

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
Employee  
MN406/2006  
against

CASE NO.  
RP327/2006

Employer

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley  
Members: Mr G. Phelan  
Mr J. Le Cumbre

heard this appeal at Roscrea on 25th June 2007

#### Representation:

Appellant: In person

Respondent: Mr. Bill O'Brien BL instructed by Geraldine Maher of O'Meara & Co Solicitors, Clare Street, Nenagh, Co. Tipperary

The decision of the Tribunal was as follows:

#### **Claimant's case:**

The Tribunal heard evidence from the Claimant. The Claimant was employed by the Respondent in his public house business. When she heard that the Respondent's business was sold she contacted the owner (Mr. S) to ascertain her position with regard to employment and redundancy. The Claimant's clear evidence is that she was reassured on several occasions by the Respondent that redundancy was a matter for the new owners. She sought other advice and was told that the onus regarding any redundancy payment was on the outgoing owners. She contacted the new owners who told her that they had no problem paying the redundancy but that they could not obtain the rebate and therefore did not want to pay the lump sum. She went to Mr. S to obtain holiday pay owed to her. He had accessed the Redundancy Payment web site of Department Enterprise Trade And Employment (DETE) to ascertain her redundancy payment amount. He did this to show her the amount she would be due.

The new owners told her that it was not a transfer of business, that they had just bought the building. Mr. S told her that all the employees had transferred.

The Claimant explained when asked that she thought that the business closed down for a short period. The last time she worked there was in or around 7<sup>th</sup> January 2006. She had heard the business was sold in or around 9<sup>th</sup> January.

When she spoke to Mr. S and his wife they told her that they had handed the new owners a list of all the employees. To the Claimant's knowledge all the staff had received a phone call from the new owners. She herself did not receive a phone call from the new owners. She did not approach the new owners for a job. Because the other staff had received phone calls and she had not she assumed that the new owners did not want her. She never worked for the new owners.

The Claimant confirmed that she spoke to Mr. S circa 9<sup>th</sup> January and he explained that he was selling the business he told her that their jobs were fine and the new owners would be in touch with them.

It was put to the Claimant in cross examination that Mr. S would give evidence that she told him that she was not interested in working for the new owners. The Claimant agreed and explained that it was because there was a lot of animosity between Mr. S and the new owners. She also explained that she never refused an offer of work from the new owners because they never approached her with a job offer. She agreed that Mr. S never told her that her job was finished and that he told her that her job would be carried over. She explained that it was not personal with Mr. S and that the new owners said that they would pay if they had authorisation. She also stated that this was the advice from DETE.

The Claimant explained when asked that Mr. S printed out the redundancy information from the web site for her to give to the new owners. She agreed it was because he could not get a rebate. She also spoke to the accountant for the new owners and they also said that they could not get a rebate therefore both Mr. S and the new owners told her they could not get a rebate.

The Claimant was asked if when at the time the new owners took over the business she had a job and she replied, "Yes".

The Claimant in answering questions from the Tribunal regarding notice explained that she took holidays at the end of her time with the Respondent and she was paid her holiday pay.

### **Respondent's case:**

Mr. S gave evidence to the Tribunal. He explained that the business was sold as a going concern. There was a stock evaluation done on the closing day and the new owners paid for the stock. It was sold on 26<sup>th</sup> January 2006 and was still trading.

He supplied a list of the employees to the new owners. The new owners were familiar with the employees, as they also owned other premises nearby. He told all the employees that their jobs were secure and he forwarded a list of the employees to the new owners. He also discussed the matter with his solicitor and his accountant.

Mr. S was asked what the Claimant said to him when he told her about the situation. He explained that she told him that she "Wouldn't work for those people". He told her that it was her decision but that they were obliged to continue her job. He did not tell that Claimant that he was making her redundant or that he was terminating her employment.

He looked into the web site for the Claimant to show her that he would have no problem paying out redundancy, "If legislation showed that I would get the rebate". He explained, "So I showed her my hands were tied, I couldn't get the rebate".

**Determination:**

The evidence of both parties was that the business was sold as a going concern; both the Claimant and the Respondent gave evidence of a transfer of undertaking.

Based on that premise the Tribunal is unable to find evidence from the Claimant or Respondent of a valid redundancy adversely affecting the Claimant. The Tribunal is unable to find that the actions of the Transferor (the Respondent in this case) give rise to a valid claim for redundancy on the Claimant's part. The claim under the Redundancy Payments, Acts, 1977 to 2001, fails.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)