

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF: Employee -First named appellant	CASE NO RP358/2008
Employee -Second named appellant	RP359/2008
Employee -Third named appellant	RP360/2008
Employee -Fourth named appellant	RP361/2008
Employee -Fifth named appellant	RP362/2008
against	
Employer -Respondent	
under	

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. D. Hegarty
Ms. H. Kelleher

heard this appeal on 5 November 2008, and 27 January 2009.

Representation:

Appellants:
Mr Martin Leahy, SIPTU, Cork No 3 Branch,
Connolly Hall, Lapps Quay, Cork

Respondent:
Ms. Gillian Keating, J.W O'Donovan Solicitors, 53 South Mall, Cork

The decision of the Tribunal was as follows:

Summary of Evidence

The respondent was a scaffolding contractor. The first named appellant was employed on the respondent's Dublin sites. The other four appellants were employed on the respondent's Cork site. The respondent entered into a written agreement dated 22 June 2006 with another company (AC) to transfer certain of its assets to that company. By an earlier letter dated 19 June 2006 AC acknowledged to the respondent that it would take on the employees in the Cork area to keep continuity on the site. Under Schedule 2 of the said agreement AC undertook to protect current employees in the Cork area, to carry forward all holiday entitlements and service, to pay their wages for the week ending 18 July 2006 and to issue them with contracts to that effect. There was also a specific clause in the agreement that AC would cover the payroll for the respondent's employees in Cork for the week ending 18 July 2007.

There were suggestions that there would be a voluntary winding up of the respondent in late July or early August 2006. However, due to concerns about the security of stock in the respondent's Dublin sites, an application was made to the High Court and a provisional liquidator was appointed to the respondent on 20 July 2006. On 8 August 2006 he was appointed its official liquidator. To the liquidator's knowledge, as and from 22 June 2006, AC acted on foot of the aforesaid agreement. Furthermore, it was the liquidator's evidence that as far as he was aware the respondent had no employees by 20 July 2006.

The appellants' evidence was that on 17 July 2006 they had entered new contracts of employment, with AC. These contracts were subject to a six-month probationary period. The contracts were produced in evidence. The first named appellant had not worked on the Cork site prior to his commencing employment with AC on 17 July 2006 but had worked for the respondent on a Dublin site.

Determination:

On the basis of the evidence adduced the Tribunal is satisfied that there was reasonable cause under S. 24 of the Redundancy Payments Act 1967 as amended to extend the time for lodging the appeals herein under the Redundancy Payments Act 1967 to 2007.

Based on the evidence the Tribunal is satisfied that there was a transfer of that part of the respondent's business relating to the Cork site prior to the liquidation of the business and the European Communities (Protection of Employees Rights on Transfer of Undertakings) Regulations, 2003 apply. Accordingly, the contracts of employment of the second to the fifth named appellants were automatically transferred to AC. It is not open to AC to deny their continuity of employment with it or to make their contracts of employment subject to a probationary period. Accordingly, the second to the fifth named appellants' continuity of service is preserved in their employment with AC and their appeals for a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 fail. However, the first named appellant was not part of the Cork workforce. Because he had worked with the respondent on their Dublin sites his employment with AC is not governed by the abovementioned regulations. Accordingly the Tribunal finds that the first named appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth	16 December 1972
Employment commenced	12 March 2000
Employment ended	17 July 2006
Gross weekly pay	€1,200-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. It should be noted that 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)