

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYEE - appellant

CASE NO.  
RP1224/2009

against

EMPLOYER - first respondent

and

EMPLOYER – second respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. M. Murphy  
Mr. O. Nulty

heard this appeal in Drogheda on 18 January 2011

Representation:

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Appellant(s):

Mr. Conor Breen, McDonough & Breen, Solicitors,  
Distillery House, Distillery Lane, Dundalk, Co. Louth

Respondent(s):

Ms. Tara Matthews, Oliver Matthews & Company, Solicitors,  
Quayside Business Park, Mill Street, Dundalk

The decision of the Tribunal was as follows:-

The appellant, a security officer, sought a redundancy award based on employment from 25 March 1998 to 5 January 2009. It was claimed that he had started work with a security company (ES) on the abovementioned date of 25 March 1998 but that in 2004 ES changed to another name (hereafter referred to as PS). On 5 January 2009 PS ceased trading. The work contracts of PS were bought out on 9 January 2009 by another company (hereafter referred to as NSS). The appellant was offered a job, which he accepted, on 9 January 2009. He submitted a redundancy form (RP50) to PS. PS refused to complete it because it claimed to have no money to pay the appellant's redundancy. NSS stated that it was not taking on the appellant's years of service but the appellant felt that he was entitled to a redundancy payment (after some ten years of service).

It was submitted to the Tribunal on behalf of PS:

that the situation was one of transfer of business and that all appropriate conditions concerning employees were complied with by the respondent;

and that there was no redundancy applicable to the appellant as there had been no cessation or break of the appellant's employment and the appellant's job had not been affected.

At the hearing on 18 January 2011 the Tribunal was told that this case had had a previous hearing but that there had been an application by the first respondent to add a third party (to the appellant and first respondent) as a second respondent. The said third party (the second respondent) was served with a hearing notice for the 18 January 2011 hearing but it was not represented at the said hearing.

On the subject of whether there had been a contract or transfer of undertaking the Tribunal was referred to the first schedule of a consultancy agreement between the first and second respondents and told that there had been no timelapse in that there had been an immediate takeover on 5 January 2009. It had all taken place on the same day because the work was conducted through the night. The equipment had transferred. The appellant's representative did not dispute that there had been a transfer of undertaking but pointed out that there had been no reference to employees, that there had been nothing in writing and that the appellant had known nothing until the next day.

The appellant's representative stated to the Tribunal that the appellant had only received a small number of days' work in the three months prior to the 18 January 2011 hearing and attributed relevance to the fact that the second respondent was not present at the said hearing.

When 27 April 2009 was mentioned (as a date of agreement between the respondents) the appellant's representative confirmed that the appellant had worked after that date. He was to work twenty hours per week for the same rate of pay both before and after the transfer.

It was not argued that a notice of intention to claim redundancy (Form RP) had been served on the second respondent to request that the said respondent pay the appellant redundancy or guarantee him a sufficient amount of work. There was no suggestion that there had been any consultation with the appellant as to the amount of work he should be guaranteed with the second respondent or that he had been given anything in writing. It was submitted that the appellant was not satisfied with the amount of work he was being given by the second respondent and it was said that there was proof that there had been a transfer of undertaking such that the Tribunal was entitled to make such a determination.

**Determination:**

This issue came before the Employment Appeals Tribunal on 18 January 2011. The Tribunal verified that the third party (the second respondent) was notified of the matter. The Tribunal was provided with a copy of the agreement made on 27 April 2009 between the first respondent and the third party (the second respondent). This agreement transferred the undertaking from the first respondent.

The Tribunal added the third party to the proceedings at a previous hearing of the Tribunal on 28 July 2010. The Tribunal is satisfied that this third party was served with a notice of hearing for 18 January 2011. The said third party failed to attend the hearing. The Tribunal considered the new incontrovertible evidence supplied and decided that the transfer of undertakings directive applied in this case. Therefore, the appellant's employment will be deemed to be continuous and his employment was transferred from the first respondent to the third party (the second respondent) on 27 April 2009 and all his statutory rights were transferred on that date to the third party. In the circumstances the appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

