

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE (*appellant*) UD2382/2011

CASE NO.
PW539/2011

against the recommendation of the Rights Commissioner in the case of:
EMPLOYER (*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr. R. Prole
 Mr. S. O'Donnell

heard this appeal at Drogheda on 9th May 2013

Representation:

Appellant(s) :

Respondent(s) : In Person

The determination of the Tribunal was as follows:

The Parties came before the Tribunal on an employer appeal from a decision of the Rights Commissioners dated the 21st November, 2011 (r-111685-ud-11/EH and r-111686-pw-11/EH).

The Tribunal has carefully considered the evidence adduced. The respondent (employee) had worked in excess of three years with a food retail unit in Drogheda. The shop had changed owner up to four times in the period that she was there. The name of the shop as well as the owner had changed too.

The appellant (employer) took over this premises in April of 2011. In effect, this was a transfer of undertaking and under such circumstances, there rests on the new employer an obligation to take over the workplace retaining the same rights, terms and conditions of work for the employees.

The appellant gave evidence to the effect that of all the team working on this premises the respondent was the only one liable to have a work permit to hold down a job. The respondent worked a 35 hour week.

The parties were aware of the fact that a new work permit would be required to show a change

of employer and also in circumstances where the visa held by the respondent was due to expire in July 2011. The respondent was well used to the process of renewing her visa though the appellant would be obliged to fill out his share of the form. There was no cost for getting the work permit (which in fact was a spousal/dependent permit).

The respondent was due to go on holidays towards the beginning of June 2011. The issue of a renewal visa and work permit was still outstanding. The appellant noted that she was getting a reduced number of hours in the run up to the holiday she had planned some time ago.

The respondent and the appellant had words about the unauthorised taking of kitchen equipment. The appellant said he wanted to try and renew the respondent's work permit but opted to give the respondent a P45 in advance of her holiday – promising to regularise her employment on her return.

The respondent took the P45 to mean that she was being let go and that there would be no guarantee that she would be getting her job back. There can be no doubt that the P45 in effect ended the build up of the three years service which was inherently unfair. Perhaps the respondent would be re-employed after the end of her June holiday, however she would have been in a precarious position if she had accepted that this was a new job with a new employer.

The Tribunal finds this dismissal took place and was unfair. The Tribunal awards the sum of €3,500 under the Unfair Dismissal Acts, 1977 to 2007 and affirms the recommendation of the Rights Commissioner under the Payment of Wages Act, 1991, awarding €574.10.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)