

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

TU27/2011

&

EMPLOYER

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

under

**PROTECTION OF EMPLOYEES ON TRANSFER OF UNDERTAKINGS
REGULATIONS 2003**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr R. Murphy

Mr J. Jordan

heard this appeal at Dublin on 20th March 2013

Representation:

Appellant:

Respondent:

This case came before the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner r-106509-tu-11/JT

Determination

A preliminary issue arose as to whether this claim was lodged within the time frame specified in section 10(6) of the above Regulations. The Tribunal is satisfied that this claim was presented to the Rights Commissioner within 6 months of the alleged contravention of the Regulations.

The employee gave evidence to the Tribunal in respect of certain breaches of the Regulations. These alleged breaches were as follows:

1. That his terms and conditions of employment were changed without his consent over a period of time after the transfer of undertakings had occurred.

2. That he was not given the opportunity to have representation prior to the transfer of undertakings
3. That there was not adequate consultation with him prior to the transfer of undertakings.

No. 1 above is dealt with under Section 4. (1) & (2) of the regulations which state (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” and (2) Following a transfer, the transferee shall continue to observe the terms and conditions of 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”.

It was common case that the transferor is the appellant in the appeal before the Tribunal. The Tribunal finds that the appellant’s obligations transferred to the transferee on 17th September 2010 and that thereafter there can be no obligation on the appellant in respect of the continuance of the employees agreed terms and conditions of employment.

Although there is no mention of Section 4 of the regulations in the Rights Commissioner’s decision the Tribunal heard this appeal on a “de novo” basis and the claim under Section 4 of the Protection of Employees on Transfer of Undertakings Regulations 2003 fails.

No. 2 above is dealt with under Section 7 (1) of the regulations which states “where an undertaking, business or part of an undertaking or business the subject of a transfer, preserves its autonomy after the transfer, the status and function of the representatives or of the representation of the employees affected by the transfer shall be preserved by the transferee concerned on the same terms and subject to the same conditions as existed before the date of the transfer as specified in any enactment, or in any agreement between the employer and the employees’ representatives.”

This section clearly places an obligation on the transferee to preserve the employees’ right to representation. There is no such obligation on the transferor and as it was the appellant who was the transferor there can be no grounds for a claim under Section 7 and therefore the decision by the Rights Commissioner in respect of Section 7 of the Protection of Employees on Transfer of Undertakings Regulations 2003 is overturned.

No. 3 above is dealt with under section 8 of the regulations.

8. (1) The transferor and transferee concerned in a transfer shall inform their respective employees’ representatives affected by the transfer of -

(a) the date or proposed date of the transfer;

(b) the reasons for the transfer;

(c) the legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for them

and

(d) any measures envisaged in relation to the employees.

(2) The transferor shall give the information in paragraph (1) to the employees' representatives; where reasonably practicable, not later than 30 days before the transfer is carried out and, in any event, in good time before the transfer is carried out.

(3) The transferee shall give the information in paragraph (1) to the employees' representatives, where reasonably practicable, not later than 30 days before the transfer is carried out and, in any event, in good time before the employees are directly affected by the transfer as regards their conditions of work and employment.

Under this section there is an obligation on both the transferor and the transferee. It was common case that the respondent to this appeal (the employee) was only informed on the day before the transfer of undertakings took effect and therefore the Tribunal is satisfied that there was a breach of this section by the appellant.

The Tribunal upholds the decision of the Rights Commissioner under Section 8 of the Protection of Employees on Transfer of Undertakings Regulations 2003 and awards the respondent (the employee) €2,442.00 being a just and equitable in all the circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)