

## EMPLOYMENT APPEALS TRIBUNAL

COMPLAINTS OF:	CASE NO.
EMPLOYEE <b>First Named Complainant</b>	I1/2009
EMPLOYEE <b>Second Named Complainant</b>	I2/2009
EMPLOYEE <b>Third Named Complainant</b>	I3/2009
EMPLOYEE <b>Fourth Named Complainant</b>	I4/2009

against the decision of the Minister for Enterprise Trade and Employment  
in the case of EMPLOYER (the Company) **-Respondent**

Under

### **PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACTS, 1984 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

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

Members: Mr. J. Browne  
Ms. E. Brezina

heard these appeals at Killarney on 5 February 2010

#### **Representation:**

Complainants:

Mr. Mike Harper, Kenmare Citizens Information Centre,  
Bell Height, Kenmare, Co. Kerry for the first, second and  
third named complainants  
Ms. Joanne Hanagen, Temploe Lodge, Greenane,  
Killarney, Co. Kerry for the fourth named complainant

Respondent:

Officer of Department of Enterprise Trade and Employment,  
Davitt House, 65A Adelaide Road, Dublin 2

Also in attendance

Ms. Colette O'Leary, for the liquidator Mr. Aidan Heffernan,  
Hitchmough Kinnear, Sheraton Court, Glasheen Road, Cork

The determination of the Tribunal was as follows:

Upon the liquidation of the Company on 2 May 2008 the complainants claimed, in all cases, arrears of holiday pay and additionally, in the case of the first named complainant, arrears of wages from the Insolvency Fund.

Section 6 (6) of the Protection of Employees (Employers' Insolvency) Act, 1984, states that the Minister for Enterprise, Trade and Employment shall not make any payment under this section in respect of any debt until he has received a statement in the prescribed form from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and which appears to remain unpaid.

On behalf of the Minister, the Department of Enterprise, Trade and Employment refused the claims of the complainants on the grounds that the liquidator of the company, was unable from the company records available to him, to certify the claims on the requisite form as correct.

The complainants lodged complaints under section 9(1)(a) of the Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001 in order to pursue their claim for arrears of both holiday pay and, in the case of the first named complainant, wages.

**Determination:**

In some instances the details given by the complainants in oral evidence to the Tribunal were different from those they had earlier submitted to the Minister. The Tribunal accepted that this difference was due to the said complainants having submitted to the Minister only the details as and from the time the manager commenced keeping the records in writing. The Tribunal accepts the said complainants' evidence as to the exact details.

Having considered the submissions of the complainants and the respondent and having heard detailed evidence from the first, second and third named complainants and detailed evidence from the representative of the fourth named complainant who was the former office manager of the Company the Tribunal is satisfied that the complainants are entitled to payments from the Insolvency Fund under the Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001 according to the following schedule:

<b>Complainant</b>	<b>First Named</b>	<b>Second Named</b>	<b>Third Named</b>	<b>Fourth Named</b>
<b>Claim No.</b>	I1/2009	I2/2009	I3/2009	I4/2009
Date Employment Started	12 February 2007	14 November 2006	7 May 2007	1 January 2007
Date Employment Ended	21 December 2007	2 March 2008	2 March 2008	4 November 2007
Average Hours	22.4 (0.57 full time)	16.55 (0.424 full	35.56 (0.91	50 (full time)

per week		time)	full time)	
Hourly Rate €/hour	10	12.5	10	10
Average weekly pay	€224.00	€206.88	€355.60	€500.00
Total hours worked	1,008	1,109	1,457.95	43 wks work entitled to
Annual Leave Hrs @ 8%	80.64	88.72	116.64	3.31 weeks annual leave
<b>Annual Leave owed</b>	<b>€806.40</b>	<b>€1,109.00</b>	<b>€1,166.40</b>	<b>€1,655.00</b>
Public Holidays owed	7 @ 0.57	6 @ 0.424	7 @ 0.91	4
<b>Public Holidays amount owed</b>	<b>€319.20</b>	<b>€254.40</b>	<b>€516.29</b>	<b>€400.00</b>
<b>Arrears of Wages claimed</b>	<b>€3,172.00</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
<b>Arrears of Wages allowed under the Act</b>	<b>€1,792</b>			
<b>Total award</b>	<b>€2,917.60</b>	<b>€1,363.40</b>	<b>€1,682.69</b>	<b>€2,055.00</b>

These awards are made subject to the complainants having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)