

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP201/2010

against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. P. Casey
Ms. H. Kelleher

heard this appeal in Cork on 25 June 2010

Representation:

Appellant(s):
In person

Respondent(s):
Ms. Patrice O'Keeffe, Comyn Kelleher Tobin, Solicitors,
29 South Mall, Cork

The decision of the Tribunal was as follows:-

Respondent's Case

The respondent manufactures complete kitchens. RA, a different entity, made special components for the respondent and other companies. The appellant had commenced employment with RA on 1 March 2000. RA was experiencing financial difficulties and it was agreed that he and his employees, including the appellant, would move into the respondent's premises and work for the respondent. The move was made in late 2007. Initially RA and his employees continued working on RA's own contracts and when these were finished by the end of 2007, RA ceased trading. RA had paid his employees their wage over that period. Then from 2 January 2008, RA and his erstwhile employees became the employees of the respondent, working on the respondent's contracts, manufacturing complete kitchens. There was a dispute between the parties as to whether

there had been an increase in his wages at the time. While the respondent bought RA's machinery it had not taken over RA's business or part of it or any of his contracts and there had been no transfer of good will or customers. The respondent's business began to suffer losses and in November it ceased manufacturing and laid off its employees including the appellant on 21 November 2008. RA recommenced trading and took on the workers.

Appellant's Case

The appellant's evidence was that RA did not give him a P45 in December 2007 but the respondent did give one with a finishing date of 21 November 2008. The appellant agreed that they had finished off RA's contracts in early 2008 under the respondent's roof. While with RA they had made components but over the period 2000 to end 2007 they had made about three kitchens. At the time of the move they had been told that things would remain the same. He did not return to work for RA in November 2008.

Determination:

The Tribunal finds that there was not a transfer of undertakings. While the respondent bought machinery from RA no contracts or ongoing business or goodwill was transferred. There was not a transfer of an economic entity retaining its identity. Accordingly, the appellant did not have continuity of service between the two employments nor sufficient service with the respondent to entitle him to a redundancy lump sum payment from the respondent. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)