

Redundancy after Resigning – It is possible

The case of Drumcondra Childcare Limited and Szumera RPD1814 is an interesting case concerning the application of the Redundancy Payments Act 1967. The facts of this case are interesting and were agreed by the parties. The employee was employed as a part time cleaner. She was placed on temporary lay off on 25 August 2017 until 1 January 2018. After a period of 4 weeks on temporary lay off the employee wrote to the respondent terminating her employment with effect from 1 January 2018. The employee contended that pursuant to Section 12(2) of the Act she was entitled to Statutory Redundancy. The employer contended that it served a counter letter on the complainant offering her a period of continuous employment but this was not done within the time frame of 7 days from the date of receipt of the employees' intention to claim provided for in Section 13(2) of the Act. The Court set out the provisions of Section 12 and 13. The Court helpfully set out the case of Industrial Yarns Limited v. Leo Greene and Another 1984 ILRM15 at page 20 where Costello J (as he then was) stated:

“the S.12 procedure was amended by S.11 of the 1971 Act. After the employer had served the S.11 notice of lay off, the employee could now serve one of two notices;

Either (a) A Notice of Intention to claim redundancy

or

(b) A notice terminating his contract (which is deemed to be a notice to claim a redundancy payment). He cannot serve both”.

The Labour Court held that as the claim fell squarely within the meaning of Section 12(2) of the Act. The letter sent by the employee to the employer informing the employer, after she had been on a period of enforced lay off of longer than 4 weeks, is to be deemed in accordance with Section 12(2) of the Act to be a notice of intention to claim a redundancy lump sum payment. The Court held that the claim was not defeated by the Respondent within the meaning of Section 13 of the Act by serving a counter notice within the relevant time period. The employee had commenced employment on the 1st March 2012. The Court held that the relevant termination date for the purposes of redundancy was 1 January 2018 and set out her weekly rate of pay. We would comment that normally an employee in such circumstances will serve a notice of intention to claim redundancy payment. That form, as produced, provides for the counter notice. By using the alternate method of simply sending a letter terminating the

contract some employers may not then be aware that this is in fact, pursuant to Section 12(2) deemed to be a notice to claim a redundancy payment.