

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
RP78/2010
WT27/2010
MN49/2010

Against

EMPLOYER(*respondent 1*)
EMPLOYER(*respondent 2*)
EMPLOYER(*respondent 3*)
EMPLOYER(*repondnet 4*)

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr G. Andrews
Ms S. Kelly

heard this appeal at Limerick on 14th March 2013

Representation:

Appellant:

Respondents:

The claim under the Organisation of Working Time Act 1997 was withdrawn at the outset. It was common case that there was no record of the claimant ever being an employee of *respondent 3*.

Claimant's case:

The claimant DQ gave evidence of being a cleaner for respondent 1-2 in a shopping centre. He was advised by his manager VF that they had lost the tender for the cleaning of the centre but that a Transfer of Undertakings would occur and that he would remain with the new company. A representative from *respondent 4* spoke to him a few days before the takeover. On 14th January 2009 he was offered a new contract with a day-one start and lesser rates of pay. He refused to sign it and was told if he didn't accept it he would "be gone". DQ contacted VF who told him to stay on and argue his case. He was the only employee affected and received no assurances from the new

company at any time.

Respondents case:

VF for respondent 1 - 2 gave evidence of the contract being lost and providing the details of the claimant to the new company (*respondent 4*) . She told the Tribunal that she spoke to the new provider and told them that she wanted the Transfer of Undertaking legislation to apply and that they agreed to it. The claimant contacted her to say he received a new contract which he wasn't accepting. She told him not to leave the position as jobs were hard to come by. She didn't have any contact with him afterwards.

Under cross examination VF told the Tribunal that she did not receive anything in writing from *respondent 4*. She was not aware of why letters sent to the regional manager by the claimant's representative had not been replied to and understood that TUPE legalisation applied if not objected to by the new provider.

SC for *respondent 4* gave evidence of being awarded the contract. He recalled the telephone conversation with VF but stated that he would not have said that TUPE was being accepted, he wouldn't have had the authority to authorise it. He stated that sometimes it was part of an arrangement, particularly in state contracts but it is not always.

Under cross examination SC stated that he did not have a copy of the tender documentation. He would have spoken to the claimant sometime in December and advised him that TUPE was not applying. He was not aware of any unanswered correspondence to the claimant's representative.

Determination:

Having heard all the evidence, much of it conflicting, the Tribunal finds that a transfer of undertaking did not take place. No documentary evidence or evidence of any official discussion or negotiations was provided to the Tribunal.

The appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria: -

Date of birth:	13 December 1961
Date employment commenced	19 May 2000
Date employment ceased	14 January 2009
Gross weekly pay	€569.00

This award is made subject to the appellant having been in insurable employment during the relevant period under the Social Welfare Acts.

The appellant is entitled to compensation under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 in the amount of €2,276.00 which is equivalent to 4 weeks gross pay.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

