

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

Employee

- appellant

### CASE NO.

RP312/07

### Against

3 Employers

- respondent

### Under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr W Power  
Mr G Lamon

heard this appeal at Naas on 25 August 2008.

### Representation:

Appellant : In person

Respondent : No appearance by or on behalf of the respondent.

The decision of the Tribunal was as follows:-

The Tribunal has considered the time limit for receipt of appeals under Section 24 of the Redundancy Payments Act 1967 as amended by Section 12 of the Redundancy Payments Act 1971 and Section 13 of the Redundancy Payments Act 1979 and has decided to allow the appellant to present his case.

The Tribunal is satisfied that the respondent was notified of this hearing. Neither the respondent nor a representative on its behalf appeared at the hearing.

The appellant gave evidence. He commenced employment with a different respondent on 15<sup>th</sup> September 1983. The respondent subsequently took over the company. The appellant managed the company and built up a customer base. His gross weekly wage varied between €400 and €500. His employment terminated on 26<sup>th</sup> June 2006 and the respondent promised to pay him a substantial redundancy lump sum. He said that his contract of employment ceased on that day. He contended that the respondent absconded and reneged on her promise to pay him his redundancy entitlement.

When the business was signed over to a new owner he spoke to the new owner and agreed new terms and conditions. He signed a new contract of employment. He re-commenced work on 28<sup>th</sup> June 2006.

No evidence was adduced by or on behalf of the respondent.

**Dissenting opinion of Mr. George Lamon:**

Due to the understanding given to the new owner by the respondent that the appellant was being given his redundancy during their negotiations on the take-over of the business, he was not therefore in a position to accept or reject this part of the appellant's involvement in the transfer.

Arising from this exclusion the new owner was not in a position to exercise his option under Section 5 (5A) of the Redundancy Payments Act, 1971, which he could rely upon, in any future claim by the appellant in the future of the business.

The new owner gave evidence (not under oath) that the respondent told him a few times that the appellant was being made redundant by her.

To protect both parties arising from the evidence given (the respondent not in attendance) by them, it would be unsafe not to allow the appellant's appeal, therefore my decision to disagree.

In relation to the appellant securing employment with the new owner I must accept the evidence given by him that on being advised by the respondent that a new owner had purchased the business he sought employment with him.

An interview was arranged two days after the purchase of the business which resulted in the appellant being asked by the new owner how much he would want to work for him to which he asked for €600 per week, an increase of €100 per week over his last employer's payment per week.

The new owner stated he only decided he needed staff after he made the purchase, therefore no transfer of staff took place under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 S.I. No. 131 of 2003 but Section 5 (5A) of the Redundancy Payments Act, 1971 was implemented by the respondent by her decision to make the appellant redundant with his permission, being the only employee to negotiate with under this Act.

In my opinion the appellant is entitled to his redundancy claim under the Redundancy Payments Acts, 1967 to 2003.

**Determination:**

The Tribunal heard evidence from the appellant in this case that he had been promised a redundancy lump sum entitlement when the respondent sold on the business to a new employer.

Section 9 (2) of the Redundancy Payments Acts 1967 provides that

“ An employee shall not be taken for the purposes of this Part to be dismissed by his employer if his contract of employment is renewed, or he is re-engaged by the same employer under a new contract of employer, and

- (b) in any other case, the renewal or re-engagement is in pursuance of an offer in writing made by his employer before the ending of his employment under the previous contract, and takes effect either immediately on the ending of that employment or after an interval of not more than four weeks thereafter”.

In this case all the rights and obligations passed to the new employer.

Section 4 (1) of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 provides:

“4 (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.”

Accordingly, the Tribunal finds, by majority, with Mr. Lamon dissenting, that the appellant is not entitled to a redundancy lump sum entitlement. Therefore, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)