

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employer

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

6 Employee

CASE NO.
TU61/2006
TU62/2006
TU63/2006
TU64/2006
TU65/2006
TU66/2006

C/O John Cooney, Mallow No. 1 Branch, SIPTU, Liberty Hall,
Fair Street, Mallow, Co. Cork

under

TRANSFER OF UNDERTAKINGS REGULATIONS 2000

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms Rachel O'Flynn B.L.

Members: Ms. M. Sweeney
Mr. K. O'Connor

heard this appeal in Cork on 14th June 2007

Representation:

Appellant: Mr. Alan Haugh BL, instructed by Aidan Grogan of IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2.

Respondent: Mr. John Cooney, Mallow No. 1 Branch, SIPTU, Liberty Hall, Fair Street,
Mallow, Co. Cork

This case came to the Tribunal by way of appeal against Rights Commissioner Recommendation
R-032390-tu-05/JH

The determination of the Tribunal was as follows:

Appellant's Case

The former key accounts manager for Limerick, Tralee and Cork gave evidence. When she spoke to the school principal about the cleaning contract, she was told the school required flexibility and

that the cleaners be supervised. It was a condition of the contract that the staff members were not retained. When the appellant got the contract they supplied all their own equipment.

The HR manager for the appellant gave evidence. They recruited staff but were careful not to recruit any of the former cleaners as that was a term of the contract. She had no knowledge of any collective agreement.

Respondent's Case

One of the respondent's gave evidence. She started working for the holder of the cleaning contract in 1994. After 2 years the company lost the contract. Six cleaners were employed directly by the school. They accepted a pay freeze as the school was raising money for a new building. There were never any problems. The employees were always flexible and stayed until the job was done.

In August 03 she was told that the school was intending to bring in a contractor. Their jobs were safe. The transfer of undertaking regulations would apply. The contract had been for a period of twelve months. If a new contractor came in, the same thing would happen again and our jobs would be safe.

On 13th August 04 she received a letter that effective from 30th Aug 04 a new contractor was taking over the cleaning job. She took it for granted that everything would be ok. Then she saw advertisements for school cleaners. Her union wrote to the new contractor and was informed that they would not be employed.

The school principal gave evidence. The respondents had worked at the school for between 3 years and 13 years. There were no difficulties in relation to the work. There was a need for supervision following the move to a new school. Once the transfer of undertaking to the first contractor occurred the school's liabilities to the cleaners ended. There was no future commitment to them.

A member of the board of management gave evidence. At the time the employees transferred from the school to the first contractor an undertaking was given that the new employer would look after the rights of the employees. No other commitment was given.

A second member of the board of management gave evidence. There was a commitment from the new employer that there would be no break in service and terms and conditions of employment would be honoured. No other commitment was given.

The appellant's representative made submissions to the Tribunal. He cited the Suzen judgement and several Employment Appeals Tribunal determinations.

Determination

Although this matter came on appeal from the Rights Commissioner it has been treated as a de novo hearing.

Having heard the evidence and the legal submissions from the appellant and the respondent the

Tribunal is satisfied that there was not a transfer of assets or staff from the first contractor to the appellant. The Tribunal takes cognizance of the Suzen decision of the European Court of Justice. The appeal succeeds and accordingly the decision of the Rights Commissioner is set aside.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)