

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *Appellant*
MN2424/2011

CASE NO.
RP2958/2011

against
EMPLOYER - *Respondent*
under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Meghen

Members: Mr T. Gill
Ms H. Murphy

heard this appeal at Galway on 17th June 2013

Representation:

Appellant(s) : REP

Respondent(s) : REP

The decision of the Tribunal was as follows:-

Background:

The appellant commenced employment with another company (NC) on the 7th January 2008 under a fixed term contract ending on the 31st December 2008. She was then issued another fixed term contract ending on the 31st December 2009. On the 3rd September 2009 the appellant commenced maternity leave returning on the 31st January 2010.

On her return to work she worked a four-day week. In early September this reduced to a three-day week. On the 17th September 2010 the Principal of NC passed away and she received a P45. From the following day she was employed by the respondent company until the 23rd December 2010 when she was informed there was no more work for her.

Appellant's Position:

The appellant maintains there was a transfer of undertakings and therefore a claim for redundancy and minimum notice are viable.

Respondent's Position:

The respondent contends there was an "alternative agreement" with the Principal from NC to take over the business. He told the Tribunal that the appellant only remained to complete the work in progress. NC's widow was unable to pay the salaries of the staff and the respondent paid it. This "alternative agreement" ended on the 31st January 2011. No assets or employees moved to the respondent company.

Determination:

The Tribunal have carefully considered the evidence adduced by both parties in this matter and find there was no transfer of undertakings between the original employer and the named respondent company. Accordingly the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)