

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

TU1/2010

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

EMPLOYEE

*appellant*

and

EMPLOYER

*respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr F. Cunneen  
Ms M. Finnerty

heard this appeal at Dublin on 18th February 2011

Representation:

\_\_\_\_\_  
Appellant(s): The appellant in person

Respondent(s): MD of Company

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal of a Rights Commissioner decision reference r-070984-tu-08/D1.

**Appellant's case**

The appellant told the Tribunal that in March 2005 he was in receipt of a site allowance of €70. An agreement was in place if he was taken off the site that he would not receive this allowance. He had an arrangement with the previous owner to retain a €40 fuel allowance per week. A transfer of undertaking took place in 2008. He did not work from 25 August 2008 until 15 September 2008 and he was told he would be given a new roster. He received three week's holiday pay for this. The fuel allowance was discontinued in August 2008 and he maintained that he should have been receiving this allowance.

### **Respondent's Case**

The respondent BB told the Tribunal that a transfer of undertaking took place in May 2008. All employees were informed of this. An issue arose in August 2008 when the appellant did not attend work. The appellant did not inform anyone of what his intention was. Another employee had to replace the appellant at short notice. On Wednesday he eventually got in contact with the appellant at 12.30 and he asked him why he did not show up for work. The appellant told him that he had received no payslips and he was looking for another job.

The appellant would not be allowed back on the site. The appellant had a particular roster worked around his maintenance commitments and it took the respondent three weeks to find a shift pattern that was suitable for the appellant. He was never made aware of a verbal agreement that the appellant had regarding a fuel allowance of €40.00.

### **Determination**

The Tribunal carefully considered all of the evidence adduced. It is firstly found that the reason given by the appellant for his absence from his employment and in respect of which he was claiming compensation was invalid and that this appeal therefore fails.

Secondly and finally the Tribunal accepts the evidence of the respondent in relation to the appellant's claim for the payment of a continuing weekly fuel allowance of €40.00 and therefore finds that the appellant's appeal under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 fails.

For the reason set out herein the Tribunal determines that the decision of the Rights Commissioner is upheld.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

