

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- *appellant*

against

2 Employers

- *respondent*

and

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

CASE NO.

UD416/2008

RP342/2008

MN374/2008

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. J. Hennessy
Mr. G. Whyte

heard this claim at Kilkenny on 5th January 2009

Representation:

Claimant(s): Mr. Phil Funchion, Noreside Resource Centre, 22 Vickers Street, Kilkenny

First Respondent: Not in attendance and no representation

Second Respondent: Mr. Conor Roberts B.L. instructed by Ms. Caroline Roche, Kearney Roche & McGuinn, Solicitors, 9 The Parade, Kilkenny

The determination of the Tribunal was as follows:-

On 10 August 2006, the second respondent (*the vendor*) sold his licensed premises as a going concern to the first respondent (*the purchaser*) with a completion date for the sale of 24 April 2008. On the same date (*10 August 2006*) the first respondent took a short-term lease of the premises until the completion of the sale. However, on 19 October 2007 the first respondent closed the premises.

The claimant was on two weeks annual leave on 19 October and on her return was told that her job was gone. The first respondent issued the claimant with a P45 and whilst he also issued her with an RP50 form in relation to her redundancy, he had not signed it. (*A copy of the RP50 form was produced to the Tribunal*).

The claimant's representative confirmed that the claims before the Tribunal are under the Redundancy Payments Acts, 1967 to 2003 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001. There is no claim under the Unfair Dismissals Acts, 1977 to 2001.

On the T2 form (*Notice of Appearance*), which was lodged to the Tribunal by the first respondent, it stated "[the claimant] was not dismissed by me. [She] had been on holidays and when she returned the business closed due to insolvency".

Determination:

Having carefully considered the evidence adduced, the Tribunal is satisfied that the first respondent, having taken over the business and a lease on the premises as of 10 August 2006, was the claimant's employer.

The Tribunal was satisfied that the first respondent had been duly notified of the hearing. However, there was no appearance by him or on his behalf.

Accepting the uncontested evidence of the claimant, the Tribunal finds that the appeal under the Redundancy Payments Acts, 1967 to 2003 against the first respondent succeeds and awards her a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of birth:	06 August 1961
Date of commencement:	21 January 1995
Date of termination:	04 November 2007
Gross weekly wage:	€403.00

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

Four weeks after the termination of her employment, the claimant secured alternative employment at a similar rate of pay. Accordingly, the Tribunal awards the claimant the sum of €1,612.00, being the equivalent of four week's pay in lieu of notice, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The claim under the Unfair Dismissals Acts, 1977 to 2001 against the first respondent is dismissed.

All the claims against the second respondent are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)