

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
7 Employees

CASE NO.
TU6/2005
TU8/2005
TU9/2005
TU10/2005
TU11/2005
TU12/2005
TU13/2005

against the decision of the Rights Commissioner in the case of

2 Employers

under

**EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYEES ON TRANSFER OF
UNDERTAKINGS) REGULATIONS 2003**

CLAIMS OF:

Sean Dolan, 40 Drumlease, Dromahair, Co. Leitrim

CASE NO.
UD774/2005
RP347/2005
MN552/2005

WT220/2005

against the same respondents as in TU6/2005 etc. above

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan BL

Members: Mr. D. Morrison
Mr P. Clarke

heard this claim at Sligo on 20 July 2006

Representation:

Claimants / Appellants:

Mr. Anthony McCormack, SIPTU Sligo Branch,
Hanson Retail Park, Cleveragh, Sligo

Respondents:

Mr. Eamonn Dillon, Michael Glynn & Co., Solicitors,
Cecil House, 6 Lower Cecil Street, Limerick on behalf of
The first named respondent

Mr. Alan Haugh, BL, IBEC, 11/12 Mill Court,
The Diamond, Donegal Town on behalf of the second named respondent

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by seven employees against a decision of the Rights Commissioner R-031021-TU-04/TB in the case of two employers (the respondents). The first named appellant also brought a claim under four Acts against the same respondents.

There were two preliminary issues to deal with in that the appeals against the decision of the Rights Commissioner had been lodged outside the six weeks from the date on which the decision had been communicated to the parties as provided in Regulation 11, paragraph 2 of the regulations. The second preliminary issue was that the claim under the Unfair Dismissals Acts, 1977 to 2001 had been lodged outside the six-month period from the date of dismissal. The Tribunal found that it had jurisdiction to hear the appeals following the application of Regulation 11 paragraph 4f which provides that *any matters consequential on, or incidental to, the foregoing matters* may be taken into account when considering any such greater period than six weeks as The Tribunal determines in the particular circumstances. The Tribunal found that it had jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2001 as exceptional circumstance had prevented the claim being lodged in the six-month period from the date of dismissal but within twelve months.

The first named respondent (FNR) employed the first appellant in a cleaning role in an educational institution (EI) from 16 October 2000. This employment was uneventful until September 2003 when FNR lost the contract to clean EI. This contract was awarded to the second named respondent (SNR) and the first appellant transferred to the employment of SNR, by agreement with continuity of service. SNR employed the other appellants over the next four months. By June 2004 EI had become dissatisfied with the service provided by SNR and dispensed with their services and again called on FNR to provide the cleaning service from 26 June 2004. Whilst SNR took the view that this was a transfer of undertakings, FNR took the view that it was not a transfer of undertakings and declined to take on the appellants. Rather FNR used its own employees to provide the cleaning service in EI.

Determination

By majority, with Mr. Clarke dissenting, the Tribunal is satisfied that the situation in June 2004 when FNR took over from SNR did not constitute a transfer of undertakings as provided in the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. Mr. Clarke in his dissenting opinion found that the overriding objective of the Regulations is to protect the accumulated rights of the appellant. In this case it was accepted by both respondents that a transfer of undertakings had taken place in September 2003. SNR subsequently lost the contract to FNR prior to the expiry date of SNR's contract with EI. Mr. Clarke's view is that in all the circumstances the change of employer represented a transfer of an asset and that the regulations governing such transfers should apply in this case. Accordingly, by majority, the Tribunal affirms the decision of the Rights Commissioner and the appeals under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 fail.

The Tribunal, having found that no transfer of undertakings existed in this case, is satisfied that the claimant was dismissed by reason of redundancy by SNR. Accordingly the claim under the Unfair Dismissals Acts, 1977 To 2001 must fail. The Tribunal finds that the appellant is entitled to payment under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria.

Date of Birth	17 August 1952
Employment commenced	16 October 2000
Employment ended	25 June 2004
Gross weekly pay	€343-61

The Tribunal awards the sum of €687-22, being two weeks' pay, under the Minimum Notice And Terms Of Employment Acts, 1973 To 2001. No evidence having been adduced, the claim under the Organisation Of Working Time Act, 1997 must fail. For the avoidance of doubt the awards under both the Redundancy Payments Acts and the Minimum Notice And Terms Of Employment Acts are against the second named respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)