

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**  
EMPLOYEE

*- appellant*

**CASE NO.**  
PW260/2009  
P6/2009  
TE276/20 09  
TU21/2009

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

*- respondent*

under

**MATERNITY PROTECTION ACT 1994 AND 2004**  
**PAYMENT OF WAGES ACT, 1991**  
**PROTECTION OF EMPLOYEES ON TRANSFER OF UNDERTAKINGS REGULATIONS 2003**  
**TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr M. Murphy  
Mr J. Moore

heard this appeal at Monaghan on 7th June 2011

### **Representation:**

Appellant(s) :Mr. Gareth Kyne, IR/HR Consultant, Oengus Lodge, Newgrange, Slane, Co Meath

Respondent(s) : Mr. Lee Hamilton BL instructed by:  
John C. Kieran & Son, Solicitors, Castle Street, Ardee, Co. Louth

The decision of the Tribunal was as follows:-

These appeals came before the Tribunal by way of the appellant (employee) appealing three decisions and one recommendation of the Rights Commissioners under the Payments of Wages Act, 1991, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, The Maternity Protection Act, 1994 and the Terms of Employment (Information) Act, 1994 and 2001. References r-075588-pw-09/SR, r-075585-tu-09/SR, r-075587-mp-09/SR and r-075589-te-09/SR.

### **Appellant's Case:**

The appellant gave evidence. The respondent company was involved in the waste business which had been originally owned by the appellant's parents. She worked in the office located in the yard beside her parents residence and was employed as an Office Administrator carrying general administration duties on a gross weekly wage of € 447.00 (net being € 400.00).

She commenced maternity leave on February 19<sup>th</sup> 2008, giving birth to her child the following day. Before this time her parents had been in negotiations with the respondent company to take over the business in full. She attended a meeting with her father in respect of these takeover negotiations. On February 27<sup>th</sup> 2008 she compiled their client list database and transferred it over to the respondent's Financial Manager (CON). The business transferred to the respondent on July 8<sup>th</sup> 2008.

In August 2008 she contacted CON by telephone telling him of her intent to return to work following her maternity leave. He told her to do nothing and he would get back to her. She telephoned him a second time and was again advised to do nothing and he would be touch with her. He then told her to put her intention in writing, which she duly did on September 15<sup>th</sup> 2008. She also requested a copy of her contract with the respondent and a confirmation that her job as Administration Manager was still available to her under the same terms and conditions.

The following day CON replied stating he was lead to believe she was not due back until October. He also informed her of her obligation under regulations that she must confirm in writing her date of return to work to her employer four weeks before her due date of return. He asked to meet her to discuss her return to work and her specific role and conditions under which she would be employed. A meeting was duly arranged for September 20<sup>th</sup> 2008 where she was informed that she would have to work in the Dundalk office on a gross salary of € 400.00 but was not given a definition of her role. She explained to the Tribunal that part of the sale agreement was the administration work would remain in the premises on her parentsland for a further six to twelve months.

On October 3<sup>rd</sup> the claimant wrote to CON stating she was not accepting the position of Credit Controller offered to her at the meeting of September 25<sup>th</sup> with an additional 2 ½ hour working week and travel time from Carrickmacross to Dundalk also required. She also stated that if she was required to travel to Dundalk she required a written undertaking she would be paid travel expenses.

On the same day CON replied asking clarification of her decision not to take up the post and to inform her the company would be happy to accept her return to work in the Dundalk offices at a gross salary of € 400.00 for a 37 ½ hour week. Having heard no reply from the claimant on October 6<sup>th</sup> CON again emailed her stating that as the respondent had not heard from the claimant they assumed she was not taking up the offer of employment.

The same day she responded requesting confirmation the company would comply with the legislation transfer of undertaking, terms of employment and wages. The claimant told the Tribunal that on this day she attended for work with the respondent in the offices on her parents' premises.

On October 12<sup>th</sup> 2008 she emailed CON informing him she was not returning to work for the respondent, as she would not receive the wages she had received while working for her parents before the takeover. She also informed him she had spoken to a third party and would be making a formal complaint to the Rights Commissioners. Her email was acknowledged and her resignation accepted.

On cross-examination she explained that she had make a formal complaint to the Rights Commissioner under four different Acts of legislation - the Payments of Wages Act, 1991, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, The Maternity Protection Act, 1994 and the Terms of Employment (Information) Act, 1994 and 2001.

When put to her she replied that she had stated at that hearing that she had been forced to resign her position and had entered on the T1A form that she had been dismissed. She said that she felt her employment had ended before it had started. When asked she said she terminated her employment on October 12<sup>th</sup> 2008. She agreed she had given the required four-month prior notice of her intention to return

to work from maternity leave. The last day she worked for the respondent was October 9<sup>th</sup> 2008.

When put to her why the business had ceased to trade on her parents' premises she said there had been no waste permit for it. She stated that she had carried out some credit control work for her parents but this was not the position she was lead to believe she would take up in the respondent company. A printout stating the wages details of staff was handed to the Tribunal showing the claimant had been paid € 400.00 gross pay. When put to her she stated she had not operated the payroll system but had compiled details of staff wages for the respondent company. She knew that eventually she would have to move her work location to Dundalk.

When asked by the Tribunal she said she did not know why she had attended work on October 7<sup>th</sup> 2008 when she felt she had been dismissed on October 3<sup>rd</sup> 2008. She felt she "would just give it a go".

**Determination:**

The Tribunal having carefully considered the sworn evidence and submissions adduced in this case finds the appellant voluntarily left her employment and the Rights Commissioner was correct in his three decisions and one recommendation under the four different Acts of legislation - the Payments of Wages Act, 1991, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, The Maternity Protection Act, 1994 and the Terms of Employment (Information) Act, 1994 and 2001. The Rights Commissioners three decisions and one recommendation are upheld and therefore the appeals fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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