

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
RP1753/2009, MN1537/2009

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms C. Egan B.L.

Members: Mr T. Gill
Mr O. Nulty

heard this appeal at Sligo on 26th February 2010

Representation:

Appellant : Mr John McCarrick, SIPTU, Hanson's Retail Park, Cleveragh, Sligo

Respondent : Mr Bob Walsh, McGovern Walsh & Co, Solicitors, Pearse Plaza, Pearse Road, Sligo

The decision of the Tribunal was as follows:

Appellant's Case

The appellant commenced employment with the respondent in 2001. By the spring of 2009 it was clear that the respondent was having trading and operating difficulties. On 1 May that year the appellant learned that her employment with the respondent was to cease. She emailed the main shareholder seeking information and clarification on her employment status in the event that she would commence with a third party. That email was also copied to that third party who in turn replied stating, among other things, that there was no agreement in place between him and the respondent regarding her future employment with either him or the respondent. That writer indicated that he might approach the appellant with a view to starting up a joint business venture in a nearby service area. The main shareholder did not reply to the appellant's query.

Acting on the appellant's request for advice on the matter, a trade union official wrote to the main shareholder on 7 May seeking a meeting to discuss her situation. The trade union official received a written reply the same day from the main shareholder. That letter stated that it would not be necessary to declare the appellant redundant as she was being transferred to another employer (the third party) and therefore came under the protection of the Transfer of Undertakings Regulations. However, the third party had by that stage clearly stated that this was not the case. The respondent closed business on 8 May and the appellant's employment with it came to an end.

The following Monday and Tuesday the appellant helped the third party, in his absence, in his endeavours to set up a business. She then approached the local Social Welfare Office for assistance, as she was no longer employed. Some ten days later she entered into a business partnership with the third party.

Respondent's Case

The main shareholder of the respondent told the Tribunal of the financial and commercial difficulties the company was experiencing from 2007 onwards. Some employees left under various circumstances and a number of outside entities got involved in certain aspects of the company. Eventually the respondent closed down in early May 2009. The appellant remained an employee up to that time. The witness understood and indeed expected that the appellant would transfer over to a third party who had previous links with the respondent. However, no formal agreement regarding that transfer existed.

On 8 May the third party stated to the main shareholder that he needed the assistance and the presence of the appellant in his new premises for two days the following week. The witness accepted she "was out of her depth" in dealing with the disposal of the business and the termination of the appellant's employment, and the requirements of a Transfer of Undertaking Regulations.

Determination

The Tribunal is satisfied that a Transfer of Undertaking, as legislated for, did not occur in this case. The respondent neglected to ensure that the entitlements of the appellant were complied with. There was no agreement in place to transfer the appellant to another employer. It follows that the appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory lump sum under those Acts and based on the following:

Date of Birth: 21 October 1978
Date of commencement: 21 May 2001
Date of Termination: 29 May 2009
Gross Weekly Wage: €462.21

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is allowed and the appellant is awarded €1,386.63 as compensation for outstanding notice entitlements.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

