

**EMPLOYMENT APPEALS TRIBUNAL**

| COMPLAINTS OF:                              | CASE NO. |
|---|----------|
| EMPLOYEE<br><b>First Named Complainant</b>  | I1/2010  |
| EMPLOYEE<br><b>Second Named Complainant</b> | I2/2010  |
| EMPLOYEE<br><b>Third Named Complainant</b>  | I3/2010  |
| EMPLOYEE<br><b>Fourth Named Complainant</b> | I4/2010  |
| EMPLOYEE<br><b>Fifth Named Complainant</b>  | I5/2010  |
| EMPLOYEE<br><b>Sixth Named Complainant</b>  | I6/2010  |

against the decision of the Minister for Enterprise Trade and Innovation  
in the case of EMPLOYER **-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:

XXXXXXXXXX

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:

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

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)