

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER

CASE NO.
TU10/2009

against the decision of the Rights Commissioner in the case of:

EMPLOYER
against

EMPLOYEE & 4 Others

under

EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYEES ON TRANSFER OF UNDERTAKINGS) REGULATIONS 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C Corcoran

Members: Mr D Moore
Mr N Dowling

heard this appeal at Dublin on 30th June 2010

Representation:

Appellant: Mr Paul Dunne IBEC, Confederation House,
84/86 Lower Baggott Street, Dublin 2

Respondents: Ms Karen Smollen SIPTU, Contract Services Branch,
Liberty Hall, Dublin 1

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by the employer (hereinafter referred to as the appellant) appealing against the decision of a Rights Commissioner under the Protection of Employees on Transfer of Undertakings Regulations 2003 references r-071794-98-tu-08/JC.

Appellant's Case

The human resources manager told the Tribunal that the respondents transferred to the appellant on 1 July 2008. Prior to that transfer those respondents subscribed to and were potential beneficiaries of a contributory sick pay scheme. The witness acknowledged that the appellant wrote to the respondents around that time outlining that transfer. That letter stated that their contracts of employment from their former

employer would remain largely unchanged. There were no listed exceptions to those contracts and certainly no reference to the sick pay scheme. This witness who was not involved in this aspect of the transfer of undertaking became aware of an issue concerning that scheme when he was approached by the respondents subsequent to the transfer. In detailing some of the sections of that sick pay scheme the human resource manager indicated that the appellant had difficulties in funding that scheme. The appellant was not currently operating that scheme as “the maths of the scheme does not add up”. The witness commented that this shortfall was not the full issue as there were management and “knock-on effects” to be considered.

Respondents’ Case

One of the respondents speaking on behalf of all five respondents stated that there were no mention or discussion over the sick pay scheme during the transfer period. However, when deductions for that scheme were not recorded in their payslips the respondents queried this. This witness was unclear on whether he received a letter from the appellant concerning the transfer of undertaking. However on further questioning by members of the Tribunal and on examining the letter itself, he did confirm that he received this letter. He acknowledged that no section of that scheme obliged either his former employer or the appellant to make good any shortfall in the funding of that scheme.

Determination

Having considered this evidence and the Rights Commissioner’s decision the Tribunal varies that decision under the European Communities (Protection of Employees on Transfer of Undertaking) Regulations 2003 to the effect that the contributory sick pay scheme as operated by the respondents’ former employer and transferred to the appellant be invoked in full.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)