

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
-claimant UD622/2009
MN633/2009

against

EMPLOYER -respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Hayes

Members: Ms. J. Winters
Ms. M. Mulcahy

heard this appeal at Navan on 28th January 2010

Representation:

Appellant: Mr. Ed Kenny, SIPTU, Liberty Hall, Dublin 1

Respondent: In Person

The determination of the Tribunal was as follows: -

Preliminary Issue

The respondent believes the claimant does not have the required service to make a claim under the Unfair Dismissals Acts, 1977 To 2007. The P45 issued by the respondent had a cessation date of the 16th of February 2009 but the claimant's last working day was the 1st of February 2009 with a start date of the 4th of February 2008. By letter dated the 5th of February 2009 the respondent informed the claimant his employment was being transferred with effect from the 7th of February 2009.

The Tribunal accept that the 7th of February 2009 as the claimant's date of cessation therefore he has the required service for a claim under the Unfair Dismissals Acts, 1977 To 2007.

Respondent's Case

The respondent is a security firm that employed the claimant as a security guard to work on a building site. The construction site operators terminated the contract with the respondent in December 2008 giving them 1 months notice. The respondent informed all their staff by letter dated the 5th of January 2009 that their involvement on the site would cease on the 7th of February 2009. That letter stated that the respondent would pass on the claimant's details to the new company and,

"I am now giving you the thirty days notice as required by the European Communities (Protection of Employees on the transfer of Undertakings) Regulations 2003."

A second letter dated the 5th of February 2009 informed the staff who the new company was, requested the staff to return their uniforms and to expect their P45's. Both the letters were sent by ordinary post.

The respondent only discovered who the company taking over the contract was in late January 2009 and informed the staff who the new company was and that they would be in contact with them directly. The respondent handed over the site on the 7th of February with the undertaking that the new company would look after the staff on site. The respondent was informed by the new company by letter that they approached the claimant and offered him employment which he accepted and worked on the 7th and 8th of February. Later that week the claimant phoned the company stating that he no longer wished to be employed with them and to remove him from the work roster with immediate effect.

Claimant's Case

The claimant first heard about the transfer to the new contract holders on the 9th of February 2009 when he received the respondent's letter dated the 5th of February 2009. The claimant never received the letter dated the 5th of January 2009 giving him notice of the transfer. The claimant worked on the 7th and 8th of February without realising he was working for the new company; he wore the uniform of the respondent to work on those days.

The claimant contacted the respondent on receipt of the letter dated the 5th of February and asked what it meant for him. The respondent informed him that his employment was transferred to the new company from the 7th of February 2009 and they would be paying his wages and to approach them regarding payment for the 7th and 8th of February.

The new company contacted the claimant and asked him for his P45 in order to put him on the payroll and pay his wages. The claimant decided not to forward his P45, as he had never met anyone from the new company or signed a contract with them. The claimant said he could not work for the new company, as he did not know them.

Determination

The respondent provided security services. At one site their client decided to engage a new provider of these services. The respondent was told of this in December 2008. On 5th January 2009 all employees concerned were written to and told that there would be a transfer of undertaking in February. At this time the respondent did not know who the transferee would be. Once the respondent knew the identity of the transferee, the five employees affected were told. The site was handed over to the transferee on the 7th February 2009.

The Tribunal is satisfied that the claimant was notified of the impending transfer on the 5th January 2009.

There is a requirement under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 to notify employees, inter alia, of the proposed date of transfer. There is no requirement to notify the employees of the identity of the transferee. In any event, the Tribunal is satisfied that the respondent notified the claimant as soon as it reasonably could. Nor is there a requirement that an employee consent to the transfer.

The claimant worked on the 7th and 8th February 2009 and says that he was only told of the transfer on the 9th February.

The Tribunal is satisfied that there was a transfer of undertaking on the 7th February 2009, that the claimant's employment was transferred and that he was not dismissed, if at all, by the respondent. In these circumstances, these claims under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)