

## **Redundancy Payment Acts, 1967 – 2014**

In a case of Instore Merchandising and Demonstrating Limited and Colley RPD191 the Court had to deal with a situation where the employee had never been given a contract of employment.

The Court looked at Section 11 (2) of the Act which describes the circumstances of short time within a meaning which could be applied in the particular case as the Claimant's potential remuneration was less than half of existing pay under a new proposed arrangement. However, the Court pointed out that provision was qualified by the time requirement set out in Section 12 of the Act before this could be claimed. The Claimant has not been on short time for four or more consecutive weeks or for six or more weeks within a thirteen-week period and therefore Section 11 (2) was not applicable. The Court pointed out that they were of the view that the contract which the employee has was effectively an "if and when" contract. The Court held that no redundancy had taken place.

While it was not covered in this case, it is interesting that it was claimed by the employee that she had never resigned but indicated simply that she would not accept one day's work every week. There is a provision in the Redundancy Legislation that if there is a breach of contract when an employee can immediately resign and claim redundancy. The Labour Court have recently ruled on such a case.

The other interesting aspect is that the employee would have been better working one day every week for four consecutive weeks and then may well have come within the provisions of Section 11 (2) of the Act. Even if the contract at that stage had been an "if and when" contract, as held by the Labour Court in this case, the employee would still have been able to rely on Section 11 if her remuneration was less than half the existing pay that she would have been receiving.

This case would appear to indicate the importance of employee's getting advice before deciding to bring a redundancy claim. The employer was represented. The employee was not.

Unfortunately, there is no legal aid in this country for such employees. Saying this, the Labour Court, where there is an unrepresented party do take this into account in looking at matters for the purposes of ensuring that the employer or the employee in this case gets a full

and fair hearing and that arguments which could be advanced by the employee would effectively be addressed.