

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP582/2006  
MN746/2006

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. P. O'Leary B.L.

Members: Mr. J. Redmond  
Ms. H. Henry

heard this claim at Galway on 28 November 2007

#### **Representation:**

Appellant:

Mr. Brendan Cunningham, SIPTU, Galway No. 2 Branch,  
Forster Court, Galway

Respondent:

Mr. Shane MacSweeney, MacSweeney & Co. Solicitors,  
1 Merchants Gate, Merchants Road, Galway

The determination of the Tribunal was as follows:

#### **Determination:**

The appellant is a chef whose employment commenced in a public house in Mt. Bellew on 15 May 1998. On 11 September 2000, following a transfer of the undertaking, that is the public house, the appellant became an employee of the second named respondent. The appellant, who never received pay slips and was not issued with a contract of employment, was under the impression that the first named respondent, who is a director of both the second and third named respondents, was his employer.

The respondents' position is that during 2003 the appellant was, on occasion, seconded to a public

house in Athenry that was run by the third named respondent. At the end of 2003 the appellant requested to move to the Athenry establishment on a permanent basis. The appellant's position is that he moved to the Athenry establishment on a permanent basis from January 2003 and at all times thought the first named respondent was his employer. He was never told that his employment had been transferred to a different legal entity. The appellant denied having received a P45, dated 14 February 2005, which showed the appellant's date of leaving the second named respondent as 20 January 2004.

It is common case that the appellant's position in the Athenry establishment became redundant on 2 October 2006, the point at issue in this case surrounds the continuity, or otherwise, of the appellant's employment in the two establishments.

### **Determination**

The Tribunal is satisfied that the appellant is entitled to have his service, for the purpose of calculating his statutory payments under both the Redundancy Payments Acts, 1967 to 2003 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001, calculated on the basis that he began his employment on 15 May 1998 and that this employment was unbroken until 2 October 2006. That being the case, the Tribunal is satisfied that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria.

Date of Birth	28 June 1959
Employment commenced	15 May 1998
Employment ended	2 October 2006
Gross weekly pay	€561-00

The Tribunal further awards €2,244-00, being four 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)