

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE *-claimant*

CASE NO.
UD1573/2011

MN1635/2011

against

EMPLOYER *-respondent A*

EMPLOYER *-respondent B*

EMPLOYER *-respondent C*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr F. Moloney

Mr P. Trehy

heard this claim at Dublin on 8th January 2013

Representation:

Claimant:

Respondents:

Background:

These claims were heard with claims UD1572.11, RP2097.11, MN1634.11 and MN1793.11.

Summary of evidence:

At the outset of the hearing the claimant's representative stated that there was a difficulty in identifying the correct employer. A number of documents were submitted to the Tribunal one of which showed that holiday pay was processed and paid by respondent C in September 2011; some months after the claimant's employment had ended.

Representation for respondent C confirmed that a transfer of undertakings to respondent C had taken place on 20 June 2011, some two days prior to the end of the claimant's employment. When the claimant later sought a payment of holiday pay, respondent C paid it, as it was accepted that the liability had transferred.

It was the claimant's evidence that she was employed in November 2006 and worked as a supervisor of cleaning staff. In the months preceding the transfer the claimant was informed by her manager that a transfer of undertakings would occur and this later took place effective from 20 June 2011. The claimant accepted that her terms and conditions and hours of work remained unchanged following the transfer.

It was the claimant's case that she had asked the permission of her new manager (LS) to speak Russian to some staff members in order to better explain cleaning instructions and LS agreed to this. However, subsequently LS addressed the claimant for speaking Russian with other staff members. The claimant told LS that, "*if this is how it is going to be I cannot go on*" and the claimant subsequently resigned on 22 June 2011. The claimant stated that she could not continue to work for respondent C as it was stressful and other staff were complaining to her since the transfer.

It was the evidence of the manager, LS that on 21 June 2011 the staff were provided with the relevant paperwork and training following the transfer. LS recalled the claimant requesting permission to give instructions through Russian and LS agreed to this and did not reprimand the claimant at any stage for this. LS spoke to another employee about learning to speak English but this was unrelated to the claimant.

In any event the claimant approached LS at 8am on 22 June 2011 and informed her that she wished to resign. The claimant also complained about the time she started work although this was unchanged. Also, LS checked that there was no local arrangement in place in relation to this issue. LS tried to reassure the claimant and encouraged her to reconsider but to no avail. When requested to do so, the claimant gave her intention to resign in writing and departed the employment.

Determination:

The Tribunal is satisfied from the verbal and documentary evidence that respondent C was the employer by virtue of a transfer of undertakings on 20 June 2011. Within two days of this transfer the claimant resigned from her employment without previously raising a grievance. The Tribunal finds that the resignation of the claimant did not constitute a constructive dismissal and dismisses the claim under the Unfair Dismissals Acts, 1977 to 2007. As the claimant resigned from her employment it follows that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)