

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - first appellant

CASE NO.
RP1828/2010

EMPLOYEE - second appellant

RP1829/2010

EMPLOYEE - third appellant

RP1830/2010

against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. W. O'Carroll
Mr. F. Dorgan

heard this case in Nenagh on 20 May 2011

Representation:

Appellant(s):
No legal or trade union representation

Respondent(s):
No legal representation

The decision of the Tribunal was as follows:-

The first appellant claimed that her employment, which commenced in October 2004, ended by reason of redundancy on 26 February 2010. Her gross weekly pay was €136.50.

The second appellant claimed that her employment, which commenced on 4 October 2007, ended by reason of redundancy on 26 February 2010. Her gross weekly pay was €123.50.

The third appellant claimed that her employment, which commenced on 25 June 2006, ended by reason of redundancy on 26 February 2010. Her gross weekly pay was €123.50.

The written defence proffered by the respondent was that:

it lost a contract in Roscrea

it put the appellants on notice while trying to find alternative employment within the company

the company that won the contract contacted the ladies and offered them a “new” job in the same place of work as before

the three ladies contacted their supervisor and told her that they were not prepared to wait for the respondent to provide alternative employment

the ladies resigned from the respondent and accepted the new offer of employment with the new company

the respondent was very sorry to lose three very good members of its staff but, as they resigned their positions, they were not entitled to any redundancy.

At the Tribunal hearing the Tribunal was furnished with a copy of a letter dated Monday 15 February 2010 from SC (the respondent’s area manager) to MD (the first appellant) who was described as supervisor to MG (the second appellant) and MF (the third appellant). The letter stated that the respondent wished to notify MD and her staff (MG and MF) that the contract for cleaning at the civil defence premises in Roscrea was not going to the respondent and that the respondent had been so informed by phone at the end of the second week of that February and that the contract with the respondent would cease on Friday 26 February 2010.

The letter went on to state that the new contract cleaning company would take over on Monday 1 March 2010, that a transfer of undertakings should apply and that SC was sure that the new contract cleaning company would be in contact with the three ladies “in the near future”. The letter

concluded by wishing the ladies well with their new employers and thanking them for all their hard work “over the last number of years”.

Giving sworn testimony, MD (the first appellant) confirmed that the respondent had sent a letter stating that it had lost the contract. The ladies applied to work for the new company (hereafter referred to as NC). NC took them on as new employees for ten hours weekly. They lost three hours because they had worked thirteen hours per week for the respondent. NC said that it would not take on the ladies’ previous service. The ladies were still working for NC although it had had a change of name.

In clarification for the Tribunal, MD said that no alternative work had been offered to her and the others. They had worked in the civil defence offices. She thought that the respondent probably had other work but not in the same area. She did not know specifically about the respondent’s other work.

Giving sworn testimony, MG (the second appellant) confirmed the start and end dates of her employment with the respondent and that NC had cut the ladies’ hours from thirteen to ten. They had been interviewed by NC and had got work at the same rate but with reduced hours. They were doing the same work but were doing less hours.

Giving sworn testimony, MF (the third appellant) stated that the appellants had started on Monday 1 March 2010 for NC. She confirmed that she had got the letter that MD had got, that NC had not recognised the appellants’ service and that they still worked for NC.

In cross-examination MF said that her service had not broken and that the interview was between when she had received the letter and Friday 26 February 2010.

Answering a question by the Tribunal MF stated that she did not know if the respondent had had other contracts.

Giving sworn testimony, SC (the abovementioned area manager for the respondent) said that she had got a call from “the Department of Civil Defence” on Friday 12 February 2010 saying that the respondent had lost the contract. She was told that the last day would be Friday 26 February. SC replied that the notice was short. She had not had a strong relationship with that individual in civil defence.

SC then told the appellant ladies that the respondent had lost the contract. The respondent had tendered for the contract but had not got it. The respondent notified the ladies in writing. The ladies gave her a name for NC (the abovementioned new company) but SC could not contact NC in Ireland.

According to SC the appellant ladies had not known if they would have a job and the respondent would have paid redundancy if there was no work for them. The nearest contract that the respondent would have had would have been in Limerick. The respondent had only employed the three appellants on the Roscrea civil defence site but it had about 250 employees in Ireland. The

respondent had just lost three people when it lost the Roscrea civil defence site contract but was still in business although it had also lost work in Newbridge (with fifteen employees) and other work to the same competitor.

SC felt that transfer of undertaking rules should have applied to the three appellants who had lost their service. SC said that the respondent itself applied transfer of undertaking rules unless a client said that it would not take the staff. She submitted that what had happened in the case of the three appellants had been very unfair. The three appellants had been taken on by NC although they did lose some hours. SC described the situation as similar to a transfer of undertaking and said that the respondent had felt that the three appellants had not been entitled to a redundancy payment. She acknowledged that the transfer of undertaking rules were there to protect employees. When it was put to her that the contracts should remain the same she replied by saying that the respondent gave a month's notice when it had to transfer.

Asked about Newbridge, SC said that Newbridge had been "just a straight transfer" and that she assumed that the employees had been taken on. No redundancy (payment) had been sought. SC had rung the Newbridge supervisor who had said that all was fine.

Determination:

The Tribunal considered all that it had heard taking account of the key Suzen case which had relevance to transfer of undertaking for which there had to be a transfer of a substantial part of the assets of a company. This had not happened in this case. The Tribunal did not find that there had been a transfer of undertaking in the circumstances of this case. Loss of a contract can give rise to a transfer of undertaking but not in this case.

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the first appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	06 January 1943
Date of commencement:	15 October 2004
Date of termination:	26 February 2010
Gross weekly pay:	€136.50

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the second appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	25 May 1955
Date of commencement:	4 October 2007
Date of termination:	26 February 2010
Gross weekly pay:	€123.50

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the third appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	18 March 1965
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Date of commencement: 25 June 2006
Date of termination: 26 February 2010
Gross weekly pay: €123.50

Note:

These awards are made subject to the appellants having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)