

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
Employee
RP608/2006

CASE NO.
UD1218/2006

against

Respondent 1.
Respondent 2.

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley
Members: Mr G. Phelan
Dr. A. Clune

heard this claim at Limerick on 29th January 2008

Representation:

Claimant: In person

Respondents: In persons

The determination of the Tribunal was as follows:

There was a transfer of business as a going concern in this case. The first named Respondent sold the business to the second named Respondent. The business was a supermarket and post office, which had three employees. The Claimant was a post office clerk at the time of the sale. She had previously worked in the shop. Two of the employees resigned or were happy to leave the employment at around the time of the sale. The Claimant was in hospital at the time of the sale.

The Tribunal heard evidence from the first named Respondent. He told the Tribunal that the second named Respondent bought the premises. The sale was to be completed by 20th June 2005 but was not completed until 18th July 2005. He resigned as postmaster and the buyer applied and was successful in obtaining the postmaster post. The success of the sale was dependent on

he buyer obtaining the post. His accountant had previously sent a fax to the buyer's accountant with the names of the three employees. This was to let the buyer know that they had staff working for them and that Claimant was one of them. The fax was opened to the Tribunal. It was noted by the Tribunal that none of the staff were named. The witness explained that he gave the names of the employees at a later time. The buyer knew that he had to take on the employees along with the shop. He gave the employees information about the take over and told them that the buyer had to retain them.

The Claimant went to hospital for a procedure on 27th May 2005. He paid her monies she was due and her holiday pay as he knew that she would not arrive back to work until after the take over. The Claimant had asked him about redundancy before the sale was completed. He told her that he was not paying her redundancy, as her job would still be there after the sale.

The Tribunal heard evidence from the second named Respondent. He told the Tribunal that they had another supermarket at the time of the sale. He explained that he had always made it clear that they were not going to retain the employees as they had their own staff and himself and his spouse also.

When it was put to the witness that there was an obligation on him and the vendor to consult with the employees he explained that he was told there was no staff. He was told that all staff issues were dealt with and that the staff were laid-off. He was asked who did the work after the sale. He told the Tribunal, "we did it ourselves, we had staff and we probably took on someone else as well". He explained that they combined the post office duties and the shop duties to maximise their resources. He explained that he did not know who the employees were. He also explained that certificates were not handed to him.

The Tribunal heard evidence from the Claimant. She was told by the first employer that she would not get redundancy she would be "passed on to the new owner". She was never introduced to the new owner. She was out sick at the time of and after the take over and she gave her certificates into the shop. The Claimant's medical certificates were accepted by the second named Respondent continuously from the closing of the sale and the transfer of the business in July 2005 to October 2006.

Determination:

It is to be noted that neither the Transferor nor the Transferee involved in the sale of the business fulfilled the obligation set out in Regulation 8 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 S.I. 131/2003, to inform or consult the employees or their representatives of the transfer. The Tribunal notes further that the contents of the letter dated April 20th 2005 from the buyer's (second named Respondent) solicitors to the seller's (or first named Respondent) solicitors, setting out the former's intention not to keep on existing staff were not disclosed to the Claimant.

The Tribunal is satisfied the sale gave effect to the transfer of an economic entity whose function and identity were preserved. The Tribunal is further satisfied that the actions of the Transferee in not engaging the Claimant subsequent to the sale of the business amounts in all the circumstances to an unfair dismissal of the Claimant and the Tribunal determines the claim under the Unfair Dismissals Acts, 1977 to 2001 and the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 S.I. 131/2003. The Applicant's claim succeeds against the second named Respondent. Having regard to all the circumstances, including the evidence

given by the Claimant the Tribunal awards the Claimant the sum of €8,000.00.

The claim under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)