective matter whereas the reasonableness of the employees refusal depends on factors personal to him and is a subjective matter to be considered from the employees point of view. In the Cinders case the Labour Court held that it was reasonable for the employee to refuse to move to a concession within a department store but unreasonable to refuse to move to a stand-alone store in the city centre a distance of about six kilometres. The Labour Court in that case held there was no significant difference between the working environment she would have enjoyed in the alternative store and that she had experienced in the previous twenty or so years of her working relationship with the respondent.

The Adjudication Officer in this case also held, which will be important, that the relevant termination date in a case arising from lay off or short time is the date the notice of intention to claim relief is served and referred to the case of Leinster Cleaning Services -v- Muningus RPD199. It might be thought by some that it is the date that the notice would run out or the notice period in the contract. It is not. It is the date that the notice is served.