

Redundancy Payment Act 1967 – Transfer

The issue of a transfer from one entity to another often arises in the area of redundancy. This issue was dealt with in case ADJ18637. This involved an employee who worked as a legal secretary in a legal partnership. There were three partners. One partner dissolved the company. The Managing Partner informed the employee in 2015 that she was being made redundant. She was then advised that this individual was starting her own company and invited the employee to work with the new company. The employee joined the firm. In this case the employee had no written contract. No notifications occurred under SI131 in the Transfer of Undertaking Regulations. The firm of solicitors contended that there was no redundancy as the employee was not dismissed. The employer relied on the case of Symantec Limited –v- Lyons and Leddy 2009 IEHC256 where the High Court had held that a transfer on the same terms and conditions meant that a person had not been made redundant by virtue of Regulation 4(1) of the TUPE Regulations. There is also the UK decision of Robert Graham Hynd –v- David Armstrong and 24 Others 2007 CHIH 16XA158/04 which is authority for the contention that a partnership comes within the reach of the European Communities (Protection of Employees on Transfer of Undertaking) Regulations 2003. In that case the solicitor successfully challenged his dismissal due to redundancy on the dissolution of a partnership in which he was employed and argued he was entitled to the protection of Regulation 4 when the partners established a new firm. The Court in the UK accepted that the employee was employed by a partnership and could draw on the Regulations to contest his dismissal due to redundancy and assert his right to a transfer into the new company.

The AO in this case also quoted the case of Spijkers –v- Geber Benedik Abbatoir TV case C-24/85 as authority for determining if a transfer of undertaking occurs. The AO pointed out that the business was the same before and after the transfer, the intellectual property, in good will, much of the customer base transferred and the staff transferred. The AO in this case held that there was no redundancy.

The AO in this case did not quote a case from the Labour Court being RPD1713 being the case of Ardcolum Motor Factors Limited and Gildea where the Labour Court had held that an employee who refused to transfer does not become entitled to redundancy under the 1967 Act. A similar approach was taken by the Labour Court in case RPD1710.