

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.

UD1398/2009
MN1381/2009

against
EMPLOYER
– Respondent No.1

EMPLOYER
– Respondent No.2

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan BL
Members: Mr J. Hennessy
Mr T. Kelly

heard this claim at Waterford on 7th October 2010

Representation:

Claimant(s) : M. M. Halley & Son, Solicitors, "Presentation House",
Slievekeale Road, Waterford

Respondent(s) : Mr. John Goff, Nolan Farrell & Goff, Solicitors, Newtown,
Waterford, representing respondent No 1.

Ms. Gillian Kiersey, T. Kiersey & Co, Solicitors, 17
Catherine Street, Waterford representing respondent No 2.

The determination of the Tribunal was as follows:-

First Named Respondent's Case

(PK) for the first named respondent gave evidence that he operated a small convenience store for 20 years. The claimant was employed in his store since May 2006 and he had a total of 9 employees. On 30 November 2008 he sold the lease of the business to the second named respondent. The second named respondent took over the operation of the business on 1 December 2008. Prior

to the changeover he said he informed the second named respondent of the details of all employees in the store. He also informed him of the fact that the claimant was on maternity leave. As far as he could recall he provided a computerized list of the employees to the second named respondent. He was unsure as to whether or not the claimant's name was on the computerized list, but was certain that he informed the second named respondent that she was due to return from maternity leave in February 2009.

He told the Tribunal that he contacted the claimant towards the end of October 2008 informing her that he was selling the business. He said he told her that her job was safe and that her rights would be looked after by the second named respondent. Following the transfer of the business on 30 November 2008 the claimant was issued with a P45.

Under cross-examination by the solicitor for the claimant as to when he issued the P45 he said that he was unsure as to the date of issue of the P45. The solicitor for the claimant asked him would he be surprised to learn the P45 was issued in January 2009. When questioned on this the first named respondent said he knew the claimant would not need it to make a claim for social welfare payments as she was on maternity leave until February 2009. The solicitor for the claimant put it to the first named respondent that as the P45 was not issued until January 2009 the claimant was still on his books. The first named respondent was questioned as to why the cessation date was 7 December 2009 a week after the second named respondent started operating the business. The first named respondent said it could be holiday pay or something.

Second Named Respondent's Case

(DB) for the second named respondent gave evidence that he acquired the lease of the first named respondent's premises on 1 December 2008. He invested a considerable amount of money into the venture. The first named respondent told him he had two part-time permanent staff and the rest were part-timers who just came in for a number of hours per week. One of these part-time permanent staff was leaving and there was reference to the other being on maternity leave. He told the first named respondent that he did not wish to take over the staff but the first named respondent told him it would be better if he kept the local girls. He was given a computerized list of names of all existing employees by the first named respondent which was just names and the hours they normally worked. The claimant's name was not on that list. He retained a number of existing employees for a short period of time but eventually had to let them go due to a deterioration in the business. Sometime in February 2009 the claimant called to the premises seeking to return to work. He was surprised by her visit and was not in a position to offer her any work. He was aware that an employee of the first named respondent was on maternity leave but that was the extent of his knowledge. He was never provided with any details of this person by the first named respondent. His business is now in financial difficulty and is in the process of being wound down.

Claimant's Case

The claimant gave direct evidence that she commenced working for the first named respondent on 15 May 2006. She worked 24 hours per week. She became pregnant in 2008 and was due to return from her maternity leave on 23 February 2009. She met with (PK) in October 2008 who informed her that the business was in the process of being sold. He told her that her job would be there for her in February 2009 when she was due to return to work. In January 2009 she called to the store and met with (DB). She enquired from him about her position concerning her return to work. Her name meant nothing to (DB) who told her that he was not in a position to offer her any work. She then contacted (GK) from the first named respondent who issued her with a P45. She was surprised

to be issued with a P45. The date of cessation on her P45 was 7 December 2008.

She gave further evidence that she was in receipt of maternity benefit until the end of February 2009. She then received job seekers allowance for one year. She has made several unsuccessful attempts to secure employment and she is currently unemployed.

Determination

Whereas the Tribunal having carefully considered the evidence adduced at the hearing. The Tribunal finds that there was a transfer of undertakings within the meaning of the legislation between the first named respondent and the second named respondent. However, the Tribunal is not satisfied that the first named respondent consulted sufficiently or adequately with the second named respondent regarding staff. No documentary evidence was submitted by the first named respondent as to what staff details were furnished to the second named respondent. The Tribunal notes that the P45 issued to the claimant by the first named respondent was issued in January 2009 and shows the claimant's employment with the first named respondent ceased on 7 December 2008 one week after the transfer of undertakings to the second named respondent and whilst the claimant was on maternity leave. The Tribunal finds that the claim under the Unfair Dismissal Acts, 1977 to 2007 succeeds as against the first named respondent but not as against the second named respondent. The Tribunal awards the claimant the sum of €12,500.

The Tribunal finds that the claim under Minimum Notice and Terms of Employment Acts 1973 to 2005 succeeds as against the first named respondent but not as against the second named respondent and awards the claimant the sum of €437.08 being the equivalent of two weeks pay under the said Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

