

Notice of Termination of an Employment*

The legal issue in relation to this arose in case ADJ-00026668 where the Adjudication Officer helpfully set out the issue relating to whether the necessity for written notice has to be given. The Adjudication Officer pointed out that the question of the necessity for written notice was addressed in the Supreme Court judgement in Boland's Limited (in Receivership) -v- Ward 1988 ILRN382 where Henchy J stated that the form of notice is not provided for in the Act of 1973, being the Minimum Notice and Terms of Employment Act and does not even require to be in writing when the Court held

"...the Act is concerned only with the period referred to as the notice, and it matters not what form the notice takes so long as it conveys to the employee that it is proposed that he will lose his employment at the end of a period which is expressed or necessarily implied in that notice. There is nothing in the Act to suggest that the notice should be stringently or technically construed as if it were analogous to a notice to quit. If the notice actually given (whether orally or in writing), is one document or in a number of documents – conveys to the employee that at the end of that period expressly or impliedly referred to in the notice or notices it is proposed to terminate his or her employment, the only question normally arising under the Act is whether the period of notice is less than the statutory minimum..."

The Adjudication Officer in that case stated that it appeared that the complainant was asserting that a redundancy is only affected when it is notified to an employee in writing.

The Adjudication Officer referred to Section 17 of the Redundancy Payment Act which provides in sub section (1)

"An employer who proposes to dismiss by reason of redundancy an employee who has not less than 104 weeks service with that employer shall, not later than two weeks before the date of the dismissal, give to the employee notice in writing of the proposed dismissal"

The Adjudication Officer held in light of the above that the Respondent was not required to provide the Complainant with notice of the termination of his employment in writing. The Adjudication Officer held as a result of an email the Complainant sent that the

Complainant was aware that his employment was due to be terminated.

We fully understand the decision of the Adjudication Officer in relying on the dictum in Boland's Limited but that case related to one under the Minimum Notice Legislation. In our view the provisions of Section 7 of the Redundancy Payment Act is different and the notice is required to be in writing as the words "in writing" are specifically stated in the legislation. In our view the fact that an employee would be aware that their employment was due to finish, due to redundancy is not relevant. The question is whether the appropriate notification was actually sent in writing.

Now when we use the word "*in writing*" that is a wide term now. It would include an email. It would not have to be a letter. That would be normal when the Redundancy Payment Act came into place in that email was not available. It might even include a text message.

It is always our advice that employers issue any notification in writing. That can be sent by post and a copy can be sent by email. It is having appropriate records which resolve cases and avoid cases going to the WRC.

Saying this however we are firmly of the view that any notification of termination of employment by reason of redundancy must be a notice given in writing.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

***In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**