

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

UD321/2006

against

MN179/2006

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. McGrath

Members: Mr. D. Winston
Mr. G. Lamon

heard these claims at Naas on 23 March 2007

Representation:

Appellants:

XXXX

Respondent:

XXXX

The determination of the Tribunal was as follows:

The respondent employed the claimant as a cleaner in their public house. The respondent, as transferee, took over the public house in a transfer of the undertaking from the transferor in August 2005. The transferor did not notify the respondent that the claimant was an employee. Whilst the claimant was unable to produce any documentation to show that she had been an employee, her position was that she had been employed since July 1999, the respondent accepted that both members of staff that they were told about by the transferor confirmed that the claimant had worked for the transferor. As the respondent was not told about the claimant by the transferor and could produce no documentation to prove her assertion that she was an employee of long standing the General Manager interviewed her for the position as cleaner and appointed her in that position from shortly after the transfer. The claimant's position was that she worked on Thursday, Saturday and Sunday mornings. The General Manager was unhappy with the claimant's performance and provided her with a note of what was expected, the note did not express any dissatisfaction with her work. The General Manager remained unhappy with the claimant's performance and, when she did not attend work on Friday 15 September 2005, as she was unavailable as well as it not being her

regular day to work, took the decision to dismiss her. The claimant turned up for work on Saturday 16 September 2005 to find that the premises were cleaned and that her services were no longer required.

Determination:

The Tribunal has carefully considered the evidence presented before it in this difficult case. There has clearly been a Transfer of Undertakings situation in which the respondent took over the premises wherein the claimant had worked for the previous six years. The Transfer took place in or about August 2005. The Tribunal had very little evidence presented to it regarding the negotiations around the Transfer. The General Manager stated that he took much of his information orally. In particular when the General Manager stated that when he was told about which employees came with the Transfer the claimant was not mentioned. The General Manager does however accept that the claimant probably did have an employment relationship with the transferor and of significance is the fact that it seems likely and was generally accepted that those employees that did transfer would have known that the claimant worked a pattern of Thursday, Saturday and Sunday mornings. In a Transfer of Undertakings situation the onus rests with the employer, be it transferor or transferee to keep the employee in the loop. The Tribunal cannot fault an employee (in particular one who is a part-time cleaner) who has been overlooked and neglected in both a financial and legal transaction of this magnitude.

It is accepted by this Tribunal on the evidence adduced that the claimant had worked for over six years and that she was dismissed without notice and in violation of her rights as an employee trying to find her feet in a new situation. The Tribunal notes that the claimant has not mitigated her losses and in the current climate it is assumed that she should have found further employment within six months. The Tribunal awards the claimant €3,000-00 under the Unfair Dismissals Acts, 1977 to 2001. The Tribunal further awards €520-00, being four weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)