

**CORRECTING ORDER**

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL OF:**  
EMPLOYEE

– *appellant*

**CASE NO.**  
RP764/2009

Against

EMPLOYER - *respondent*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr J. Hennessy  
Mr T. Kelly

heard this appeal at Clonmel on 9th March 2010

**Representation:**

Appellant: In Person

Respondent: Eamonn Hayes, Solicitors, 50 New Street, Carrick-On-Suir, Co Tipperary

The decision of the Tribunal was as follows:-

This Order corrects the original Order dated 26<sup>th</sup> August 2010 and should be read in conjunction with that Order.

The appellant's Date of Commencement on Page 3 should read 1<sup>st</sup> August 2003 and not 1<sup>st</sup> March 2003 as stated in the original Order.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

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### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

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#### **Representation:**

Appellant: In Person

Respondent: Eamonn Hayes, Solicitors, 50 New Street, Carrick-On-Suir, Co Tipperary

The decision of the Tribunal was as follows:-

#### **Background**

The respondent in this case is a restaurant with a licensed premises attached. There are two directors, JC and RC, who are husband and wife. At the beginning of the hearing the respondents submitted a letter from their accountant stating that a Transfer of Undertakings had taken place on 1<sup>st</sup> March 2009. This letter was dated 9<sup>th</sup> March 2010.

#### **Appellant's Case**

The appellant was employed as a waitress in the respondents restaurant. She commenced working in the restaurant in August 2003. During direct evidence the appellant told the Tribunal that sometime around Christmas 2008, the owner and director, JC, approached her about taking over the lease of the restaurant. The appellant told him that she was not interested. Sometime in February, RC, another director, told the claimant that C, another employee was going to take over the restaurant.

JC asked the appellant to work at a confirmation on 1<sup>st</sup> March 2009. On the Wednesday prior to

this they had been discussing the restaurant changing hands and JC said that C was taking over and that he was going to bring some staff in. The appellant was asked how she felt about the situation and would she work for C. She said that she did not know and that she would have to talk to C about it.

The appellant told the Tribunal that the Transfer took place that week.

The appellant received her P45 from RC on 5<sup>th</sup> March 2009. The appellant asked RC “was that it?” and RC responded that she had checked it out and nothing goes with that. When the appellant asked was she entitled to anything with it RC said no. The appellant asked RC did she mind if she checked it out herself and RC said she did not.

The following morning the appellant received a phonecall from RC. There was a heated exchange, during which RC told her that she was not entitled to anything. The appellant then contacted the Citizens Information Centre and filled out forms.

The appellant’s employment ended on the Thursday and she did not receive any payment for that week. It was JC that had requested her to work but assuming that her employer was now Chris, she rang him and he told her that he did not have to pay her. The appellant did not know who she was working for.

The only time the appellant spoke to C was when JC told her to talk to C about working for him and he (C) said he did not yet know what he was going to do in relation to running the restaurant.

During cross examination the appellant told the Tribunal that she did not agree to give things a try with Chris.

### **Respondent’s Case**

During direct evidence RC, owner and director of the restaurant, told the Tribunal that in 2008 her husband collapsed and had a spell in hospital. The hours involved in running the business were too long and they were exhausted. They decided to give up the restaurant. In December they told the appellant and asked her would she be interested in taking over the lease. She told RC she’d love to do it but she didn’t have the time.

RC and JC then spoke to C, who was anxious to take over the running of the restaurant. C was the chef in the restaurant at the time.

RC told the appellant that they were going to lease out the restaurant and that if she didn’t want to stay in the restaurant she could work two days in the bar. RC said she did not want to lose the appellant, that’s why she offered to take her to the bar with us. RC said the appellant told her she was going to give it a go with Chris. RC told the Tribunal that the other employees are still working in the restaurant.

On the 5<sup>th</sup> March 2009, RC brought the appellant her P45 and told her she would need it so that she did not go on to emergency tax. When she handed her the P45 the appellant asked her what was coming with it. RC told her that she would sort out her holidays. The appellant said “I’m talking about redundancy, I was speaking to my husband’s accountant and he said I’m entitled to it”. RC told her she would look into it and get back to her. RC spoke to the appellant on Friday and told her that their accountant said she wasn’t entitled to redundancy because her employment was continuing. At this stage the appellant got abusive and RC put down the phone.

**Determination:**

The purported new owner did not appear to have offered the appellant continuous employment in the new business. The Tribunal heard evidence that the business continued with minimal disruption. The Tribunal is not satisfied that there was any documentary evidence of a transfer other than an accountant's letter dated 9<sup>th</sup> March 2010. This letter did not mention C as a new employer.

The only evidence proffered to the Tribunal to suggest that a transfer took place is the letter from the accountant and the Tribunal is not satisfied in these circumstances that the provisions of the European Communities (Protection of Employees of Transfer of Undertakings) Regulations 2003 (S.I. 131 of 2003) were complied with.

The Tribunal is further not satisfied that the offer made to the appellant of work in the bar was a sufficient offer of comparable or similar work within the meaning of the section 16(1) of the Redundancy Payments Acts, 2007.

In these circumstances the Tribunal finds that the appellant is entitled to a redundancy payment based on the information below:

Date of Birth	22 <sup>nd</sup> September 1967
Date of Commencement	1 <sup>st</sup> March 2003
Date of Termination	5 <sup>th</sup> March 2009
Gross Weekly Pay	€120

This award is subject to the appellant having been in employment which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

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

