

Redundancy – Time limit to bring a claim

In the case of Brian Cahill trading as Jerpoint Inn and Helen Green an issue arose as regards the jurisdiction in relation to the issue of a claim under the Redundancy Payment Acts. What is interesting in this case is that the legal representatives were arguing about the fact that the claim had not been lodged within 6 months of the purported date of termination.

The Labour Court pointed out that there appears to be a misunderstanding in relation to the time limit on claims for Redundancy Payment. The Court pointed out that the limitation period under Section 41 (6) of the Workplace Relations Act 2015 applies and that the appropriate limitation period is 52 weeks from the date of termination of employment.

This is an important reminder of what the law on this issue is. It is one of the cases where the 6 months period does not apply.

The issue arose then whether or not the employee was entitled to Redundancy. The issue was effectively determined on whether there had been a transfer under the Transfer of Undertakings Regulations. The Labour Court helpfully referred to case 24/85 Spijkersv Gebroeders Benedik Abbatoir CV and set out the views of the ECJ in relation to that. It is useful that the Court has set out what the test was, namely:

“In order to establish whether or not a transfer has taken place in a case as such before the National Court. It is necessary to consider whether, having regard to all the facts characterising the transaction, the business was disposed of as a going concern, as would be indicated inter alia by the fact that its operation was actually continuing or resumed by the new employer, with the same or similar activities.”

The Court went on to state that the ECJ had stated:

“To decide whether these conditions are fulfilled it is necessary to take account of all factual circumstances of the transaction in question including the type of undertaking or business in question, the transfer or otherwise of tangible assets such as buildings and stock, the value of intangible assets at the date of transfer, whether the majority of the staff were taken over by the new employer, the transfer or otherwise of the circle of customers and the degree of similarity between the

activities before and after the transfer, and the duration of any interruption in those activities. It should remain clear, however, that each of these factors is only part of the overall assessment which is required and therefore they cannot be examined independently of each other.”

In this case the Court found that all stock, furniture and equipment, the 7 days publican’s licence and the use of premises all transferred. The Complainant transferred. Supplier accounts transferred. The customer base transferred. There was no period of interruption. The activities, before and after the transfer, mirrored one another. The Court therefore held that there was no entitlement to a Redundancy payment. They however importantly also pointed out that the complainant in this case was entitled to continue in the new employment on terms no less favourable than she had previously had.

This is a very important decision of the Labour Court clarifying the time limits for a claim under the Redundancy Payment Acts and giving further clarity in relation to the Transfer of Undertaking Regulations.