

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**  
Employee - *appellant*

**CASE NO.**  
TU16/2008

against the recommendation of the Rights Commissioner in the case of:  
Employer - *respondent*  
Employer - *respondent*

under

### TRANSFER OF UNDERTAKINGS REGULATIONS 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. M. Flood  
Mr B. Byrne

heard this appeal at Dublin on 27th January 2009

#### **Representation:**

Appellant(s) : Malone & Potter, Solicitors, 7 Cope Street, Dublin 2

Respondent(s) : McCann Fitzgerald, Solicitors, Riverside One, Sir John Rogerson's Quay, Dublin 2

The decision of the Tribunal was as follows:-

**This case came before the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner Ref:r-054225-TU-07/RG.**

Having heard submissions from a third-named respondent in this case they were released from being a party to this claim before this Tribunal.

#### **Respondent's Case:**

A witness from first-named respondent (respondent hereafter known as C) gave evidence. She explained that in December 2005 she had received information from the third-named party, that was released from this claim, that there was a difference in the services they provided. A meeting was held and it was agreed to set up a sub-group. Discussions broke down concerning funding, which had ceased in December 2006. C got in contact with the Department of Enterprise, Trade and Employment for advice. Staff were made redundant and the payments were made from the Department of Enterprise, Trade and Employment Insolvency Fund.

No staff were transferred to the second-named respondent in this case (hereafter known as S). The witness's employer had no direct relationship with S. She had since resigned from the first-named respondent and the other 2 staff had been let go. She had been on the Board of Management.

On cross-examination by the appellant's representative she stated the appellant had been ill in 2005 but had returned to work on a full-time / part-time basis.

On cross-examination by a representative of S, she said C had wound up, the staff understood a new entity would be set up but had not been at that stage but S did not exist at the time.

When asked by the Tribunal she said they had hoped to discuss the possibility of transferring staff but the discussion mainly concerned redundancy. The Government made a decision and FÁS was to set up a set local employment service (L). L operated from the same premises as C. L had no Manager and the first task was to appoint a Manager.

A witness from S gave evidence. He stated he had been a member of the Board since May 2007. He consulted with local firms. S was in existence at the time. When he joined there was a Manager in place who drove the recruitment end of things. They looked for funding. He was aware that the C had looked after the local employment service but the service was taken off them and given to S, which was located in different premises. S was a totally different set up. He said they had never been party to the Rights Commissioners hearing against C.

On cross-examination by the claimant's representative he said S had nominated local people to the Board of Management. He said that they had not given assurances that jobs would be safe.

On cross-examination by the representative from C he said that S specifically supplied the local employment service.

When asked by the Tribunal he said the Manager and a member of the Board from the third-named respondent decided whom to recruit. He was not involved in direct recruitment.

The Manager of S gave evidence. She stated they advertised jobs through emails to community developments and local community employment nationally. There were 3 posts to fill. 3 people including her were involved in the recruitment. She stated that she had been recruited in June but did not get paid until late July / August. Nothing transferred from C to S. S opened on October 2007 but it had taken 3-4 months to set it up.

On cross-examination from the claimant's representative she stated that they had acquired furniture before they had received funding. They were aware they would get funding but not the amount.

When asked by the Tribunal she said they had recruited their team in September 2007.

She said a lot of people had applied for the positions available.

The Co-ordinator of S gave evidence. He stated that the local employment service was set up in 1991. There were no direct assurances made to parties when funding was removed. They had concerns how services were delivered and FÁS wanted a contractual service supplied. The decision was made in June 2006 to set up a new service and funding was ceased to C. In December 2006 no new service was in place. S was set up in January 2007 and commenced work in October 2007.

On cross-examination that a new entity was set up, S. The third-named respondent had decided to remove funding. He said that was not in his remit to be concerned about the staff of C.

When asked by the Tribunal he said that he had tried to give the staff of C an update of what was happening. He had received a report of concern of how C's "Q" mark in relation to the process which depended on funding. FÁS were concerned that a quarter of Dublin were not receiving the right service by C.

**Claimant's Case:**

The claimant gave evidence. She stated that she had been a mediator for the local employment service. In 2006 she was absent from work on sick leave. She resumed to work part-time on half her salary. Her role was to speak to people, sometimes in prison, and try help them get back into employment on their release. There had been talks between the third-named respondent and C. She met with people from the third-named respondent and S in 2006 and was aware that there were problems between the 2 parties. She was told she would be relocated.

In 2007 she knew there was no more funding for C. The staff had been paid from their own funds but they were told it would not affect them. She received a redundancy payment in 2007. Some months later she saw an advertisement for a Manager's position and having done a Companies Registration Office search she revealed a new company had been set up. The service was identical and the leaflets produced were the same.

On cross-examination she said she had resigned. She had not asked other witnesses to appear as witnesses on her behalf as she could not contact them.

When asked by the Tribunal she said they had been told they would be relocated. She said if she had have known S was recruiting she would have applied for a position.

**Determination:**

Based on evidence and legal submissions the Tribunal by majority upholds the decision of the Rights Commissioner and decide that Section 3(4) of the Regulations applies.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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