

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
RP199/2007

MN331/2007

UD470/2007

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr. D. Winston
Mr. S. O'Donnell

heard this claim at Dublin on 16th November 2007

Representation:

Claimant: Marcus Dowling B.L., instructed by BCM Hanby Wallace, Solicitors,
88 Harcourt Street, Dublin 2

Respondent: Mark Connaughton S.C., instructed by Mason Hayes & Curran, Solicitors,
South Bank House, Barrow Street, Dublin 4

The determination of the Tribunal was as follows:

The claims under the Unfair Dismissal Acts and Minimum Notice and Terms of Employment Acts were withdrawn by the claimant during the hearing.

Claimant's case:

The claimant said it was a straightforward case of redundancy and that the Directive in relation to the transfer of undertakings was irrelevant. A precedent was quoted in common law whereby a servant has the right to refuse work with a new master. The regulations protect employees who transfer to a new employer. Under section 7, (a), (b), & (c) of the Redundancy Payments Act, 1967, unless a contract is developed with someone else, redundancy arises. There was a change in the management of the company, not ownership. The employee did not agree to work with the new

employer.

Respondent's case:

The respondent said the claimant was making a separate claim under the transfer of undertakings directive before the rights commissioners. This is questionable. It is a case of transfer of undertakings and therefore there is no redundancy entitlement. The issue of redundancy requires dismissal, and did not occur in this situation. The jobs continued to exist on foot of a transfer. By definition a redundancy does not arise. Article 4.1 of the European Communities (Protection of employees on transfer of undertakings) Regulations 2003, supports their contention on this matter.

Determination:

The employee is not obliged to accept the new employer, and this is not inconsistent with the directive in relation to the transfer of undertakings.

Under the Redundancy Payments Acts, 1967 to 2003, the Tribunal finds that the claimant is entitled to a redundancy lump sum based on his commencement date of 15 October 2002, termination date of 10 November 2006, gross weekly pay of €945.11 and date of birth which was 12 April 1975.

Please note that a statutory gross weekly ceiling limit of €600.00 applies to all payments from the Social Insurance Fund. This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

