

EMPLOYMENT APPEALS TRIBUNAL

COMPLAINTS OF:	CASE NO.
Jacqueline Allin, Rusheens, Kenmare, Co. Kerry – First Named Complainant	I1/2010
David Babor, Brookside, Muxnan, New Mill Road, Kenmare, Co. Kerry – Second Named Complainant	I2/2010
Tamsin O'Neill, Ballygriffin, Kenmare, Co. Kerry – Third Named Complainant	I3/2010
Patricia O'Sullivan, Derrysallagh, Dromoughty, Kenmare, Co. Kerry – Fourth Named Complainant	I4/2010
Lubomir Sivak, 11 Saill Ardan, Killarney, Co. Kerry Fifth Named Complainant	I5/2010
Lisa Wheatley, Lackaroe, Kenmare, Co. Kerry – Sixth Named Complainant	I6/2010

against the decision of the Minister for Enterprise Trade and Innovation
in the case of Bacus Cafes Limited (the Company), C/O Hitchmough Kinnear,
Chartered Accountants, Sheraton Court, Glasheen Road, Cork **-Respondent**

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. G. Andrews
Mr. T. Kelly

heard these complaints at Killarney on 5 November 2010

Representation:

Complainants:

Mr. Mike Harper, Kenmare Citizens Information Centre,
Bell Height, Kenmare, Co. Kerry

Respondent:

Ms. Deirdre Rowe, Insolvency Payments Section,
Department of Enterprise Trade and Innovation,
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 from the Insolvency Fund.

Section 6 (6) of the Protection of Employees (Employers' Insolvency) Act, 1984, states that the Minister for Enterprise, Trade and Innovation 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, from the company records, had not been able to certify the claims as correct on the requisite form.

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 holiday pay.

Determination:

During the hearing the liquidator's representative informed the Tribunal that the liquidator was now in receipt of information supplied by the former office manager of the Company, together with Revenue forms P35 for 2007 and 2008, which enabled the calculation of figures which would have allowed the liquidator to satisfy the Minister that payments were due to the complainants. Having considered this information and the submissions of the complainants and the respondent 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:

Complainant	First Named	Second Named	Third Named	Fourth Named	Fifth Named	Sixth Named
Claim No.	I1/2010	I2/2010	I3/2010	I4/2010	I5/2010	I6/2010
Date	2 March	2 March	2 March	2 March	2 March	2 March
Employment Ended	2008	2008	2008	2008	2008	2008
Total pay in 2008	€2,870-00	€2,805-00	€4,711-00	€4,581-00	€3,066-00	€2,634-00
Weekly pay in 2008	€318-89	€311-67	€523-44	€509-00	€340-67	€292-67
Days worked per week in 2008	4	4	5	4	5	3
Holiday entitlement in 2008 (A)	€220-83	€215-78	€362-22	€352-38	€235-74	€201-94
Total pay in 2007	€14,489-00	€29,582-00	€14,264-00 over 32 weeks from 14 May	€ 28,950-00	€15,504-00	€13,497-00 over 30 weeks from 28 May
Weekly pay in 2007	€278-54	€568-88	€445-75	€556-73	€298-15	€449-90
Days worked per week in 2007	4	4	5	4	5	3
Holiday entitlement in 2007 (B)	€1,114-15	€2,275-54	€1,096-55	€2,226-92	€1,192-61	€1,034-79
Total Holiday pay owed A +B	€1,334-98	€2,491-32	€1,458-77	€2,579-30	€1,428-35	€1,236-73

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)