

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:

Case No.

Employee

UD1270/2006
RP637/2006
RP171/2006

MN836/2006

Employee

MN232/2006
UD1273/2006
RP640/2006
RP190/2006
MN839/2006
MN251/2006

Employee

UD1267/2006
RP634/2006
RP176/2006
MN833/2006
MN237/2006

Employee

UD1274/2006
RP641/2006
RP177/2006
MN840/2006
MN238/2006

Employee

UD1268/2006
RP635/2006
RP213/2006
MN834/2006
MN277/2006

Employee

UD1269/2006
RP636/2006
RP173/2006
MN835/2006
MN234/2006

Employee

UD1272/2006
RP639/2006
RP179/2006
MN838/2006
MN239/2006

Employee

UD1271/2006

RP638/2006
RP172/2006
MN837/2006
MN233/2006

against

5 Employers

and

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
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: Ms. K. T. O'Mahony B.L.

Members: Mr. M. Forde
Mr J. McDonnell

heard this claim at Cashel on 19th July 2007

Representation:

Appellants: Mr. Aidan Leahy, Donal T. Ryan, Solicitors, Castle Street,
Cahir, Co. Tipperary

Respondents: No appearance or representation for Narcea Limited.

Company representative

Mr. Alastair Purdy, Purdy Legal, Solicitors, New Docks,
Lough Atalia, Galway representing Employer

The determination of the Tribunal was as follows:

At the outset of the hearing the representative for XXXX stated that XXXX was not the appellants' employer.

It was the appellants' contention that they were first employed by XXXX but that XXXX had become their employer due to a transfer of undertakings in July 2004.

The appellants first lodged claims under the Redundancy Payments Acts, 1967 to 2003 and under the Minimum Notice & Terms of Employment Acts, 1973 to 2001 between March and May of 2006. Subsequently, claims were lodged under the Unfair Dismissals Acts, 1977 to 2001, as well as, under the Redundancy Payments Acts, 1967 to 2003, and the Minimum Notice & Terms of Employment Acts, 1973 to 2001 between October and November of 2006. The claims lodged on the second date were lodged against four possible respondents, which included the two identified in the original lodgement. This being the case the claims first lodged under the Redundancy Payments Acts, 1967 to 2003 and the Minimum Notice & Terms of Employment Acts, 1973 to 2001 are deemed to have been withdrawn.

The representative for XXXX stated that the claims were statute barred under the Unfair Dismissals Acts, 1977 to 2001, as the claims were received outside of the stipulated six-month time period after the date of termination.

This being a redundancy situation the claims under the Unfair Dismissals Acts, 1977 to 2001 are

dismissed.

XXXX:

Mr. W of XXXX stated that his first contact with XXXX was when he did some consultancy work for the directors of XXXX. When XXXX stopped providing workers for the XXXX factory in Cahir in 2004, Mr. W decided to provide the same workers to XXXX. As a result XXXX was set up for this purpose on the premise that Mr. W was told he would have approximately seven years work, with forty or fifty contracts at all times. Mr. W was given a contract to sign by XXXX but he did not sign it, as it did not mention anything in relation to redundancy. XXXX had a deficit when it ceased trading in January 2006.

Mr. W stated that there was no transfer of undertakings from XXXX to MW XXXX when he started the contract with XXXX. Mr. W stated that neither XXXX nor XXXX had any input into how the appellants worked in the factory. XXXX controlled this. Mr. W told the Tribunal that he knew the appellants were entitled to a redundancy payment but there was no money in the company to pay redundancy. Mr. W stated that the work in the XXXX factory in Cahir is now being done by foreign workers.

Answering questions from the Tribunal, Mr. W stated that XXXX was set up a number of months before July 2004 as Mr. W thought that there might be work at the XXXX factory in Cahir. Mr. W did not realise about a transfer of undertakings. XXXX is being liquidated but at the time of hearing a liquidator had not yet been appointed.

During cross-examination by the representative for XXXX, Mr. W confirmed that he had worked as a consultant with XXXX but he had not shared the profits of that company.

It was put to Mr. W that there had been a transfer between XXXX and XXXX in relation to the employees, Mr. W replied, "Yes." He stated that at all stages through XXXX and XXXX, XXXX dictated the amount of money to be paid. There was no provision for holiday money or redundancies in this amount. Mr. W's percentage mark up was 25-27% from XXXX.

During cross-examination by the representative for the appellants Mr. W stated there had been a transfer of undertakings between XXXX and XXXX but Mr. W had not understood what this meant. Mr. W confirmed he wrote a letter to the appellants stating that,

"As you are aware on Friday 24th February XXXX terminated the contract XXXX to supply boners to their plants. As a result we are currently endeavouring to find a new contract for our workers. However this could take some time. We will be contacting you next week with regard to this and any monies due will also be sent."

Answering questions from the Tribunal, Mr. W stated he was unaware that he was taking over the employees from XXXX. M. W did not think the appellants were entitled to a redundancy payment from him as he had only employed them for fourteen months.

Appellant's Case:

The appellants were employed by XXXX to work in the XXXX factory in Cahir. Mr. W was a representative of XXXX and he travelled to the appellants to give them their wages until 1999. Then from 1999 onwards the wages were posted to the appellants. In July 2004 the wages started

to be paid by XXXX. The appellants did not receive any notification of the change of employer. They were only made aware of it, as the name of their employer had changed on their payslips. The employer's name on their payslips had stated XXXX but then changed to XXXX.

On the 24 February 2006 at 3pm the Plant Manager at XXXX stated that the contract between XXXX and XXXX had ended and there was no more work for the appellants at the factory.

During the time the appellants worked in the factory they had no dealings with the management of XXXX. The appellants did not receive any payments after the 24 February 2006. The appellants were paid up to Friday, 24 February 2006.

Determination:

Having considered the evidence adduced, the Tribunal is satisfied that a transfer of undertakings occurred between XXXX and XXXX in July 2004. The Tribunal is satisfied that XXXX was the appellants' employer. The Tribunal award the appellants lump sum payments under the Redundancy Payments Acts, 1967 to 2003 and based on the following criteria:

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Date of Birth:	30 August 1961
Date of Commencement:	19 September 1992
Date of Termination:	24 February 2006
Gross Weekly Pay:	€900.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €5,400.00 being the equivalent of six weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth:	21 April 1967
Date of Commencement:	6 April 1995
Date of Termination:	24 February 2006
Gross Weekly Pay:	€650.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €3,900.00 being the equivalent of six weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth:	22 August 1974
Date of Commencement:	12 August 1996

Date of Termination: 24 February 2006
Gross Weekly Pay: €973.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €3,892.00 being the equivalent of four weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth: 3 February 1969
Date of Commencement: 1 July 1993
Date of Termination: 24 February 2006
Gross Weekly Pay: €891.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €5,346.00 being the equivalent of six weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth: 13 June 1967
Date of Commencement: 15 March 2002
Date of Termination: 24 February 2006
Gross Weekly Pay: €670.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €1,340.00 being the equivalent of two weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth: 7 November 1962
Date of Commencement: 02 November 1992
Date of Termination: 24 February 2006
Gross Weekly Pay: €891.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €5,346.00 being the equivalent of six weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth: 7 August 1972
Date of Commencement: 1 September 2000
Date of Termination: 24 February 2006
Gross Weekly Pay: €891.00

Please note a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund from the 1 January 2005.

The Tribunal award the appellant €3,564.00 being the equivalent of four weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

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Date of Birth: 10 September 1975
Date of Commencement: 20 February 1999
Date of Termination: 24 February 2006
Gross Weekly Pay: €891.00

The Tribunal award the appellant €3,564.00 being the equivalent of four weeks' gross wages as his entitlement under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)