

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP1272/2008
MN1371/2008

Employee

RP1273/2008
MN1372/2008

Employee

RP1274/2008
MN1373/2008

Employee

RP1275/2008
MN1374/2008

against

Employer

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: Ms N. O'Carroll-Kelly BL

Members: Mr. L. Tobin
Mr A. Butler

heard this appeal at Wicklow on 2nd June 2009

Representation:

Appellant :
In person

Respondent :
Mr Danny Kelleher, B.L., instructed by Rosemary Scallan & Co., Solicitor,
"Menlo", Church Road, Greystones, Co. Wicklow

The decision of the Tribunal was as follows:-

Respondent's case:

Mr B. in his evidence told the Tribunal that he worked with Mr P who was director of the original company. Mr P had the company for five years and he suggested to witness that he should set up his own company and he contracted witness to finish the contracts. In October 2007 witness sub-contracted the business. When he started there was just he and another employee. In later weeks more work came in and he took on others over the months to a total of twenty employees. All except for two employees transferred to the new company. Ladders were purchased and some old stocks. It was exactly the same type of business. He had no discussions with the previous owner in relation to redundancy. The main contractors were the same. Witness was recruited by the original company to continue on the work for them. Witness worked closely with the employees and they were given the opportunity to come and work for him. There was no transfer of monies and no written agreements.

In cross-examination witness stated that the appellant's were dismissed by text message. Work was coming to an end and he never lied to them. They knew the position. He told them he would have to let them go as there was no work. They received one weeks notice. There was no transfer of undertakings as it's a new company name and a new VAT number. Vans were bought directly from the car sales person. The same foreman is on the sites.

In answer to questions from Tribunal members witness said there was no discussion with staff, just a general conversation. He was not taking over the business it was a new business. He took on one of the appellant's at the start and told him to come and work with him or he did'nt have employment. The company is no longer trading. It was a familiar name known to contractors. He employed sub-contractors to finish a number of the sites. When new work came in witness was sub-contracted by the original company to finish the work. The major contracts stayed with witness. P.45's and P.60's issued to the employees by the original company. Witness was not aware that Mr P. had not told the appellant's that he (the original company) was not going to pay them redundancy. Mr P. sent their details to his (witness) accountant so that the appellant's would not be put on emergency tax. He did not know the procedure regarding P.45's. He explained to the employees that this was a new company. The director of the original company recommended him. He was the front man for most of the contracts. As far as he is aware the original company is still trading. He took over five or six contracts. The fourth named appellant was the first employee he took on and others were taken on over the following month or two.

The Tribunal also heard evidence from the wife of the previous witness and she also worked in the respondent company. She did not work for the previous company. She witnessed some conversations regarding the opening of his, (the previous witness's) own business and Mr P was going to sub-contract him. The tenders were sent to all the fire roofers. A few supplies and a few ladders were the only pieces of equipment from the other company. The van was bought through another supplier.

Appellant's case:

The four appellant's were employed by the original company owned by Mr P. They contend that there was continuity of employment and reckonable service between this company and the respondent under the new owner Mr B.

In August 2007 they were informed verbally that Mr B had taken over the company and that they

would now be working for Mr B. Approximately twenty people were employed at the time. While their transfers were staggered everyone transferred to the new company by the end of 2007. They did not receive P.45's from the first employer nor did they receive new contracts from the new employer. The work they were doing continued exactly the same as it had previously. They used the same vans, the same tools, the same personnel were involved and they worked on the same contracts. On 26th September 2008 the first and fourth named appellant's received texts to say that there was no work for them and they were being dismissed on the following Friday. They were given one week's notice. The other two employees, second and third named appellant's were told they were to collect their wages on Friday. They sent the employer forms RP77 claiming a redundancy payment but the forms were not returned. The first named appellant received a telephone call from Mr B, the respondent stating that he did not owe either of the employees any money.

In cross-examination the third named appellant stated he was not aware whether or not buildings were purchased from the old company or where the van was purchased or the value of the contracts.

The appellant was just told by Mr P that he would be working for Mr B the following week. The second named appellant was also told. Around twenty transferred over to the new company and as far as he was aware there were one or two that did not transfer.

In answer to questions from Tribunal members witness stated that he transferred over to the new company on 29th October 2007. The forms RP77 were sent to the respondent in or around the end of November. The other appellant's were on their way to Manchester when they got a text message from Mr B saying he was taking over.

Determination:

The Tribunal having considered all the evidence and documentation including Case 24/85 and C-13/95, submitted is satisfied that the European Communities (Protection of Employees on Transfer Undertakings) Regulations 2003 applies in this case. The Tribunal feel these cases fit the criteria.

The respondent failed to justify the non-payment of Redundancy and Minimum Notice.

The employees listed hereunder are entitled to a Redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

First named employee:

Date of Birth	27 th March 1980
Date employment commenced	28 th February 2005
Date employment ended	03 rd October 2008
Gross weekly salary	€526.50

Second named employee:

Date of Birth	16 th March 1983
Date employment commenced	14 th February 2006
Date employment ended	03 rd October 2008
Gross weekly salary	€546.00

Third named employee:

Date of Birth	16 th September 1982
Date employment commenced	07 th June 2004
Date employment ended	03 rd October 2008
Gross weekly salary	€536.25

Fourth named employee:

Date of Birth	23 rd April 1987
Date employment commenced	14 th March 2006
Date employment ended	03 rd October 2008
Gross weekly salary	€507.00

Please note that these awards are being made subject to the appellant's having been in insurable employment during the relevant period

In relation to notice entitlements, the employees received one weeks notice from the respondent therefore they are now due the balance of one further week in each case under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 as follows:

First named employee: €526.50

Second named employee: €546.00

Third named employee: €536.25

Fourth named employee: €507.00

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

