

Redundancy – Where a contract is Frustrated

The right of an employee to claim a payment for a contract which is frustrated.

This issue arose in ADJ-00025512 involving a Chef and a Community Service Provider.

The Adjudication Officer set out Section 7 of the Redundancy Payment Acts in detail. The Adjudication Officer also set out the Provisions of Section 9. The relevant Section here is Section 9 (1) (c) where the employee terminates the contract under which he is employed by the employer in circumstances ... such that he is entitled so to terminate it by reason of the employer's conduct.

In this case the Adjudication Officer held that Subsection (c) allows for dismissal to take place where the employee is allowed to terminate their own contract because of the conduct of the employer. The employee considered her new role and location to be unsuitable. The Respondent listened to those concerns and made a commitment that it would be considered. The employee it appears had not taken the opportunity for that consideration to take place. The Adjudication Officer stated they could not predict the outcome of that consideration but had no reason to doubt the Respondent employer would ensure it takes place when the Complainant returns from sick leave. The Adjudication Officer held that the employee had not been dismissed.

This case is useful for highlighting an issue relating to redundancy which is going to arise. There will times where an employee will rather claim redundancy rather than claim Constrictive Dismissal.

The provision of Section 9, in a particular Section 9 (1) (c) is an issue which employees will look to in the coming months.

The interesting aspect which was not addressed is whether the employee by their actions effectively resigned and whether the employer can now rely upon same.