

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
Employee

CASE NO.  
RP1219/2008

Against

Employer

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms M. Sweeney  
Mr J. McDonnell

heard this appeal at Cork on 15th July 2009

### **Representation:**

Appellant : Mr Daniel Snihur, IWU, 55 North Main Street, Cork

Respondent : No representation listed

The decision of the Tribunal was as follows:

### **Respondent's Case**

A current employee of the respondent (CE) had been a director of Co. R, which had employed the appellant on 18 February 2006. The claimant commenced employment with Co. R on 18 February 2006. Difficulties arose in Co. R including serious financial problems and personal difficulties between its directors. Co. R ceased trading in September 2006 and laid off all its employees, of which there were around seventy. Some weeks prior to this, in late August 2006 CE and an employee of Co. R (Ms. C) had informed all its employees of the impending closure of Co. R and termination of their employment a few weeks hence. In some cases, as in the claimant's case, this involved their visiting the sites where employees were working to inform them of the situation. Ms.C prepared the pay and P45s for Co R's employees when it was closing down. The respondent commenced trading/business on 2 October 2006.

The respondent commenced trading on 2 October 2006. It was Ms. C's evidence that she commenced employment with the respondent in a different position to that which she had held in Co. R. She helped the respondent to recruit its employees by contacting those who had previously worked for Co R. She contacted the appellant and he agreed to work for the respondent. Initially, the respondent had 20 employees and this later increased but at the time of the hearing the respondent had only twelve employees. The respondent employed a

company to translate the contracts of employment and safety statements into the relevant languages for its employees.

Co. R had been involved in the building and construction industry, labour hire services and packaging. The respondent is involved in painting, decorating, block laying and importing goods unrelated to the building industry. There was no transfer of equipment between the two companies and the location of both businesses was different albeit by some three kilometres. There was a period without any work between the closure of Co. R and the respondent's commencement of business. None of the respondent's directors were directors of Co. R.

### **Appellant's Case**

The appellant commenced employment with Co. R on 18 February 2006. There was no break in his service in September/October 2006. His pay slip at the end of September included his holiday pay. He was doing a painting job the day he was called into the office and continued at that job the following day. The appellant had no memory of meeting the director of Co. R (CE) and Ms. C in August 2006 or of having been informed by them of a change in his employment. He could not recall the date on which he was called to the office and informed of the change of employment but he was painting the day before his visit to the office and he continued with the same work the day after. He was given a contract of employment and told the company name had changed. He was also told that he would work under the same rules and conditions as before this changeover. The appellant signed his contract of employment with the respondent on 30 January 2007. His employment with the respondent was terminated on 18 April 2008.

### **Determination**

Having considered the oral evidence and documentation (contract of employment from the respondent and pay slips from Co. R) presented to it the Tribunal finds that the appellant's employment with Co. R was terminated in September 2006 and that he commenced with a new employer, the respondent, on 2 October 2006. There was not a transfer of undertakings between the two companies. The appellant's service with Co. R was not preserved and not continued into his employment with the respondent. It follows that the appellant, having commenced employment with the respondent in October 2006, did not have the requisite two years' service with the respondent when his employment with the respondent was terminated in April 2008, so as to entitle him to a statutory redundancy payment. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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