

EMPLOYMENT APPEALS TRIBUNAL

Appellants

Case No:

1. RP377/2006
RP260/2007
UD578/2007
WT185/2007
2. RP433/2006
RP160/2007
UD365/2007
WT25/2008
3. RP424/2006
RP265/2007
UD583/2007
WT26/2008
4. RP166/2007
UD380/2007
WT269/2006
5. RP452/2006
RP269/2007
UD587/2007
WT27/2008
6. RP522/2006
RP267/2007
UD585/2007
WT28/2008
7. RP482/2006
RP263/2007
UD581/2007
WT29/2008
8. RP474/2006
RP270/2007
UD588/2007
WT212/2008
9. RP606/2006
WT30/2008
10. RP605/2006
RP165/2007
UD379/2007
WT114/2007
11. RP444/2006
RP266/2007
UD584/2007
WT31/2008
12. RP462/2006
RP268/2007
UD586/2007
WT32/2008
13. RP461/2006
RP264/2007
UD582/2007
WT33/2008

14. RP254/2007
WT34/2008
15. RP722/2006
RP262/2007
UD580/2007
WT244/2008
16. RP271/2007
UD589/2007
WT35/2008

Respondents:

- a.
- b.
- c.
- d.
- e.

Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 1991
UNFAIR DISMISSALS ACTS, 1977 TO 2001
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997

Division: Mr. D. MacCarthy S.C.
Mr. J. Walsh
Mr. F. Barry

heard this appeal at Portlaoise on 2nd April 2007 and 27th September 2007

Representatives:

Appellants:

Appellants 1,2,4,7,10 and 14 above:
Appeared in Person

Appellants 3,5,6,8,9,11,12,13,15 and 16 above:
Ms. E.J. Walsh, B.L., instructed by James J. Kelly & Son, Solicitors,
Templemore, Co. Tipperary

Respondents:

Respondents **a – d** above:
Sherwin O’Riordan Solicitors, 64 Waterloo Road, Dublin 4

Mr. Anthony Fitzpatrick, Fitzpatrick O’Dwyer & Co.,
Auditors and Accountants, Clonmoney House,
Newenham Street, Limerick

Respondent **e** above:

The determination of the Tribunal is as follows:

Preliminary Issues:

Solicitors representing a portion of the appellants made known at the outset the exact appellants they were representing for the Tribunal.

The firm of auditors and accountants confirmed that the respondents “a-d” above were actually “c” and the record could be amended to show that fact. This company “c” was placed into voluntary liquidation on the 26th June 2007 and the above named were appointed as liquidator to this company from that date. At the outset, the solicitors named above for respondents “a-d” above were confirmed as no longer on record.

Solicitors representing Respondent “e” above made a submission to the Tribunal that they had no responsibility for the employment of the above named appellants and requested that their company be withdrawn from the proceedings. This was accepted by all the parties.

All parties agreed that redundancy in this case was not in dispute. Claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and Organisation of Working Time Act, 1997 were included by consent of all parties at the hearing. Two appellants who had proceedings activated at the Rights Commissioners agreed to withdraw those proceedings based on the fact that the Tribunal was to determine the claims at this hearing.

All parties agreed to accept that the figures supplied by the liquidator were to be the final figures that the Tribunal would base its determination on, should the appellants be successful in their appeals.

The liquidator agreed that a Transfer of Undertakings, in accordance with the relevant legislation, occurred between respondent “e” and respondent “c” on the 14th September 1999, and all previous service would be applicable for the purposes of reckonable service for the appeals of relevant appellants.

Determination:

The Tribunal determines that all appellants were made redundant by virtue of the fact that the respondent “c” terminated their contracts. The Tribunal was also cognisant of the fact that the liquidator appointed to the respondent was in agreement with this fact.

The appellants agreed that the claims made under the Unfair Dismissals Acts, 1977 to 2001, were withdrawn. Accordingly, the Tribunal dismiss these claims.

The Tribunal determines that the appellants did not receive their statutory holiday entitlements, including payment for Bank Holidays, and therefore awards the appellants 18 months (being 43.5 days’ pay) under the Organisation of Working Time Act, 1997, in line with the details of gross pay set out in the Schedule below.

Appellant	Gross Weekly Pay	43.5 Days pay award under OWT
1	€620-62	€5399-22
2	€536-42	€4666-85
3	€442-92	€3853-40

4	€545-88	€4749-16
5	€692-62	€6025-79
6	€402-42	€3501-05
7	€721-58	€6277-75
8	€483-12	€4203-14
9	€600-38	€5223-31
10	€466-68	€4060-12
11	€578-59	€5033-73
12	€476-85	€4148-60
13	€433-88	€3774-76
14	€168-50	€1465-95
15	€451-85	€3931-10
16	€411-27	€3578-05

The Tribunal determines that the majority of the appellants are entitled to remuneration under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, and award them their statutory minimum notice in line with their entitlements detailed in the Schedule below. It should be noted that appellants 1,2, 4,6,9 & 12 all received notice equal to or in excess of their statutory entitlement and their claims under these Acts must fail

Appellant	Employment Started	Notice of Termination Received	Employment Ended	Notice Pay Outstanding in Weeks	Minimum Notice Award
1	10/05/04	16/06/06	06/07/06	0	0
2	22/03/04	16/06/06	07/07/06	0	0
3	31/08/84	16/06/06	06/07/06	5	€2,214-60
4	30/03/04	23/06/06	07/07/06	0	0
5	22/07/98	01/07/06	14/07/06	2	€1,385-24
6	24/03/02	16/06/06	07/07/06	0	0
7	17/07/00	16/06/06	07/07/06	1	€721.58
8	20/07/96	16/06/06	07/07/06	1	€483.12
9	15/06/99	16/06/06	14/07/06	0	0
10	21/08/03	30/06/06	30/06/06	2	€933-36
11	01/03/01	16/06/06	06/07/06	1	€578.59
12	15/04/98	16/06/06	14/07/06	0	0
13	15/03/99	28/06/06	06/07/06	3	€1301-64
14	17/05/01	16/06/06	05/07/06	1	€168-50
15	13/10/89	16/06/06	14/07/06	4	€1,807-40
16	19/11/86	16/06/06	14/07/06	4	€1,645-08

Having considered the evidence, the Tribunal finds that a redundancy situation did exist. Therefore, the appeals under the Redundancy Payments Acts 1967 to 2003 succeed and the Tribunal awards the appellants lump sum payments based on the information set out in the Schedule below:

Appellant	Date of Birth	Employment Started	Employment Ended	Gross Weekly Pay
1	15/08/73	10/05/04	06/07/06	€620-62
2	27/05/67	22/03/04	07/07/06	€536-42
3	05/05/67	31/08/84	06/07/06	€442-92
4	01/12/72	30/03/04	07/07/06	€545-88

5	03/08/69	22/07/98	14/07/06	€692-62
6	21/02/82	24/03/02	07/07/06	€402-42
7	28/10/65	17/07/00	07/07/06	€721-58
8	20/09/63	20/07/96	07/07/06	€483-12
9	23/05/83	15/06/99	14/07/06	€600-38
10	14/01/69	21/08/03	30/06/06	€466-68
11	13/03/65	01/03/01	06/07/06	€578-59
12	07/07/74	15/04/98	14/07/06	€476-85
13	22/03/77	15/03/99	06/07/06	€433-88
14	09/07/62	17/05/01	05/07/06	€168-50
15	23/02/71	13/10/89	14/07/06	€451-85
16	06/09/66	19/11/86	14/07/06	€411-27

It should be noted that all payments from the social insurance fund are limited to a maximum of €600-00 per week

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)