

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

MN956/2008
RP888/2008

Employee

MN957/2008
RP889/2008

Employee

RP1380/2008

Employee

RP1381/2008

against

3 Employers

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr P. Pierce
Ms K. Garvey

heard this appeal at Carlow on 9th February 2009 and 14th May 2009

Representation:

Appellants :

In Person

Respondent :

Ms Paula Walshe, (1st day of hearing) and
Mr Frank Lannigan (2nd day of hearing)
Malcomson Law, Solicitors, Courtplace, Carlow
Represented the first and second named respondent

XXXX represented the third named respondent

The decision of the Tribunal was as follows:-

A division of the Tribunal first met on the 9th February 2009 to hear this case. The first and second named appellants were present on this date. The second named respondent was also in attendance.

It was submitted by the respondent that a transfer had occurred to the third named respondent on the 6th January 2008. It was the case of the second named respondent that due to the transfer a redundancy situation did not occur in relation to the appellants' employment with the second named respondent. The appellant's last payslip from the second named respondent was dated the 7th January 2008.

The appellants submitted they had to re-apply and attend for interview for their positions when the third name respondent took over from the second named respondent. The second named appellant retained her position as receptionist but her duties changed. The first name appellant's position changed when she worked for the third name respondent and Ms B of the third named respondent informed her that her previous five years service would not be taken into consideration. The second named appellant remained in the employment of the third named respondent for a number of months and the first named appellant remained in the employment of the third named respondent for a number of weeks.

In reply to questions from the Tribunal, the appellants stated there was no break in their service between working for the second named respondent and working for the third named respondent. The second named appellant stated that her employment ended with the second named respondent on 7th January 2008 and commenced with the third named respondent on the 8th January 2008. It was submitted by the appellants that a number of other employees had received a redundancy payment from the second named respondent. Both of the appellants agreed their employment with the third named respondent did not come to an end by reason of redundancy.

It was submitted by the respondent that the Tribunal might need to hear from the third named respondent. The Tribunal's attention was also brought to the fact that there were a further two appeals pending (one of which was subsequently withdrawn). Of the two additional appeals, one of the appellants continued to be in the employment of the third named respondent.

The appellants opted to have their appeals adjourned until another date at which the third named respondent would be present, along with the other appellants. The Tribunal put the onus on the second named respondent to put the third named respondent on notice of their intention to co-join them as a respondent to the case. The second named respondent later notified the Tribunal, in writing, of their intention not to put the third named respondent on notice. The Tribunal subsequently co-joined the third named respondent for the second date of hearing.

The claim under the Redundancy Payments Acts 1967 to 2007 was withdrawn by the fourth named appellant

The legal representative stated that the first named respondent was never the employer and he asked

the Tribunal not to make an order against him. The second named respondent was the employer and the first named respondent was the managing director.

The Tribunal then asked if he would agree to the second named respondent being added as employer for the third named appellant. While he did not consent he would agree if the Tribunal so ordered. The claim in respect of the third named appellant was then amended to include the third named respondent.

The legal representative stated that the second named respondent left the premises and paid redundancy to certain employees and others transferred to the third named respondent including the first and second named appellant's therefore they were not made redundant by the second named respondent. The third named appellant was ill at the date of transfer. The first and third named appellant's had previously worked in another of the respondent's hotel's and when there was a fire on the premises in 2001 they were paid redundancy at that time.

The first named appellant stated that she and her colleagues did not receive the required thirty days notice of the transfer. They received only three days notice of the transfer from Mr B the managing director and did not receive any notice from the first named respondent. She continued working with the third named respondent for two weeks and while she worked different hours she received the same pay. She left because of a difference with the manager. As far as the employees were concerned they were starting new contracts.

The second named appellant stated that her hours did not change when she transferred to the third named respondent. She worked there for three months. She needed a full time job. Officially she was a part-timer but was doing full time hours. In April 2008 she was told her hours would be reduced. She left because she needed the extra hours. She like her colleague the first named appellant did not receive the required notice. There were about twenty employees but this varied with part-timers. She is claiming redundancy from the second named respondent.

The third named appellant was ill at the time of the transfer and had been ill since 31st December 2007. He was never employed by the third named respondent. In April/May 2008 he was called for an interview with the third named respondent and his hours were reduced, however his doctor would not certify him fit to return to work. He had previously worked 30/31 hours per week and he was now offered 12 hours per week

The managing director (MD) of the third named respondent stated that the third named appellant was offered employment but he was unable for health reasons to take up that offer. He finished his employment with the second named respondent. The first and second named appellant's transferred to the third named respondent on the understanding that their service was also being taken over. In relation to the second named appellant she wanted full time hours which she never had and she found another job with full time hours and left of her own accord. In relation to the first named appellant she left the employment of the third named respondent. He did not make either the first or second named appellant's redundant.

In answer to questions from Tribunal members MD stated that the second named appellant worked part-time. The person who replaced her worked on an hourly rate. The first named appellant did not work full time. A bar manager was brought in and as far as he was concerned they employed everybody as they had previously been employed by the second named respondent. In relation to the third named appellant his contract continued by way of Transfer of Undertakings from the second to the third named respondent.

Determination:

In the case of the first and second named appellant's they both transferred from the second to the third named respondent without a break in their service and they both left the employment of the third named respondent of their own accord. Their claims under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 are therefore dismissed against the first, second and third named respondent's.

In relation to the case being made that the required thirty days notice was not given prior to the transfer from the second to third named respondent the Tribunal cannot make a ruling in this regard.

In the case of the third named appellant he was out on sick leave at the time of the transfer to the third named respondent and his employment did not transfer as in the case of the first and second named appellant's. He was also offered reduced hours. He is therefore entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 from the second named respondent based on the following:

Date of Birth:	28 th May 1944
Date employment commenced	04 th July 2003
Date employment ended	07 th January 2008
Gross weekly salary	€341.00

Please note that the third named appellant was on sick leave from the 31st December 2007 to 7th January 2008

This award is being made subject to the appellant having been in insurable employment during the relevant period.

The claim against the first and third named respondent's are dismissed in the case of the third named appellant.

The fourth named appellant withdrew his claim under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

