

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

EMPLOYEE

UD2006/2010  
RP2729/2010

Against

EMPLOYER - *Respondent 1*

And

EMPLOYER - *Respondent 2*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr. M. Flood  
Mr N. Dowling

heard this claim at Dublin on 28th February 2012

Representation:

\_\_\_\_\_

Claimant: In person

Respondent 1 No appearance by or on behalf of the respondent

Respondent 2 In person

The determination of the Tribunal was as follows:-

**Claimant case:**

The Tribunal heard evidence that the claimant worked as a security guard from June 2006 and was told on 8<sup>th</sup> April 2010 that his job (site) would finish on 10<sup>th</sup> April. He was told something would be sorted out for him and he kept in contact by telephone asking about his position. On 26th April 2010 he received an e-mail about a merger of companies. The letter was addressed to all employees and stated that there would be no change in rates of pay or working conditions.

The claimant drove down to head office and the general manager told him there was nothing available for him at the moment.

On 10<sup>th</sup> May the claimant received a letter from Mr M stating that his shifts had reduced completely but if the situation changed things would be reviewed. The claimant wrote to Mr M on 25<sup>th</sup> June 2010 looking for clarification of his situation but received no reply.

MR M was an employee of the second named respondent but the letter of May 10<sup>th</sup> was written on headed notepaper from the first named respondent.

The claimant received no redundancy payment and only received his P45 when he made contact with the Tribunal.

### **Respondent's case:**

The second named respondent stated that it purchased some contracts from the first named respondent. They also purchased the name of the company and payroll system.

Some employees did not transfer over to them, a general letter was sent or left at sites for all employees.

A liquidator was appointed to the first named respondent and it became a security training operation.

Under cross examination the second named respondent stated that they took on 200 of the 205 employees.

They were unaware of who issued the P45 but thought it may have come from the liquidator.

### **Determination**

Having considered all of the evidence the Tribunal notes in particular the following

- (a) 200 out of 205 employees transferred in or about May 2010 to the second named respondent
- (b) All secretarial business transferred at that date to them along with the main payroll system
- (c) A letter was written to the claimant by Mr M an employee of the second named respondent at this stage on 10<sup>th</sup> May 2010 indicating that they considered the claimant an employee.
- (d) The first named respondent as was does not have any security business but is devoted entirely to training.
- (e) 2003 regulation S.I. 131 (Protection of Employees on Transfer of Undertakings) states that “the regulation applies to any transfer of undertaking, business or part business from one employer to another as a result of a legal transfer”

4.1 of the regulation states that

“In general, the regulations apply to any person working under a contract of employment”.

Despite the correspondence between the liquidator and the second named respondent and the letter from NERA put before the Tribunal the Tribunal is satisfied that there was a Transfer of Undertakings within the meaning of the regulation of the organised grouping of resources that encompassed the claimant's employment.

The Tribunal heard evidence unchallenged by the second named respondent that the claimant has not worked since April 2010 and that he made several attempts to obtain work.

It cannot have helped in his endeavour that he was not provided with his P45 until August 2011 though date of cessation was stated as 30<sup>th</sup> April 2010.

The Tribunal finds that the claimant was transferred and unfairly dismissed and award him the sum of €50,122.80, being equivalent of 104 weeks of his gross pay as agreed at the hearing.

The claim under the Redundancy Payments Acts 1967 to 2007 is dismissed because these acts are mutually exclusive.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

