

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee
- *appellant*

RP1014/2008

MN1090/2008

against

2 Employers

- *respondent's*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr. M. Forde
Mr D. McEvoy

heard this appeal at Cork on 10th June 2009

Representation:

Appellant :

Mr. Dominic Creedon, Philpott Creedon & Co., Solicitors, 43
Grand Parade, Cork

Respondent :

Mr Paul Dunne, IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2 represented the 1st named respondent.

XXXX represented the 2nd named respondent

The decision of the Tribunal was as follows:-

The Appellant in this case brings a claim for redundancy arising out of the termination of his employment with the first named Respondents on the 8th of June 2008.

The situation arose by virtue of the loss by the first named Respondents of a Contract to clean buses for XXXX. It appears that after a tender process the XXXX was awarded to the second named Respondents as and from the 9th of June 2008.

It was the understanding of both companies that SI306/1980-European Communities (Safeguarding of Employees Rights on Transfer of Undertaking) Regulations 1980 and SI487/2000 (the amending Instrument) applied to the transfer.

The relevant provision appears to be article 5 (2) of SI 306/1980 which provides “*if a contract of employment or an employment relationship is terminated because a transfer involves a substantial change in working conditions to the detriment of the employee concerned, the employer concerned shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship.*”

The Appellants specific job was the cleaning of seat covers using a machine designed for this purpose. He was paid on a piece work basis for this. His colleagues who had general cleaning duties were paid an hourly rate.

In an email sent by the second Respondent to the first Respondent on the 9th of May 2008 the following was stated:

“we are currently contracted for deep cleaning at night and day and would not be involved in seat cover cleaning carried out by (the appellant). Again, here you need to clarify with Bus Eireann their position and inform the employee accordingly that he is not qualifying to be TUPE-d to us”.

The Appellant was not informed of the contents of this email and consequently turned up for work as usual on the 9th of June expecting to continue the work that he was previously doing, under the control a new employer. He was surprised when he was told that there was no work for him and he was sent home.

The following day another general cleaning job did become available because another employee failed to report for work and this job was offered to the Appellant and he accepted it and commenced work for the second Respondent but under different terms and conditions (including pay) than previously.

Determination:

In this case the Tribunal finds by majority decision, (Mr Forde dissenting), that the appellant’s position became redundant when Bus Eireann did not contract for seat cover cleaning with the second named respondent.

The redundancy occurred when the appellant was in employment of the first named respondents and the Tribunal finds that the second named respondents have no liability to the appellant.

The appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	27 th August 1976
Date employment commenced	19 th September 2005
Date employment ended	08 th June 2008
Gross weekly pay	€534.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

No award is being made under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

