

EMPLOYMENT APPEALS TRIBUNAL

| APPEALS OF: | CASE NO. |
|--|-----------|
| EMPLOYEE- first named appellant | RP2548/10 |
| EMPLOYEE- second named appellant | RP2549/10 |
| EMPLOYEE- third named appellant | RP2550/10 |
| EMPLOYEE- fourth named appellant | RP2551/10 |
| EMPLOYEE- fifth named appellant | RP2552/10 |
| EMPLOYEE- sixth named appellant | RP2552/10 |
| EMPLOYEE- seventh named appellant | RP2553/10 |
| EMPLOYEE- eighth named appellant | RP2553/10 |
| EMPLOYEE- ninth named appellant | RP2554/10 |
| EMPLOYEE- tenth named appellant | RP2555/10 |
| EMPLOYEE- eleventh named appellant | RP2555/10 |
| EMPLOYEE- twelfth named appellant | RP2556/10 |
| EMPLOYEE- thirteenth named appellant | RP2556/10 |
| EMPLOYEE- fourteenth named appellant | RP2557/10 |
| EMPLOYEE- fifteenth named appellant | RP2557/10 |
| EMPLOYEE- sixteenth named appellant | RP2558/10 |
| EMPLOYEE- seventeenth named appellant | RP2559/10 |
| EMPLOYEE- eighteenth named appellant | RP2560/10 |
| EMPLOYEE- nineteenth named appellant | RP2561/10 |
| EMPLOYEE- twentieth named appellant | RP2561/10 |
| EMPLOYEE- twenty first named appellant | RP2562/10 |
| EMPLOYEE- twenty second named appellant | RP2562/10 |
| | RP2563/10 |
| | RP2564/10 |
| | RP2565/10 |
| | RP2624/10 |
| | RP2625/10 |
| | RP2626/10 |
| | RP861/11 |

against

EMPLOYER–First Named Respondent

EMPLOYER–Second Named Respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. O’Cathain

Members: Mr G. Andrews
Mr F. Dorgan

heard these appeals at Clonmel on 14 November 2011

Representation:

Appellants:

Mr Ger Kennedy, SIPTU Connolly Hall,
Churchwell, Tipperary Town,
Co. Tipperary

Respondent:

Mr Colin Morrissey, English Leahy Solicitors,
8 St. Michael Street, Tipperary Town,
Co. Tipperary, for the first named respondent

Mr Marcus Dowling BL instructed by Ms Aisling Butler,
William Fry Solicitors, Fitzwilton House,
Wilton Place, Dublin 2, for the second named respondent

The determination of the Tribunal was as follows:

Determination:

The position of the first named respondent was that, whilst accepting the appellants had been their employees, albeit on a job initiative scheme whereby the second named respondent had provided the funds to enable the first named appellant to pay the appellants then, in circumstances where other funding for materials used on the job initiative scheme had been withdrawn by another arm of the state, any liability for lump sum payments under the Redundancy Payments Acts fell on the second named respondent.

The position of the second named respondent was that they were not the employer but rather the funding agent of the first named respondent which was the employer of the appellants. Their position was further that the first named respondent was not a business but that the job initiative scheme was a labour market intervention and that, even though materials funding had been withdrawn, the second named respondent had offered alternative placements to the appellants such that there was no entitlement to lump sum payments in the event that the Tribunal found that the second named respondent was the employer.

The appellants' position was that the first named appellant was the employer and that the appeals against the second named respondent had only been lodged in response to the first named respondent's claim that any liability lay with the second named respondent.

The first named respondent issued the appellants with contracts of employment which describe them as employees. The payslips received by the appellants name the first named respondent as the employer. In those circumstances the Tribunal was satisfied that the appellants were employed by the first named respondent and that the second named respondent bore no further responsibility in the matter.

The first named respondent then conceded liability for the payment of lump sum payments under the Redundancy Payments Acts to all except the sixteenth and twenty second named appellants. The appeals of the sixteenth and twenty second named appellants were then withdrawn. The Tribunal was then satisfied that the remaining appellants are entitled to lump sum payments under the Redundancy Payments Acts, 1967 to 2007 based on the criteria contained in the following schedule.

These awards are made subject to the appellants having been in insurable employment under the Social Welfare Acts during the relevant period.

| Claim No. | Appellant | Date of Birth | Employment Started | Employment Ended | Gross Weekly Pay |
|------------------|------------------|----------------------|---------------------------|-------------------------|-------------------------|
| RP2548/10 | First Named | 08/01/1954 | 24/11/2003 | 11/06/2010 | 432 |
| RP2549/10 | Second Named | 17/11/1961 | 26/07/2004 | 11/06/2010 | 432 |
| RP2550/10 | Third Named | 15/08/1956 | 15/05/2000 | 11/06/2010 | 432 |
| RP2551/10 | Fourth Named | 05/07/1950 | 01/05/2000 | 25/06/2010 | 432 |
| RP2552/10 | Fifth Named | 25/10/1952 | 27/07/2005 | 28/05/2010 | 432 |
| RP2553/10 | Sixth Named | 04/07/1960 | 24/11/2003 | 11/06/2010 | 432 |
| RP2554/10 | Seventh Named | 05/09/1956 | 24/11/2003 | 11/06/2010 | 432 |
| RP2555/10 | Eighth Named | 27/07/1945 | 25/07/2005 | 28/05/2010 | 432 |
| RP2556/10 | Ninth Named | 19/07/1951 | 21/07/2003 | 11/06/2010 | 432 |
| RP2557/10 | Tenth Named | 01/12/1955 | 27/11/2000 | 11/06/2010 | 432 |
| RP2558/10 | Eleventh Named | 31/03/1951 | 15/05/2000 | 25/06/2010 | 432 |

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|-----------|--------------------|------------|------------|------------|-----|
| RP2559/10 | Twelfth Named | 17/10/1945 | 24/09/2001 | 11/06/2010 | 432 |
| RP2560/10 | Thirteenth Named | 16/07/1950 | 08/05/2000 | 25/06/2010 | 432 |
| RP2561/10 | Fourteenth Named | 30/09/1947 | 08/12/2003 | 11/06/2010 | 432 |
| RP2562/10 | Fifteenth Named | 09/08/1949 | 24/11/2003 | 11/06/2010 | 432 |
| RP2564/10 | Seventeenth Named | 20/01/1948 | 15/05/2000 | 25/06/2010 | 432 |
| RP2565/10 | Eighteenth Named | 16/09/1954 | 01/05/2000 | 25/06/2010 | 432 |
| RP2624/10 | Nineteenth Named | 26/02/1946 | 11/10/2004 | 25/05/2010 | 420 |
| RP2625/10 | Twentieth Named | 24/06/1959 | 01/12/2003 | 11/06/2010 | 432 |
| RP2626/10 | Twenty First Named | 06/08/1955 | 18/05/2000 | 11/06/2010 | 420 |

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)