

**EMPLOYMENT APPEALS TRIBUNAL**

APPEALS OF:

CASE NO.

Employee  
– **First Named Appellant**

RP2737/2009  
MN2215/2009

Employee  
– **Second Named Appellant**

RP2996/2009

against

Employer  
**-Respondent**

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. P. Clancy

Members: Mr. B. O'Carroll  
Ms. S. Kelly

heard these appeals at Ennis on 4 June 2010

**Representation:**

Appellants: Both in person

Respondent: Director of the respondent

The determination of the Tribunal was as follows:

**Determination:**

At the outset the respondent conceded that both appellants were entitled to redundancy payments. The matter that remained to be resolved was the claim of the first named appellant under the Minimum Notice and Terms of Employment Acts.

The first named appellant, whose employment in the respondent's restaurant began on 1 January 2007, was given notice of termination due to redundancy on 24 September 2009, having been on a three-day week since January 2009. Her last day in work was Thursday 1 October 2009, having worked the two previous days. On Saturday 3 October she raised the issue of her entitlement to two-weeks' notice with the managing director (MD) of the respondent and MD offered the opportunity for her to work the following week. The first named appellant declined this offer.

Whilst initially the respondent did not give the required two-weeks' notice to the first named appellant, when she brought this error to MD's attention he offered a further week's work to her. It was the first named appellant's choice to decline to work the second week of notice. Whilst section 7 (1) of the Minimum Notice and Terms of Employment Acts, 1973 to 2005 provides: -

*Nothing in this Act shall operate to prevent an employee or an employer from waiving his right to notice on any occasion or from accepting payment in lieu of notice.*

This in no way compels an employer to make a payment in lieu of notice. The respondent offered a second week of notice to the first named appellant and she refused to work it. Accordingly, the claim of the first named appellant under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

The Tribunal finds that both appellants are entitled to lump sum payments under the Redundancy Payments Acts, 1967 to 2007 in accordance with the following schedule

| Appellant    | Date of Birth    | Employment Commenced | Employment Ended | Gross Pay | Weekly |
|--------------|------------------|----------------------|------------------|-----------|--------|
| First Named  | 30 May 1947      | 1 January 2007       | 1 October 2009   | €300-00   |        |
| Second Named | 29 November 1948 | 1 January 2007       | 23 October 2009  | €153-00   |        |

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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