

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
RP2565/2009

EMPLOYEE

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Mr D Peakin
Mr J Dorney

heard this appeal at Naas on 27th October 2010

Representation:

Appellant: The appellant in person

Respondent: Mr Niall Crehan, Apartment 3, Kilnamoragh Stud Farm, Donadea, County Kildare

The decision of the Tribunal was as follows: -

Appellant's case

The appellant stated that he had commenced employment as a shop assistant approximately two weeks before the Christmas of 1984 with an employer who had operated a supermarket and hardware business out of shared premises. The hardware side of the business was later moved to separate premises and was re-named with a separate name by the then owner of both businesses. After approximately thirteen years the hardware business was sold to Ms R and the name and nature of the business remained the same. Within a short time of the acquisition of the hardware business the appellant became a manager. Some time after the sale of the hardware to Ms R the supermarket was taken over by a larger company. The hardware business continued to employ the appellant and continued to be owned by Ms R and this remained the case when the hardware relocated to a unit in a local shopping centre. At some time after this move to the shopping centre the hardware was sold as a going concern to the respondent in or about June 2006. The respondent later changed the name of the hardware business to emphasise its concentration upon the sale of paint. The appellant continued to be an employee under similar terms and conditions of employment throughout these changes of ownership.

On the 31st July 2009 the appellant was informed that the business was closing down and that his last day of employment was to be 4th August 2009. The respondent offered the appellant a redundancy lump sum based on his service with the business since the respondent had taken

ownership. The appellant refused this as he had been advised that he was entitled to be paid redundancy calculated on the basis of his entire service with the business throughout the various transfers of undertaking since 1984.

Respondent's case

The respondent stated that he had taken legal and accountancy advice during the purchase of the business from the previous owner. Part of the advice he was given was that he was not liable for claims in relation to the periods of service of employees with the previous owners. A document was drawn up and signed by the appellant at that time. According to the respondent this document exempts him from the liability to pay redundancy in respect of the period of employment occurring prior to the respondent taking ownership of the business.

Determination

Having considered the evidence adduced the Tribunal finds that the respondent attempted to make the appellant redundant on 4th August 2009. However the Tribunal finds that the effective date of redundancy taking into account statutory minimum notice period is 25th September 2009.

Furthermore the Tribunal is satisfied that the appellant commenced employment with the business on 11th December 1984 and that a series of transfers of undertaking occurred over the years including one to the respondent in or about June 2006. Notwithstanding the fact that the appellant signed a document to the contrary, the Tribunal holds that the transferor and/or the transferee cannot contract out of the relevant statutory entitlement to redundancy or to deprive the appellant of his entitlements under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 SI131/2003. The Tribunal notes that the employee was not a party to this agreement, the Tribunal finds that a series of transfers of undertakings occurred and the Tribunal therefore awards to the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date Of Birth	2 nd July 1965
Commencement Date	11 th December 1984
Date notice received	31 st July 2009
Termination date	25 th September 2009
Gross pay	€679.46 per week

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

It should be noted that any payment made from the Social Insurance fund is calculated on the basis of maximum earnings of €600.00 per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)