

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE *-appellant*

CASE NO.
RP1504/2009
MN1304/2009

Against

EMPLOYER *-respondent 1*

EMPLOYER *-respondent 2*

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr G. Andrews
Ms S. Kelly

heard this appeal at Limerick on 22nd November 2010

Representation:

Appellants: Mr. Gerard Tobin, Limerick Citizens Information Centre, 54 Catherine Street, Limerick

Respondent 1: Ms. Mairead Crosby, IR/HR Executive, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

Respondent 2: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

Appellant's Case

The appellant worked for respondent 2, a contract cleaning company. Respondent 2 lost the contract that the appellant was employed on. This contract transferred to Respondent 1. The appellant did not take up employment with Respondent 1. Respondent 2 does not dispute that a redundancy situation existed but is of the belief that the appellant's employment transferred to Respondent 1. Both the respondents' and the appellants' representatives made extensive submissions on the application of the transfer of undertakings in this case.

Determination

This case is primarily a redundancy claim and did not come before the Tribunal as a claim under the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations.

The Tribunal is persuaded by the argument made by respondent 1, that the applicable and definitive case law is the matter of *Suzen -v- Zehnacker Gebaudereinigung GmbH Krankenhausservice*, and that no transfer took place. The employment of the appellant was terminated by way of redundancy by respondent 2.

The mere fact that the service provided by respondent 1 is similar does not support the conclusion that an economic entity has been transferred, the *Suzen* case strongly indicates that loss of a contract to a competitor cannot by itself point to or indicate the existence of a transfer within the meaning of the directive.

The Tribunal does not accept the reasoning put forward by the respondent 2 that goodwill transferred to respondent 1 as no significant flight or movement of commercial assets took place.

The Tribunal would emphasise that the appellant's unchallenged evidence (excepted by both the respondents) was that the appellant's employment was brought to an end by reason of redundancy affected by respondent 2. The responsibility for the redundancy payment lies with respondent 2.

In all the circumstances the Tribunal find that the appellant's position was made redundant and awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth:	5 th August 1964
Date of Commencement:	28 th April 1995
Date of Termination:	29 th May 2009
Gross Pay:	€304.00

This award is made subject to the appellant having been in insurable employment during the period.

The appellant received notice on the 19th of May 2009 that her employment would be terminating with respondent 2 on the 31st of May 2009. The appellant is entitled to six weeks minimum notice, therefore the Tribunal allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and awards the appellant €1216.00 as compensation, being the equivalent to 4 week's notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)