

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP15/2009

against

EMPLOYER – *respondent no. 1*

and

EMPLOYER – *respondent no. 2*

and

EMPLOYER – *respondent no. 3*

and

EMPLOYER – *respondent no. 4*

and

EMPLOYER – *respondent no. 5*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Mr. G. Hunter

heard this appeal at Letterkenny on 19th May 2009
and 22nd July 2009
and 16th October 2009

Representation:

Appellant(s):	In person
Respondent(s): (<i>No. 1</i>)	No appearance or representation
(<i>No. 2</i>)	No appearance or representation
(<i>No. 3</i>)	In person
(<i>No. 4</i>)	In person
(<i>No. 5</i>)	In person

The decision of the Tribunal was as follows:-

Background:

Initially, the appellant named the first two named respondents in these proceedings. On the first day of the hearing of this case, there was no appearance by these named respondents. However, during the course of the appellant's sworn evidence on that occasion, it emerged that a transfer of undertaking could have occurred. Consequently, because of Tribunal concerns in relation to this possible transfer, the hearing was adjourned to allow the appellant amend her claim to include the transferors as respondents.

On the adjourned day, there was no appearance by any of the named respondents. Accordingly, the hearing was again adjourned to ensure that notice of the hearing was properly served on all parties.

Appellant's case:

In her sworn evidence, the appellant confirmed that she commenced employment in September 1996 as a legal secretary in the office of the legal practice of the second named respondent. On 19 December 2007 – a Wednesday – she was taken in to the office of the principal – *the first named respondent* – of the legal practice – *the second named respondent* – and told that his practice had been sold to the third named respondent, a legal practice in which the fourth and fifth named respondents were partners. She was also told that though the legal practice had been sold, it was not part of the sale agreement that his staff would be kept and re-employed by the new entity. She was told that because of her experience and length of service, she would have no difficulty in securing alternative employment and that she might even get employment with the third named respondent. The appellant confirmed that she did not ask the first named respondent about redundancy at that time.

On 21 December 2007, the appellant received a telephone call from the fourth named respondent enquiring if she would be interested in working in the legal practice of the third named respondent and she replied in the affirmative. She commenced employment in that practice on 2 January 2008 and signed a new contract of employment a few weeks later. She worked there as a legal secretary, in the same office as she had when employed by the first named respondent. There had been no change in the nature of the business except for the change in name.

Following the re-commencement of her employment, the appellant had further contact with the first named respondent personally when he called to the office, and by telephone. In March 2008, she spoke to him about redundancy and he told her that he would have his accountant check into it. She had no further contact from him after this date.

The appellant confirmed that she did not receive any redundancy payment from the first two named respondents. It was not the case that the first named respondent had recommenced a practice under a new name and that she had been replaced.

In cross-examination by the fourth named respondent, the appellant confirmed that she continues to be employed and paid by the fifth named respondent.

The appellant agreed that in their telephone conversation on 21 December, the fourth named respondent had said to her that he was happy for her to continue her employment with the third named respondent on the same terms – same office, role, hours and wages – as when she had been employed by the first named respondent.

The first named respondent did not actually dismiss the appellant at their meeting on 19 December 2007. He had basically told her that the practice had been sold and that he was finishing on 21

December. His practice was taken over by the third named respondent and they had also taken over his active files.

Respondent's case:

In his sworn evidence, the fourth named respondent explained that the negotiations for the sale of the legal practice to the third named respondent had been ongoing for a number of weeks between himself and the first named respondent. The contract of sale for same was signed on 20 December 2007. (*A copy of the sale contract was opened to the Tribunal*). Clause 3 of the contract provided "It is the responsibility of the Vendor to serve Redundancy Notice on all the staff at the Practice as and from 20th day of December, 2007 and such staff will be made redundant with immediate effect. The Vendor shall be responsible exclusively for all payment of all redundancy payments properly and necessarily payable by the Vendor to the said staff under present employment legislation."

The fourth named respondent had a feeling that the first named respondent would not adhere to the terms of the contract, and so, allowing for this possibility, he had offered the appellant the same conditions of employment which she had when employed by the first named respondent, thus preserving her continuity of service. It was his view that there had been continuity and no break in the appellant's service. Another reason that employment had been offered to the appellant was that when checked, it was found that the first named respondent was not in a position to provide proof that he had paid redundancy to the appellant.

The Tribunal gave the fifth named respondent the opportunity to cross-examine the appellant and to ask questions of the fourth named respondent but he declined to do so.

Determination:

The appellant's claim in this case is for redundancy, based on the ending of her employment with the practice of the first named respondent. The Tribunal however noted that there was no effective break in employment and that the appellant remained employed in the same office, performing similar duties and under similar terms and conditions as were applied to her by the first named respondent.

The Tribunal determines that the appellant was not dismissed by reason of the fact that her employment transferred to the third named respondent (made up of the fourth and fifth named respondents) under the provisions of the European Communities (Protection of Employee's Rights on Transfer of Undertakings) Regulations 2003, and with her accrued years of service.

The Tribunal therefore dismisses the appellant's claim under the Redundancy Payments Acts 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)