

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
2 Employees

CASE NO.
RP262/2005
MN402/2005
RP263/2005
MN403/2005

Against

3 Employers

Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. T. Gill
Mr. G. Hunter

Heard this appeal at Castlebar on 26th February 2007

Representation:

Appellant(s): Ms. Edel McCool, Solicitor, (for the first named appellant only)
Garavan & O'Connor Solicitors, Main Street, Castlebar, Co. Mayo

Respondent(s): Michael Browne, Solicitor
Garvey Smith & Flanagan, Solicitors, Castlebar, Co. Mayo

The decision of the Tribunal was as follows:-

At a previous hearing, (on the first of February 2006), before a different division of the Tribunal, the above named respondents denied that he was the employer. His position was that a Transfer of Undertakings occurred and another party (hereinafter referred to as "The new owner") was responsible for the appellants. The hearing was adjourned to be heard in full by a new division of the Tribunal and to allow the named respondents to inform the Tribunal of the name and address of the new owner, which the Tribunal was informed would be done within two weeks.

The case was listed for hearing after numerous unsuccessful attempts to elicit the information regarding the name and address of the new owner from the representative for the named respondents.

On the date of hearing, the respondents' position was once again that he was not responsible for the appellants' redundancy situation, and that the claim should have been against the new owner.

Respondent's Case:

The respondent's position was that he was not responsible to the appellants. He had sold the Hotel as a going concern to another party. He did not offer any evidence to the Tribunal that the appellants' employment had been secured as part of a Transfer of Undertakings. Despite the fact that the sale of the premises was admitted to have been by way of contract in writing, no contract documentation was disclosed to the Tribunal. No correspondences inter partes or any other documentation was submitted to assist the Tribunal. He assumed the Hotel was being sold as a going concern as the purchasers had asked him to keep the Hotel open and trading despite the fact that the Intoxicating Liquor License had lapsed prior to the contract being entered into, up until the sale was closed at the end of March 2005, and had enquired about future bookings. The sale was of the Hotel, not of the third named respondent, which was his company and was in fact the employer. The contract of sale required him to carry out works to the value of eighteen thousand euros to bring the Hotel in line with Fire Safety Standards.

Appellants' Case:

The appellants' position was that they had worked in the Hotel for a number of years. There had been a previous Transfer of Undertakings at the Hotel where their employment had continued as normal. When the respondent sold the Hotel, the building closed for renovations and they were not re-engaged when the Hotel re-opened. They were not consulted or given any information about the sale.

Determination:

The Tribunal felt that the Respondent's treatment of the employees in this case was very unsatisfactory and not in accordance with best practice. He relied on the provisions of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, without having complied with same himself. The case had been previously heard and was adjourned for full hearing before another Division of the Tribunal to allow him to forward details of the "new owner", but he failed to do so without explanation. He proceeded to make the same case again before the Tribunal despite failing to take the opportunity allowed to join the new owner as a respondent in the case. The Tribunal was informed that a Contract for Sale for the Hotel as a going concern had been entered into but this Contract was not submitted to the Tribunal, nor was any correspondences inter partes. The Respondent assumed that the new owner was keeping the employees on but was aware the Hotel was operating without a liquor Licence and in breach of fire regulations and required substantial work to bring it up to minimum standards. He however expressed surprise that the Hotel had to be shut down for renovation purposes.

The Respondent failed to convince the Tribunal that a Transfer of Undertakings had taken place pursuant to section 3 of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

The Tribunal therefore determines that a redundancy situation did exist under the Redundancy Payments Acts, 1967 to 2003, based on the evidence adduced and submissions made on behalf of both parties to this case.

The Tribunal awards the appellants a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria:

In the case of the first named Appellant:

Date of Birth:	12 th August 1968
Date of Commencement:	14 th February 1999
Date of Termination:	31 st March 2005
Gross Pay:	€190.00

The Tribunal awards the first named appellant the amount of €760.00 (being 4 weeks' pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

In the case of the second named Appellant:

Date of Birth:	20 th April 1956
Date of Commencement:	1 st September 1998
Date of Termination:	31 st March 2005
Gross Pay:	€275.00

The Tribunal awards the second named appellant the amount of €1,100.00 (being 4 weeks' pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)