

## THE HIGH COURT

IN THE MATTER OF THE EVANHENRY LIMITED  
AND IN THE MATTER OF THE COMPANIES ACT 1963 TO 1983

Judgment of Mr. Justice Murphy delivered the 15th day of  
May, 1986.

The Motion herein concerns the legal principles applicable in determining the date as of which employees of a company are dismissed where an Order of the winding up of the employer company has been made by the Court.

Evanhenry Limited (the Company) employed a number of workers in and prior to the month of February 1984. On the 15th February 1984 the Company presented a Petition to the High Court. On the same day an application was made for an Order appointing Mr. Daniel Delaney as Provisional Liquidator thereof. That Order was granted. The powers conferred upon the Provisional Liquidator included the power "to carry on the business of the Company so far as he (the Provisional Liquidator) deems necessary".

On the 12th day of March 1984 an Order was made for the winding up of the Company by the Court but no Official Liquidator was appointed on that date. Instead Mr. Daniel Delaney was continued as Provisional Liquidator. It was not until the 2nd day of April 1984 that Mr. Hugh Cooney was appointed Official Liquidator in place of the Provisional Liquidator.

The evidence before the Court in connection with the present application consists of an Affidavit by Mr. Hugh Cooney

sworn on the 19th day of July 1985 and certain redundancy notices exhibited therein. No Affidavit was filed on behalf of the Provisional Liquidator or any of the employees so that there is no direct evidence before the Court as to any arrangements or agreements made between the parties concerned at the time of the appointment of the Provisional Liquidator. In his Affidavit Mr. Cooney deals with the employees whose rights are under consideration in two categories, first "the Nine Employees" and secondly what he describes as "the Mater Employees". Of the nine employees he says that having looked into the affairs of the Company subsequent to his appointment as Official Liquidator that he discovered that the nine employees had apparently been specifically requested by the Provisional Liquidator to continue working for the Company. On the 5th day of April 1984 that is, to say, some three days after his appointment as Official Liquidator and some seven weeks after the appointment of the Provisional Liquidator, Mr. Cooney gave notice to seven of the nine employees that their employment was being terminated by reason of redundancy. Similar notice was given to the remainder of the nine employees on the 31st day of May 1984 and the 20th of June 1984 respectively.

With regard to the Mater employees Mr. Cooney was careful to say that the history of their relationship with the Company and the Provisional Liquidator was not fully clear to him. All he could say was that it seemed to him that prior to the presentation of the Petition that the Company had purported to assign to another Company called "Precision Electric Ireland Limited" on the 10th day of February 1984 the benefit of a contract which the Company had with the Mater Hospital. It then appeared to Mr. Cooney that there was information to

suggest that the Mater employees were then told that they were working on behalf of Precision Electric (Ireland) Limited and not on behalf of the Company. However, when the Provisional Liquidator was appointed on the 15th February 1984 it seems that he paid the Mater employees some arrears of wages and paid the then current wages up to the 22nd of February 1984 after which redundancy notices were served on the Mater employees by the Provisional Liquidator on the 24th of February 1984. In these circumstances the Official Liquidator is anxious to ascertain as of what date or dates these employees were dismissed from the employment of the Company so as to determine their right to compensation under the Minimum Notice and Terms of Employment Act 1973. In the case of the Mater employees it is suggested that the termination of their employment with the Company may have predated the commencement of the winding up.

Alternatively in relation to those employees and the nine employees it is suggested that the employment may have terminated either on the 15th day of February 1984 when the Petition was presented and the Provisional Liquidator appointed or on the 12th day of March 1984 when the Order for winding up was made. Indeed consideration was also given to the suggestion that the employment may have terminated later still, either on the 2nd of April 1984 when the Official Liquidator was ultimately appointed or on the date or dates when the redundancy notices were given respectively by the Provisional or Official Liquidator.

In relation to the Mater employees it does seem to me on the very limited evidence available that the attempt to transfer the Company's employees or some of them into the employment of another party was never accepted by those employees nor seriously persisted in by the Company or its Provisional Liquidator.

Accordingly I see no reason for making any distinction in respect of those employees by virtue of that particular circumstance.

The effect of a winding up Order on a contract of employment between a company and its employees was considered by the learned President in the case of Donnelly .v. Gleeson & O in a judgment which was delivered on the 11th of July 1978 but not as yet reported. In that case the President accepted as established law the following propositions:-

- (a) that a Court Order for the winding up of a company is in the ordinary case deemed to be a discharge of the company's servants;
- (b) that a servant can, however, be kept on in the same terms as his original contract by being specifically requested to do so and
- (c) that the effect of a winding up Order as a notice of discharge can be waived

Referring to the facts of the case before him the President pointed out that the Petition therein had been presented on the 26th of May 1977 and that Mr. Donnelly had been appointed Provisional Liquidator on that date. The winding up Order was made on the 20th June 1977. In the Order appointing him Provisional Liquidator Mr. Donnelly was given liberty to carry on the business of the company so far as was necessary for the beneficial winding up thereof. In those circumstances the President held that the appointment of the Provisional Liquidator did not amount to notice of discharge of the employees of the company.

It seems to me that the decision of the President in that regard is equally applicable to the facts of the present case

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and accordingly I conclude that neither the presentation of the Petition nor the appointment of the Provisional Liquidator constituted notice of dismissal of the employees of the Company.

On the other hand it does appear that the Company acting through the Provisional Liquidator Mr. Delaney did purport to issue redundancy notices to all of the Mater employees. There is some confusion as to the date given in this notice as to the purported termination of the employment. It appears to have been the 22nd of February 1984 rather than the 15th of February 1984 but apart from that detail there can be no reason to doubt that the employment of these employees was consciously - as opposed to impliedly - terminated by the Provisional Liquidator acting on behalf of the Company.

In relation to the nine employees. Their employment continued until the 12th of March 1984 at the least. The first question that arises in relation to these employees is whether the Order made on that date constituted notice of dismissal. In my view - again applying the decision of the President in Donnelly and Gleeson - it did. However, perhaps the more appropriate question to pose is whether there was anything in the circumstances of the present case which would justify rejecting the ordinary presumption as to termination in respect of all or any of the "nine employees".

Whilst the delay which did occur between the making of the winding up Order and the appointment of the Official Liquidator was to some extent unusual it was not a factor which, so far as I am aware, affected in any way the relationship between the Company and its employees. Insofar as the actions of the Official

Liquidator are concerned it is clear that he took steps promptly upon his appointment to give redundancy notices in respect of seven of the nine employees. It seems to me, therefore, that in respect of these seven employees that the ordinary presumption as to the effect of the winding up Order on employment applies.

As to the remaining two of the nine employees: the services of the last of these employees were not dispensed with until more than three months after the making of the winding up Order. In the circumstances it seems to me reasonable to infer that either expressly or by implication some new arrangement or agreement was entered into between the Official Liquidator and the two employees concerned. In the absence of any evidence that any change was envisaged by either party I can only conclude that the implied or express agreement involved minimal alterations and indeed consisted solely of the continuation of the employment of these two employees by the Company until their employment was finally determined by the Company (acting by the Official Liquidator) on the 31st of May and 20th of June 1984 respectively.

Having decided the various dates on which the various employees were given notice of their dismissal I propose to put the matter back in the list for argument by Counsel on behalf of the parties as to how - and indeed perhaps where - the outstanding issues should now be processed. It does seem certain that additional evidence will be necessary before any effort could be made to quantify the amounts to which any employee is entitled.

*Francis D. Murphy*