



Constructive Dismissal *

In case ADJ2858 the Adjudication Officer in this case very helpfully set out the test to be applied where an employee claims constructive dismissal.

The Adjudication Officer set out the decision of Mr. Justice Finnegan in the case of Berber –v- Dunnes Stores [2009] ELR61 where it was said;

“The conduct of the employer complained of must be unreasonable and without proper cause and its effect on the employee must be judged objectively, reasonably and sensibly in order to determine if it is as such that the employee cannot be expected to put up with it.

It is very useful that this decision sets out the law in such a precise way.

In case ADJ 1003 an issue arose in a constructive dismissal case that the employee had not used the internal grievance procedure. The Adjudication Officer in this case helpfully pointed out that the employee had on a number of occasions raised particular issues but had been “fobbed off”.

The requirement in relation to constructive dismissal is that the employee must be in a position to show that they have no alternative but to leave. The fact that an employee has not gone through a formal grievance procedure is not in itself the end of a claim by an employee. Where issues are raised by an employee with their employer and they are not addressed even though the formal grievance procedure has not been invoked this may be sufficient in itself.

Employers should be very slow to dismiss complaints by employees without investigating them. If the employee has raised a grievance then it is a matter for an employer to at least indicate to an employee that there is an internal grievance procedure and to invite the employee to use same.



Failure to do so could be detrimental to an employer in a subsequent claim.

***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 portion or percentage of any award of settlement.**