

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
RP1515/2009
UD1342/2009
MN1311/2009

against
EMPLOYER

- respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr J. Goulding
Mr J. Flannery

heard this claim at Dublin on 27th July 2010

Representation:

Claimant(s) : Mr. Olaleye A. Ladenegan BL instructed by:
Kevin Tunney, Solicitors, Millennium House, Main Street, Tallaght, Dublin 24

Respondent(s) : In Person

The determination of the Tribunal was as follows:-

Respondent's Case:

The General Manager gave evidence. The claimant had been employed as a Security Guard on a site in Balbriggan. On February 1st or 2nd the respondent company was informed that the security contract for the site was to be taken over the following week by another security company (hereinafter known as N).

All staff were informed by letter dated February 5th 2009 that the contract was to be handed over to N on February 7th 2009. In the letter they were informed that all staff would be taken on by N and that a representative for N would be in contact with the staff. They were also requested to return all uniforms and identity badges to the respondent. Their P45's were to issue in the future. The site was handed over on February 7th 2009.

On February he received a call from a manager acting for N, that the claimant had been rostered to work but had not turned up.

On cross-examination he stated that he had no problems with the claimant. He stated that the Operations Manager had informed the staff on February 3rd or 4th. He was not aware that the claimant was informed on February 5th, that he had told the Operations Manager that he wanted to remain working for the respondent or that he had been given a verbal option to stay. He stated to the Tribunal that the respondent company was in a position to offer the claimant a job.

Claimant's Case:

The claimant gave evidence. He stated he had received a call from the Operations Manager and informed the site was to be taken over by another company and they would contact him on February 5th 2009. The following day he received a letter from the respondent and he again spoke to the Operations Manager telling him he wanted to remain working with the respondent.

He told the Tribunal that he could not understand how he could be working for another company when he had no contract of employment. He received a call from a Manager, working for N, asking why he was not at work but the claimant told him he did not work for N and that he did not know who he was.

The claimant gave evidence of loss.

Determination:

The claimant had been employed as a Security Guard on a site in Balbriggan. On February 1st or 2nd the respondent company was informed that the security contract for the site was to be taken over the following week by another security company (N). The Claimant was advised of this and finished working for the Respondent on the 5th February. He received a telephone call from a Manager, acting for N, on the 6th February asking him why he wasn't at work but the Claimant did not know this man.

It is clear from the evidence given at the hearing that the Respondent did not comply with the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. In a transfer of a business the original Employer and the new Employer (in this case N) must inform the employee or his representative, not later than 30 days, and in any event, in good time of:

1. the date or proposed date of transfer;
2. the reasons for the Transfer and
3. the legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for the employees, and any measures envisaged in relation to the employees.

None of these requirements were complied with by the Respondent. At best the Respondent gave the claimant 3 days notice of termination of his employment which is entirely unsatisfactory. There was no worthwhile consultation by the respondent.

The Tribunal determines that the claimant was unfairly dismissed and awards him € 4,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards the sum of € 1,000.00, this being two weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Redundancy Payments Acts, 1967 to 2007 was dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)