

**EMPLOYMENT APPEALS TRIBUNAL**

<b>CLAIM(S) OF:</b>		<b>CASE NO.</b>
EMPLOYEE	<i>- First Named Appellant</i>	RP1197/2009 UD2134/2009 MN305/2010 WT462/2009
EMPLOYEE	<i>- Second Named Appellant</i>	RP1198/2009 UD2135/2009 W T463/2009
EMPLOYEE	<i>- Third Named Appellant</i>	RP1199/2009 UD2136/2009 WT464/2009
EMPLOYEE	<i>- Fourth Named Appellant</i>	RP1200/2009 UD2137/2009 WT465/2009
EMPLOYEE	<i>- Fifth Named Appellant</i>	RP1201/2009 UD2138/2009 WT466/2009
EMPLOYEE	<i>- Sixth Named Appellant</i>	RP1202/2009 UD2139/2009 WT467/2009
EMPLOYEE	<i>- Seventh Named Appellant</i>	RP1203/2009 UD2140/2009 WT468/2009
EMPLOYEE	<i>- Eighth Named Appellant</i>	RP1205/2009 UD2142/2009 WT470/2009
EMPLOYEE	<i>- Ninth Named Appellant</i>	RP1206/2009 UD2143/2009 WT471/2009

against  
EMPLOYER- *First Named Respondent*  
EMPLOYER- *Second Named Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr D. Moore  
Mr J. Moore

heard this claim at Drogheda on 26th March 2010  
and 7th September 2010  
and 25th January 2011

**Representation:**

Claimant(s) : Mr. Michael McNamee BL instructed by:  
Mr Robert Taylor, McKeever Taylor, Solicitors, 31 Laurence Street, Drogheda,  
Co Louth

Respondent(s) : Mr. Jon Byrne, Browne & Murphy, Chartered Accountants,  
28 Fitzwilliam Street Upper, Dublin 2 (*For First Named Respondent*)  
Mr. Gerard Kelly, O'Callaghan Kelly Solicitors, 51 Mulgrave Street,  
Dun Laoghaire, Co. Dublin (*For First Named Respondent*)

Mr. Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House,  
Forster Street, Galway (*For Second Named Respondent*)

The determination of the Tribunal was as follows:-

**Background:**

On the first day of the hearing (26<sup>th</sup> March 2010) and the second day (7<sup>th</sup> September 2010) the first named respondent was represented by a solicitors firm. The solicitor came off record before the third day of the hearing (25<sup>th</sup> January 2011) as a liquidator had been appointed. The secretariat of the Employment Appeals Tribunal duly added the liquidators details to the claims.

On the first day (26<sup>th</sup> March 2010) it was brought to the attention of the Tribunal that a second respondent should be added to the nine claimants claims under each respective Act. Having considered the matter the Tribunal authorised the addition of the second named respondent. The hearing was adjourned in order for the second named respondent to be notified of the various claims against them under the four Acts.

On the second day of the hearing (7<sup>th</sup> September 2010) a witness for the first named respondent gave evidence concerning the loss of the contract with the second named respondent and the fact that the nine named appellants were taken on by the second named respondent. The bulk of the assets were also purchased by the second named respondent. The hearing was adjourned for a

further date.

On December 22<sup>nd</sup> 2010 the first named respondents legal representative informed the Employment Appeals Tribunal by letter that the company had gone into liquidation and they were no longer under instruction by the company. The solicitor also gave details of the solicitor for the liquidator who had been appointed to the company.

On the third day of the hearing (25<sup>th</sup> January 2011) the solicitor for the liquidator attended, the first named respondent did not. He had no instructions from the first named respondent. Counsel for the nine claimants, after consultation, stated that his nine clients were pursuing their respective claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were applicable. All claims under the Unfair Dismissals Acts, 1977 to 2007 were dismissed.

### **Determination:**

Having carefully considered the submissions and evidence adduced by all parties over the three days of the hearing, the Tribunal finds that the appeals under the Redundancy Payments Acts, 1967 to 2007 succeeds and awards the appellants a redundancy lump sum, which is to be calculated on the basis of the following criteria:

#### **First Named Appellant**

Date of Birth:	26 June 1961
Date of Commencement:	23 April 2002
Date of Termination:	31 March 2009
Gross Pay:	€ 441.84

Loss having been established the Tribunal awards the sum of € 883.68, this being two weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal also awards the sum of € 530.21, this being six days gross pay, under the Organisation of Working Time Act, 1997.

#### **Second Named Appellant**

Date of Birth:	06 October 1956
Date of Commencement:	01 February 2005
Date of Termination:	31 March 2009
Gross Pay:	€ 441.84

The Tribunal also awards the sum of € 795.31, this being nine days gross pay, under the Organisation of Working Time Act, 1997.

#### **Third Named Appellant**

Date of Birth:	02 November 1970
Date of Commencement:	29 August 2005
Date of Termination:	31 March 2009

Gross Pay: € 399.84

The appellant in sworn evidence stated he was not owed any holiday pay. The Tribunal dismissed his claim under the Organisation of Working Time Act, 1997.

#### **Fourth Named Appellant**

Date of Birth: 04 May 1973  
Date of Commencement: 27 February 2002  
Date of Termination: 31 March 2009  
Gross Pay: € 508.62

The appellant in sworn evidence stated he was not owed any holiday pay. The Tribunal dismissed his claim under the Organisation of Working Time Act, 1997.

#### **Fifth Named Appellant**

Date of Birth: 28 February 1975  
Date of Commencement: 28 June 2004  
Date of Termination: 31 March 2009  
Gross Pay: € 441.84

The appellant in sworn evidence stated he was not owed any holiday pay. The Tribunal dismissed his claim under the Organisation of Working Time Act, 1997.

#### **Sixth Named Appellant**

Date of Birth: 19 November 1959  
Date of Commencement: 31 March 2005  
Date of Termination: 31 March 2009  
Gross Pay: € 399.84

The appellant in sworn evidence stated he was not owed any holiday pay. The Tribunal dismissed his claim under the Organisation of Working Time Act, 1997.

#### **Seventh Named Appellant**

Date of Birth: 21 August 1965  
Date of Commencement: 06 December 2004  
Date of Termination: 31 March 2009  
Gross Pay: € 431.35

The appellant in sworn evidence stated he was not owed any holiday pay. The Tribunal dismissed his claim under the Organisation of Working Time Act, 1997.

#### **Eighth Named Appellant**

Date of Birth: 20 October 1975  
Date of Commencement: 11 March 2002

Date of Termination: 31 March 2009  
Gross Pay: € 535.13

The Tribunal also awards the sum of € 428.10, this being four days gross pay, under the Organisation of Working Time Act, 1997.

**Ninth Named Appellant**

Date of Birth: 12 February 1962  
Date of Commencement: 11 March 2002  
Date of Termination: 31 March 2009  
Gross Pay: € 426.16

The appellant in sworn evidence stated she was not owed any holiday pay. The Tribunal dismissed her claim under the Organisation of Working Time Act, 1997.

All these awards are made subject to the appellant 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)