

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -*Appellant*

CASE NO.
RP2619/2010

against
EMPLOYER -*Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. R. Maguire B.L.

Members: Mr. D. Winston
Mr. M. O'Reilly

heard this appeal at Dublin on 24th May 2011

Representation:

Appellant: Ms. Faye Revington B.L. instructed by Ms Anita Sothern,
William J Brennan & Co, Solicitors, 33 Upper Merrion Street, Dublin 2

Respondent: John F Kelleher, Solicitor, 4-5 St Mary's Terrace,
Dunboyne, Co Meath

The decision of the Tribunal was as follows:

Background:

The appellant's father owned a company (hereinafter referred to as Company B). The parties were in dispute regarding whether or not a transfer of undertakings had occurred from Company B to the respondent company during January 2009.

The companies were similar in nature in that they both sold small electrical appliances. The appellant's father and a director of the respondent company had known each other for many years.

An agreement document between the respondent company and Company B was opened to the Tribunal.

Evidence:

The appellant gave evidence that he was transferred to the respondent company from the time of January 2009 until he was made redundant in October 2009. Prior to being transferred to the respondent company he was employed by Company B. A transfer of undertakings between the two companies had occurred with effect from 1st January 2009. The purchase agreement document had been signed in December 2008. As part of the transfer of undertakings both the appellant and his brother transferred to the respondent company. They were the only two employees to transfer from Company B as part of the agreement. The Tribunal was referred to clause six of the agreement which stated, “*M and P will be employed on a full time permanent basis by the Purchaser as and from the 1st day of January 2009 on terms similar to their current employment with the Vendor.*”

During the months he was employed by the respondent the appellant collected outstanding debts on behalf of Company B but he also carried out work as one of four sales representatives on behalf of the respondent company.

On the 9th October 2009 the director informed the appellant that there was insufficient work to sustain four sales representatives in the company. The appellant’s solicitor submitted an RP77 form to the respondent on the appellant’s behalf but no response was received.

A director of the respondent company gave evidence that he first saw the agreement document in January 2009, after it had been signed. He had no input into the document prior to first seeing it in January 2009. In June 2008, the appellant’s father first approached the director about purchasing Company B’s stock. The director was again approached in December 2008 and he agreed to purchase Company B’s stock. The agreement was to buy Company B’s stock in the hope that it would facilitate the respondent in securing some agencies at a later stage.

As part of their discussions at this time the appellant’s father said that it would be important for the respondent company to employ the appellant and his brother for some time so that they could recover outstanding debts for Company B. The director agreed to employ the appellant and his brother for as long as possible and he confirmed that they had worked as sales representatives for the respondent company while they were employed.

Business decreased during 2009 and as a result the director was forced to inform the appellant in October 2009 that the company could no longer continue to employ him. As there had not been a transfer of undertakings and the appellant had less than 104 weeks in the employment of the respondent, he was not entitled to a redundancy payment.

A shareholder of the respondent company gave evidence that he was approached in the car park of the respondent company during December 2008. On the morning in question he was in a hurry. A representative of Company B handed the agreement document to him. The shareholder was informed it was imperative that the document be signed immediately or the transfer of stock could not proceed. As he was in a hurry, the shareholder signed the agreement document without reading it. He confirmed that he is not a director of the respondent company.

Determination:

S.I. No. 131/2003 — European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, state as follows:

‘Application.

3. (1) *These Regulations shall apply to any transfer of an undertaking, business, or part of an undertaking or business from one employer to another employer as a result of a legal transfer (including the assignment or forfeiture of a lease) or merger.*

(2) *Subject to this Regulation, in these Regulations -
“transfer” means the transfer of an economic entity which retains its identity;
“economic entity” means an organised grouping of resources which has the objective of pursuing an economic activity whether or not that activity is for profit or whether it is central or ancillary to another economic or administrative entity.*

(3) *These Regulations shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain....*

Rights and obligations.

4. (1) *The transferor's rights and obligations arising from a contract of employment existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee.*

(2) *Following a transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.”*

The Tribunal unanimously find that a transfer of undertakings occurred.

Having found that a transfer of undertakings occurred, the Tribunal is satisfied from the evidence adduced that the appellant’s employment terminated by reason of redundancy. The Tribunal finds that he is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	11 th April 1968
Date of Commencement:	8 th September 2003
Date of Termination:	31 st October 2009
Gross Weekly Pay:	€750.00

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

This award is made subject to the appellant 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)