

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:

CASE NO.

Employer

TU17/2008

against the recommendation of the Rights Commissioner in the case of:

Employee

-v-

Employer

under

**TRANSFER OF UNDERTAKINGS REGULATIONS 2003**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P O'Leary, BL

Members: Mr J Hennessy  
Mr G Whyte

heard this appeal at Portlaoise on 17<sup>th</sup> February 2009

Representation:

Appellant: Ms Marie Conway, Mahon Sweeney, Solicitors,  
Main Street, Roscommon

Respondent: In person

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner Ref:r-063250-TU-08/RG

The employer is hereinafter referred to as the appellant and the employee as the respondent

**Appellant's case:**

The employee/respondent had previously worked for OCS cleaning the Paddy Power betting office in Portlaoise. In July 2007 Paddy Power terminated the contract with OCS and the employer/appellant took over that contract on 22<sup>nd</sup> July 2007. The employee received a letter stating that her service would be recognised and that her terms and conditions would be honoured. When the employee started she worked one hour seven days per week and the hour on the Sunday was paid at double time. At the beginning of 2008 all employees got notice of an increase in wages from €9.10 to €9.50 per hour. On 4<sup>th</sup> March 2008 all 400 employees were issued with a notice stating that if they worked on Sunday they were now required to work one hour on Saturday morning and one hour on Saturday evening. The Sunday was paid at double time whereas the Saturday was normal time. If they had not changed to Saturday the business would not be viable and in or around 200 employees would have lost their jobs. There were 211 employees working on the Paddy Power contract and 70% of these transferred to the employer/appellant.

The employee/respondent stated that she could not work the two separate hours on the Saturday. She had a very good record and they wanted to retain her however they could not make an exception for one employee. The employee/respondent rang the area supervisor and stated that if she had to give up her Sunday working it would not be worth her while doing the job. It was indicated that the employer/appellant would have to let her go and she was entitled to six weeks notice. Witness said she would not normally ring staff but she rang the employee/respondent urging her to stay on but she indicated that she had another job with BS. At this stage all the other staff had fallen in line with the new arrangement. Exceptions were made in the case of four employees and they continue to work on Sundays. The employee was paid any outstanding holiday entitlements and she received her P.45 six weeks later. The delay in the issuing of the P.45 was due to having to wait for the payroll to close at the end of the month. She left on 2<sup>nd</sup> May 2008.

As a company they follow to the letter of the law and staff got lots of notice of the change in working arrangement. 99% of the staff were happy and they were getting an increase in hourly rate of pay.

In answer to questions from Tribunal members witness said that in making the change from the Sunday working they did not consult the Transfer of Undertakings Directive.

The workers did not have a representative to consult with the employer in relation to these changes. All the employees were sent a letter in relation to the changes. Witness stated that the terms and conditions were almost the same as they had been prior to this. When the workers transferred the terms and conditions were the same and eight months later they made the change. Prior to taking over the Paddy Power's contract they were a very small company.

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

The employee/respondent confirmed the date of transfer as being 22<sup>nd</sup> July 2008 and she received a letter stating that the terms and conditions would be the same. She did not meet anyone but she had to leave the keys into the office and take them back that afternoon. Two weeks later a lady rang her and asked her to sign the contract. When

the employer/appellant took over they did not supply the same cleaning products which meant that the quality of the cleaning was not up to the standard provided prior to take over. She mentioned to the supervisor that she did not have the required cleaning products and she was told to buy them herself and she would be refunded, however the employee did not want to go down that route. In March she received the letter in relation to not working on Sundays. She normally worked in the afternoon and it did not make sense to clean in the morning also, as suggested for Saturday's, as the cleaning had been done from the previous afternoon. She was going to be down €9.10 because of not working Sundays. She was never paid the new rate of €9.50 per hour.

It was then suggested that she not to go in on Sunday but to go in on Monday and that did not suit her as she baby-sits on Monday morning. She told them she could not work on Monday am but she was prepared to work for double time on Sunday. The supervisor told her she would be sacked if she did not comply. She received six weeks notice of termination of her employment and she agreed to work her notice period. The 24<sup>th</sup> March was the first day she was to start the new arrangement of not working Sunday. On the Saturday she told her supervisor she was not working on the Sunday for single rate of pay and she was told she would be sacked on the spot. On the Saturday her supervisor rang her and she told him she was not going to work on the Sunday unless she got double pay and she was told that the employer /appellant would be contacted. She stated she wanted confirmation in writing and asked that a fax be sent to her husband's work place but nothing came through. On Sunday 24<sup>th</sup> March she received a text message stating that she was the only one objecting. She then got a text message asking for the keys of the office as he had a crowd coming up from Roscommon to clean the office. She stated she was prepared to go in if paid double time and at the 11<sup>th</sup> hour her supervisor said she would be paid double time for the duration of her notice. She was promised that the employer/appellant would revert to her within a month but she only heard on the day which was the last day before the end of her six weeks notice. At this late stage she said it was too late as she had secured another job. That night the office was cleaned by two people and they continue to clean the office. The job she had secured fell through because of the length of time she was waiting on her P.45.

In cross-examination witness accepted that her hours of work could change but she was never told that there would be a reduction in her pay.

### **Determination:**

The Tribunal in coming to its determination considered the evidence given by the parties in this case and the provisions of the Transfer of Undertaking Regulations 2003. Section 7 (2) of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 states that – *“Where an undertaking, business or part of an undertaking of business does not preserve its autonomy, the transferee shall arrange for the employees transferred who were represented before the transfer to choose a person or persons from among their number to represent them (including by means of an election), during the period necessary for the reappointment of the representatives of the employees’ or the reconstitution of their representation.”*

The employee in this case was not afforded such representation.

Section 9 (2) states – “*A provision in any agreement which is or becomes less favourable in relation to an employee than a similar or corresponding entitlement conferred on the employee by these Regulations shall be deemed to be modified so as not to be less favourable*”.

In this case the employee’s pay was reduced

Having regard to the Section 7 (2) and 9 (2) as outlined above the Tribunal deems the employer to have been in breach of both Sections and affirms the decision of the Rights Commissioner that the employee be paid compensation of €2,000.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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