



Unfair Dismissal – Getting the Contract Right*

Sometimes you come across a case which shouts out that the importance of employers having a proper contract. One of these is ADJ929. In that case the employer contended the dismissal of the employee who had penalty points was fair and reasonable. The employer contended that the contract of employment provided that the employment was contingent on the company being able to maintain a suitable policy of insurance entitling the employee to drive a vehicle. The contract provided that in the event the company was unable to obtain insurance or if the insurance premium was prohibitive the company would be able to terminate the contract on notice.

The Adjudication Officer in this case held that Section 6 (4) (d) of the Act must be dealt with on the basis that a situation which arises after the fact cannot be used to justify the dismissal in the absence of a clear and unambiguous contractual provision or parameters as it relates to penalty points on the first instance.

If an employer is going to have a policy where an employee can be dismissed for having excessive penalty points or having any penalty points it is important that this is very clearly set out in the contract of employment. In this case the employer had an award of €16,000 made against him.

Simply having a clause in a contract which is not clear and precise will not enable an employer to terminate an employment.

In the case of drivers a company needs to have a policy which will set out how many points will result in the employer being entitled to terminate the employment. If an employer does so however, the employer must be very careful to ensure that following the decision of the High Court in Governor and Company Bank of Ireland and Kelly which is a 2015 decision that this policy will have to be applied across the board. Therefore if an employer sets out that after four penalty points or five penalty points or however many penalty points that this



is a disciplinary matter which can result in dismissal then the employer will be obliged once they become aware of penalty points for any driver to apply that provision equally. The case highlights the importance of appropriate contracts of employment.

***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.**