

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP2452/2010

- Appellant

Against

EMPLOYER

- First named respondent

EMPLOYER

- Second named respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Madden B.L.

Members: Mr J. Flanagan
Ms. N. Greene

heard this appeal at Naas on 4th January 2012 and 13th March 2012.

Representation:

Appellant: In person

Respondent: 1st named respondent by Mr. Joe Morrin, Morrin & Co., Solicitors, Trident House, Dublin Road, Naas, Co. Kildare

2nd named respondent by Mr. Damien Kelly, Kelly & Griffin, Solicitors, 77 Terenure Road North, Terenure, Dublin 6W.

The decision of the Tribunal was as follows:-

First Named Respondent

The first named respondent (JB) set up a dry cleaning business in 2000. The appellant commenced employment in November 2003. Her role entailed looking after the reception. In 2009 JB received a telephone call from another dry cleaning business enquiring if he was interested in selling the business. JB did not sell the business at that time. JB contended that at that time the employees were aware that he was interested in selling his business.

The second named respondent (AK) subsequently bought the business. No solicitors were

involved in the sale of the business. JB handed over the keys to AK on 25th June 2010. JB told AK that he was anxious that he take on the employees as he did not want any employees to lose their jobs. AK said he would take on the staff but could not offer them the same hours of work or wages that they previously had with JB. However, AK told JB that if the business picked up he would review the situation. The main staff member he wanted to work for him was the appellant. JB did not give AK details of any of the employees' length of service with him. He passed the necessary paperwork to his Accountant. The appellant enquired from JB as to what hours AK expected her to work. JB told her to report for work on Monday 28th June 2010 and speak to AK. JB heard about a week later that the appellant had not transferred.

Second named respondent:

AK took over JB's dry cleaning business towards the end of June 2010. At that time he wanted his son to work in the business. There were three employees working in the business prior to the take over. He asked the employees to take a pay cut and he contended that he was not taking responsibility for redundancy of any employee.

AK contended that he took on the employees on a day one basis with new terms and conditions on 28th June 2010. Their previous years service was between them and JB. He believed that he was buying the goodwill of the business and the lease. He was not aware of the employees' entitlement to continuity of service. Legally he could not say if he was in breach of his obligations. No one told him that employees' conditions of employment needed to be protected. He did not enquire and felt he was naïve.

In the evening of 23rd June 2010 he met the appellant and told her that he wanted her to work for him. He offered her a reduction in her salary and left her to think about it. The appellant never worked for AK.

Appellant's Case:

The appellant commenced employment on 20th November 2003. She had worked a five day week until mid January 2010 and then this was reduced to a three day week.

Following a telephone conversation from AK the appellant met him on Wednesday, 23rd June 2010. This was the first incline that AK was taking over the business. He offered her a job and explained that her terms and conditions of employment would be different. She would have a reduction in both hours of work and wages. AK said if she did not accept the position he would offer it to someone else. He also said if she accepted the job that she would be starting on a day one basis.

The appellant enquired about her seven years service with JB. AK said it was nothing to do with him.

The next day the appellant spoke to JB in relation to her seven years service with him and where these years had disappeared to. JB told her "to take the job or leave it".

On Friday, 25th June 2010, the appellant's last day of working for JB, she received all monies owing to her and asked for her P45. The P45 was not ready. At this time she had still not made up her mind whether to take up the position with AK. She telephoned AK on Monday, 28th June 2010 and told him she would not be at work that day but would be in contact again. Thereafter,

she sought advice from an employment advisory body. She had no further contact with AK.

Determination:

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (TUPE) provides that the employees of a business which is being transferred from one employer to another must transfer with the business to the new employer. However, such a transfer must also be accompanied by the employees' accrued years of service and their existing terms and conditions of employment. This clearly did not occur in the present case. The Tribunal has taken into consideration the decision of the High Court in Symantec Limited v Leddy [2009] IEHC 256. However, the Tribunal is of the view that it can be distinguished from the present case. In particular, the Tribunal notes that there was a complete failure on the part of the new employer to honour the appellant's existing terms and conditions of employment as he is obliged to do and furthermore he refused to properly engage in any meaningful negotiations with her during the transfer of ownership. The appellant's refusal to transfer in this instance did not arise due to the change in ownership but because there was a complete failure on the part of her new employer to maintain her existing terms and conditions of employment.

The Tribunal finds after due consideration that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 against the second named respondent based on the following criteria:

Date of Birth:	15 th July 1971
Date of Commencement:	20 th November 2003
Date of Termination:	25 th June 2010
Gross Weekly Wage:	€270.00

This award is made subject to the appellant fulfilling current social welfare requirements in relation to PRSI contributions.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

