

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE -*Claimant*

CASE NO.

RP2825/2010  
MN2030/2010

against  
EMPLOYER -*Respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr C. Lucey  
Ms M. Mulcahy

heard this claim at Dublin on 9th March 2012

#### **Representation:**

Claimant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens Street, Dublin 1

Respondent: A director of the company.

#### **The determination of the Tribunal was as follows:**

Dismissal as a fact was in dispute in this case. The claimant was employed by the respondent company from January 2008. The appellant began maternity leave on the 22<sup>nd</sup> March 2010. A director of the respondent company gave evidence that a transfer of the business occurred on the 12<sup>th</sup> April 2010. However, all of the employees were retained on the same terms and conditions and the details for each employee were provided to the new employer.

The director attempted to contact the claimant through other employees, including the claimant's sister, but he was informed that she was out of the country. He asked the claimant's sister and her friends to inform the claimant of the transfer and to tell her that all employees were being retained by the new employer on the same terms and conditions. The director heard nothing further from the claimant until the 27<sup>th</sup> May 2010 when she requested a P45 from the respondent company. In or around this time the director was told by the claimant's friend that the claimant did not intend to return to work and he also received a text message from the claimant around this time.

In reply to questions from the Tribunal, the director stated that some employees were unhappy in the new employment and at their request he assisted them with finding other work as he had

worked with the employees for a long time and they had been “fantastic” to him.

The claimant gave evidence with the assistance of a Tribunal appointed interpreter. The claimant confirmed that she was informed of the transfer by her friends and her sister who were also employees. The claimant was aware of this from the beginning of her maternity leave; however she did not receive paperwork regarding the transfer. The claimant requested a P45 from the respondent in May 2010, as she required it for social welfare purposes.

The claimant stated that she was unaware that the director would have assisted her in finding work elsewhere. In reply to questions from the Tribunal, the claimant confirmed that she did not submit notice of her intention to return to work at the end of her maternity leave in September 2010.

**Determination:**

The Tribunal is satisfied from the evidence adduced that a transfer did occur in April 2010 and that the claimant was aware of this transfer from a very early stage in her maternity leave. Despite this, the claimant did not notify the new employer of her intention to return to work at the end of her maternity leave. In the circumstances the Tribunal finds that the appeal under the Redundancy Payments Acts, 1967 to 2007, fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, also fails as the claimant failed to return to her employment.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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