

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER– appellant

CASE NO.

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

EMPLOYEE – respondent

TU3/09

&

EMPLOYEE – respondent

TU4/09

&

EMPLOYEE – respondent

TU5/09

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms Niamh O’Carroll Kelly BL

Members: Mr G McAuliffe
Mr P Woods

heard this appeal at Dublin on 2nd June 2010

Representation:

Appellant: Mr Michael Binchey BL, instructed by:
Mr Brian Trayers,
Trayers & Co Solicitors
5 Ellis quay, Dublin 7

Respondents: XXXXXXXXX

This case came before the Tribunal by way of an employer appealing the decisions of a Rights Commissioner refs: (r-069488-tu-08/RG, r-069489-tu-08/RG & r-069490-tu-08/RG).

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant gave evidence that he acquired the business, a restaurant, on July 31st 2008. He met the employees that day and gave each of them their terms and conditions of employment. He discussed the contents of the contract with each employee and asked them to sign and return it to him within seven days. He didn't know what terms and conditions the employees had previously so he had prepared new terms and conditions for them.

The second named respondent signed the contract and returned it to him. His pay was €615 per week. The third named respondent signed the contract and returned it to him. His pay was agreed at €450 per week. Both took six weeks paid holidays while they were employed by him.

Two or three months after taking over the restaurant custom reduced due to the downturn in the economy. He had to reduce the employees' hours in early 2009. Due to his indebtedness the appellant ceased running the restaurant in October 2009. He now works for the person who took over the restaurant.

During cross-examination he disputed that he had told the employees that they could have their hours back if they withdrew their claims. The employees told him that their complaint was with the previous owner, not with him. He had to change the employees' payslips to reflect their hourly rate of pay on the instruction of a Labour Inspector.

Respondents' Case:

The third named respondent (RC ref: r-069488-tu-08/RG, Tribunal ref: tu5/09)) agreed that he received his P45 from his previous employer, the transferor. He contended that he had not received the written contract of employment from the appellant and that the signature on the document was not his. He contended that he is illiterate, but that he can sign his name. He contended that he had only given his bank details and had signed for that.

His wages were cut by €25 per week. The appellant told him that his pay would increase when the situation improved. He made his complaint to the Rights Commissioner in September 2008. The appellant then tried to pressurise him to sign the contract, but he refused.

During cross-examination the witness said that the complaint was against his previous employer for not informing him of the change and because they were told their wages would not be cut, but they were. In the beginning he worked according to the contract but his pay was changed to an hourly rate after the complaint. He did not see the similarity between the signature on the contract and other documents with his signature on them. He took 31 days holidays in 2009.

The second named respondent (RC ref: r-069490-tu-08/RG, Tribunal ref: tu4/09) contended that he was told on July 31st 2008 that his pay was being reduced from

€650 per week to €615. He agreed to this as the appellant said it would go back up when business improved. He was told that his terms and conditions would remain the same. He received his P45 from his previous employer. He signed the terms and conditions of employment.

After October 2008 the business began to get quiet. His hours and pay were reduced. He asked the appellant if he wanted to get rid of him, but he said no. He agreed that he had received all of his holiday entitlements when the business closed in October 2009.

The Tribunal heard from the two respondents present that the first named respondent (RC ref: r-069489-tu-08/RG, Tribunal ref: tu3/09) did not intend to come to the hearing.

Determination:

In relation to the third named respondent (RC ref: r-069488-tu-08/RG, Tribunal ref: tu5/09) the Tribunal is satisfied that, on the employee's evidence, he accepted a reduction in his salary and he conceded that he had received six weeks' holidays by the time the employment ceased. Therefore, the appeal under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 succeeds and the Tribunal makes no award.

In relation to the second named respondent (RC ref: r-069490-tu-08/RG, Tribunal ref: tu4/09) the Tribunal heard that the employee refuted that he had signed the contract, but confirmed that he had received his P45. On balance, the Tribunal finds that the signature on the terms and conditions document was his. He agreed to take a pay cut and confirmed that he had taken and was paid for his holidays. Therefore, the appeal under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 succeeds and the Tribunal makes no award.

In relation to the first named respondent (RC ref: r-069489-tu-08/RG, Tribunal ref: tu3/09) the Tribunal finds in favour of the appellant as the respondent did not attend to give evidence. Therefore, the appeal under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 succeeds and the Tribunal makes no award.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)