

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD2224/2009
RP2514/2009
MN2064/2009

against

EMPLOYER - first respondent

and

EMPLOYER – second respondent

and

EMPLOYER - third respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
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. L. Ó Catháin

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

heard these claims in Cork on 5th October 2010
and 25th January 2011

Representation:

Claimant(s):

Mr. Donncha Kiely BL instructed by
Murphy English & Co, Solicitors,
"Sunville", Cork Road,
Carrigaline, Co. Cork

First Respondent:

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

Second Respondent:

Mr. John Boylan, McNulty Boylan & Partners, Solicitors,
Clarke's Bridge House, Hanover Street, Cork

Third Respondent:

Ms. Maeve Cahill and Ms. Helen Barry, IBEC,
Knockrea House, Douglas Road, Cork

The determination of the Tribunal was as follows:-

Claims were lodged under redundancy, minimum notice and unfair dismissal legislation arising from the claimant's employment from October 1985 to 8 April 2009. The claims were brought against three respondents. It was alleged on the claim form to the Tribunal that the claimant's employment with the first respondent (also referred to as SDX) was transferred to the second respondent (also referred to as HSC) "and/or" a third respondent (also referred to as HVN) by virtue of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. It was further alleged that, when the claimant presented herself for work on 8 April 2009, she was refused entry to work and was unfairly dismissed.

The first respondent (SDX) disputed that it had dismissed the claimant but contended that the claimant had transferred to the second respondent (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 (the third respondent) 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 respondent) 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.

It was submitted that there had been no suspension of service and that the second respondent (HSC) had commenced operating on the site in question on 6 April 2009.

Regarding the minimum notice claim it was contended that an employee's entitlement to periods of minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, only applied in instances where the employee's contract was terminated. However, in this instance, it was argued, no such termination had occurred as the claimant's contract of employment had been transferred to the transferee.

Regarding the redundancy appeal, it was argued that the employee's role had not been redundant within the meaning of the redundancy legislation but was instead transferred to the second respondent (HSC) as per S.I. 131/2003 such that there could be no redundancy liability for the first respondent (SDX).

On behalf of the second respondent (HSC) it was submitted that HSC "did not have anything to do with the dismissal or otherwise of the claimant".

On behalf of the third respondent (HVN) it was submitted that HVN was not and had never been the employer of the claimant "within the meaning of the definitions as set out in the Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and/or the Redundancy Payments Acts, 1967 to 2007". As such it was the position of the third respondent (HVN) that it was the incorrect respondent for the purposes of any claim arising out of the claimant's employment with any employer that she had served.

Determination:

The Tribunal heard sworn testimony and submissions. Under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal unanimously determines that the claim under the said legislation succeeds against the second respondent (heretofore referred to as HSC)). The Tribunal is satisfied that there was a transfer of undertakings to the said second respondent. Accordingly, the Tribunal orders that this second respondent (HSC) reinstate the claimant in her former position with no loss in service or terms of employment as and from 6 April 2009 which was the date from which the transfer of undertaking took effect.

The appeal lodged under the Redundancy Payments Acts, 1967 to 2007, falls due to the Tribunal's finding under unfair dismissal legislation.

The claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, falls because the Tribunal's order of reinstatement under unfair dismissal legislation due to the abovementioned transfer of undertaking ensures that the claimant is compensated for all financial

loss subsequently incurred.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)