

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD2218/2009
MN2059/2009
WT932/2009

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Ms. M. Sweeney
Mr. D. McEvoy

heard this claim in Cork on 5 October 2010 and 27 January 2011

Representation:

Claimant(s):

Ms. Joan Byrne, Mullins Lynch Byrne, Solicitors,
Melbourne House, Model Farm Road, Cork

Respondent(s):

Ms. Rhona Murphy, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claims were lodged under unfair dismissal, minimum notice and working time legislation arising from the claimant's employment from 18 February 2008 to 5 April 2009. It was claimed that dismissal notice had been received on Monday 6 April 2009. The claimant had less than two years' service. A redundancy appeal was not prosecuted. It was alleged that the claimant's contract of employment had been terminated without proper notice to him or without proper pay in lieu of notice. No redundancy payment was made to him. It was further alleged that, when the claimant presented himself for work on 6 April 2009, he was refused entry to work and was unfairly

dismissed.

The claimant's contract of employment was on a permanent basis from 18 February 2008 subject to a six-month probationary period. Pursuant to the terms of the said contract he was "obliged" to receive a minimum period of notice of four weeks at the time of termination of his contract. However, he did not receive the said notice. Compensation was sought.

The respondent (SDX) disputed that it had dismissed the claimant but contended that the claimant had transferred to a second company (HSC) in accordance with Statutory Instrument No. 131 of 2003 (which is the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003) such that the claimant had no claim against the first respondent (SDX) under the Unfair Dismissals Acts, 1977 to 2007.

It was stated on behalf of SDX that it had been advised by HVN (a third company) that it had not been successful in its "rebid" to operate the catering service at the Loughbeg site and on 2 April 2009 SDX was advised that HSC (the second company) had been awarded the contract. Following "notification of same", SDX commenced consultation with its employees as per S.I. 131 / 2003 as a change in service provider in the context of the provision of catering services was treated as a transfer of undertaking.

There was no suspension of service and HSC (the second company) commenced operating the site on 6 April 2009.

It was contended on behalf of the respondent that an employee's entitlement to minimum notice only applied in instances where the employee's contract of employment was terminated but that, in this instance, no such termination occurred as the claimant's contract of employment was transferred to the transferee.

At the hearing, the Tribunal was told that the claimant was not pursuing his unfair dismissal and working time claims against the respondent but that he was reserving his position as against the abovementioned second company (HSC). The respondent's representative then submitted that the claimant was claiming against the wrong respondent and sought that the unfair dismissal and working time claims be struck out.

Determination:

The Tribunal heard sworn testimony and submissions. The claims under the Unfair Dismissals Acts, 1977 to 2007, and under the Organisation of Working Time Act, 1997, are dismissed for want of prosecution.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails because the Tribunal finds that the respondent was not in breach of the said legislation due to the claimant having been transferred by operation of law from the respondent to another company under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)