TALBOT

/150

1983 No. 407 Sp

TALBOT IRELAND LIMITED

AND

THE MINISTER FOR LABOUR AND OTHERS

Judgment of Mr. Justice Barron delivered the 12th day of December 1984.

This is an appeal on a point of law from a decision of the Employment Appeals Tribunal given on the 7th of July, 1983 in relation to a claim by the individual respondents against the applicant for their respective statutory redundancy payments.

In its decision the Tribunal set out the following facts:-

"The appellants (the individual respondents) were employed in production car assembly by the respondent company (the applicant). Early in 1981 they were informed by the company that they were being made redundant and were given two weeks' notice. A strike followed this announcement and the appellants took over the plant and placed pickets. Several court cases and injunctions followed and discussions between the respondent company and the shop's committee regarding the redundancy situation took place. After lengthy discussions with government representatives and the I.D.A., an agreement was signed by the Government, the I.C.T.U.,

the A.T. & G.W.U., the I.T. & G.W.U. and the respondent company. The employees affected by this agreement signed letters of resignation on the 16th of June, 1981 and acknowledged payments of moneys "as full and final settlement of any claim" against the respondent company. Redundancy certificates were not issued to the employees."

The Tribunal's decision was set out as follows:-

"On perusal of the executed agreement between the parties and the letters of resignation signed by the appellants, purporting to be in full and final settlement of any claim which they had against the company the following is clear:-

(1) The respondent company did not pay to the appellants any moneys on foot of their statutory entitlement under the Redundancy Payments Acts 1967 to 1979 nor were redundancy certificates issued.

(2) It was envisaged by the Government that suitable alternative employment would be found and in the event of redundancy occurring therein, the statutory redundancy payments would "be related to the number of years service of the men during their employment at Talbot".

(3) The suitable alternative employment referred to above did not materialise.

(4) The acceptance by the appellants of payment of sums purported to be in full and final settlement of any claim they had against the company, cannot, in the light of Section 51 of the Redundancy Payments Act, 1967, be taken to have resulted in a forfeiture of their statutory rights.

Section 51 states:-

"Any provision in an agreement (whether a contract of employment or not) shall be void insofar as it purports to exclude or limit the operation of any provision of this Act."

(5) Therefore the Tribunal is satisfied that the appellants are entitled to redundancy payments as set out in the schedule attached hereto. They are fortified in this opinion by the decision of the High Court In the Matter of the Redundancy Payments Act 1967 "The Minister for Labour and Daniel P. O'Connor and Irish Dunlop Company Limited, No. 253 of 1972."

The agreement referred to in the decision of the Tribunal was as follows:-

"Agreement between the Government, Talbot Ireland, the A.T.G.W.U. and I.C.T.U. in regard to the 90 assembly workers.

(1) The Government are fully confident that the I.D.A., who are actively engaged in finding a suitable viable project or projects to provide alternative employment for the 90 assembly workers, will be able to set up such a project within a period of six months. The type of employment will be comparable in nature to the existing assembly employment; the wages and conditions will be negotiated by the Trade Unions on the terms appropriate to the new employment. In the event of redundancy occurring in the new company the Government will ensure that the statutory redundancy payments will be related to the number of years service of the men during their employment at Talbot.

(2) The company have agreed to sell or lease all or parts of their Dublin factory for the proposed project and the necessary negotiations and valuations are in progress. In the event of the factory not proving suitable for a new project, it will be the intention to locate the project in suitable premises in the area, e.g. the Airways Estate.

(3) (a) During the interim period to 16th October, 1981, the workers will be given training appropriate to the employment mentioned in paragraph (1) and receive ANCO training allowances and pay related benefits as from the entering into force of this agreement. ANCO will arrange for credit and Social Welfare contributions during the training period and holiday leave at the rate of 1½ days per month will be provided.

(b) During this period to 16th October, 1981, the company will make up the difference between the ANCO basic training allowances and the pay related benefits to the value of the average take home pay of the workers during the period 1st November, 1980 to 31st January, 1981.

(c) During this interim period to 16th October, 1981 payments will ensure that the take home pay of workers in the interim period from 17th April, 1981 will be maintained.

(4) If by the 16th October an I.D.A. funded project as referred to in paragraph (1) has not provided employment the Government will arrange to continue until such time as this employment has been provided and until the ANCO

training has been completed to make up the basic training grants and pay related benefits to the value of the average earnings as calculated in 3 (b) above subject to any increases as a result of adjustments to wage levels arising from increases granted under national pay policies. When the training has been completed and if the employment referred to in paragraph (1) has not yet been provided, the Government will continue to maintain the average earnings defined in the previous sentence.

(5) (a) The company undertakes that each of the 90 workers shall be paid two full weeks pay for each year of service plus a sum in lieu of notice. The total amount will be paid by 17th June. For this payment only, service will be calculated up to October 16th, 1981. Twenty-six weeks service or over will be counted as one full year.

(b) The company will also pay an ex gratia sum calculated on the basis of 17½ days leave to each worker.

(c) The company and Trade Union will jointly review the pension and insurance schemes with a view to the transfer to the workers of the entire benefits and rights of the schemes, if

the trust deed so permits.

(d) It is intended to submit this agreement to the Labour Court for registration as a registered employment agreement under Section 25 of the Industrial Relations Act 1946."

The letter signed by each of the workers was as follows:-

"In recognition of the agreement between my Trade Union (A.T.G.W.U.), I.C.T.U., the Government and the Company dated 10th June 1981, I acknowledge payment of £ as full and final settlement of any claim I have against the company other than any payment outlined in (3) of the above agreement or payments available to me as a member of the Talbot workers' pension scheme. I hereby resign from the company."

It was submitted on behalf of the applicant that the agreement entered into by the parties and the letter of resignation as signed by each of the workers established an agreement whereby the workers gave up their right to statutory redundancy payments. The applicant submitted that in effect the workers had compromised their right to statutory redundancy payments and had instead resigned as a result of which no such payments became payable. The respondents contended that the only inference from the findings of fact of the Tribunal was that there had

been a dismissal for redundancy and that in the absence of any redundancy certificate the Tribunal was correct in law in holding the workers entitled to their statutory redundancy payments.

A similar situation to the present occurred in the Minister for Labour -v- Daniel P. O'Connor and Irish Dunlop Company Limited a decision of Kenny J. delivered on the 6th of March, 1973. In that case the company wished to dismiss the worker because of redundancy and negotiated with the worker the terms upon which he would accept dismissal. A sum was agreed which the company maintained was in discharge of all liabilities and claims including the claim of the worker to statutory redundancy payment while the worker maintained that he was to get the agreed sum and the statutory payment. The matter came before Kenny J. as an appeal from the Redundancy Appeals Tribunal which had rejected the workers' claim to receive statutory redundancy payment. Kenny J. dealt with the appeal on the basis that the amount of the statutory redundancy payment was not mentioned during the negotiations between the company and the worker and was never agreed between the worker and the company. In the event he upheld the worker's claim to statutory redundancy payment. The question arose as to whether the claim by the worker had to succeed in the absence of the

issue of a redundancy certificate by the employer. In relation to this question, Kenny J. in the course of his judgment said:-

> "I do not accept the view .... that an employer who pays the employee an amount equal to or greater than the statutory lump sum but who does not issue a redundancy certificate to the employee cannot in any circumstances prove that the amount paid was in discharge of the statutory liability. Section 18 should be interpreted in a purposive manner and so the Court must decide what aim the Oireachtas had in inserting it in the Act. Its two main purposes were to show the employee the amount of the lump sum and how this had been calculated. One of the results of this is that an employer who has agreed to pay a sum greater than the statutory lump sum but who has not given a redundancy certificate to the employee is liable to pay the statutory lump sum in addition to the agreed sum unless he establishes that when the amount agreed was paid, the employee knew the amount of the statutory lump sum and had agreed to accept the sum paid in discharge of the employer's statutory obligation."

In my view Kenny J. is saying no more than that anyone with full knowledge of his or her legal position is fully entitled to enter into

any bargain he or she wishes and that there is nothing in the Redundancy Payments Act 1967 to the contrary.

P.M.P.A. Insurance Company Limited -v- Keenan & Ors. an unreported decision of the Supreme Court delivered on the 27th day of July, 1983 is even closer on its facts to the present case. In that case there was an appeal on a point of law from a determination of the Labour Court in a matter arising under the Anti-Discrimination (Pay) Act 1974. In that case certain female employees of the Insurance Company became entitled to equal pay with certain male employees of the same company by virtue of the coming into operation of the Act on the 31st of December, 1975. Negotiations took place between the employees' union and the company on a number of matters including equal pay. A comprehensive agreement was reached between the union and the company on a number of matters including the implementation of a new unisex salary structure with effect from the 1st of April, 1978. The agreement was contained in letters passing between the company and the union. The letter from the company to the union concluded with the following words:-

"The proposals are made on the understanding that they are in full and final settlement of all claims, and that no claims of a cost increasing nature will be made for the duration of

the 1978 national wage agreement."

This basis of the agreement was accepted by the union. Subsequently the workers claimed equal pay for the period from the coming into force of the Act on the 31st of December, 1975 to the date when the negotiated agreement took effect i.e. 1st April, 1978. The appeal was decided upon the proper construction of the words "all claims" contained in the correspondence. The judgment of the Supreme Court was delivered by Henchy J. who said in the course of his judgment:-

> "Counsel for the P.M.P.A. contends that "all claims" in that sentence should be construed as including the present claim. I think not. The words "all claims" should be held to include no more than salary claims made in the negotiations leading to that settlement, and there is no evidence that the present claim came up in those negotiations."

Again the Court is indicating that a party may enter into an agreement in relation to his or her statutory rights and the question whether or not such rights have been lost is a matter for the proper construction of the agreement itself.

The Tribunal has held in the present case that the acceptance of the moneys payable under the agreement could not result in a forfeiture

of statutory rights since such a result would be contrary to the provisions of Section 51 of the Redundancy Payments Act 1967. This is not correct, nor is this conclusion supported by the decision in the Minister for Labour and O'Connor & Another. There is nothing in the agreement which purports to limit or exclude the right to statutory redundancy payment.

The sole issue which the Tribunal had to determine was in effect an issue of fact:-

> Was the claim to statutory redundancy payment discussed in the course of the negotiations leading up to the making of the agreement and the signing of the letters of resignation?

Since the Tribunal did not address itself to this issue, its decision is bad in law.

There is nothing from the findings of fact contained in its decision from which a Court could say that it would be perverse of the Tribunal to decide this issue either for or against the appellants. Accordingly, the matter must be sent back to be re-heard on this issue.

Henry Barron

12th December 1984