

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *Claimant A*

RP2649/2010

EMPLOYEE – *Claimant B*

RP2650/2010

against

EMPLOYER-*Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr F. Moloney
Mr G. Whyte

heard this appeal at Dublin on 17th June 2011 and 30th November 2011

Representation:

Appellant's: In person

Respondent: Baynes & Company Solicitors, 77 Benburb Street, Dublin 7

The decision of the Tribunal was as follows:-

The claimants worked for an establishment that had changed hands three times during their employment. At the initial hearing of 17th June 2011 it was established that the claimants did not work for the respondent as listed on the T1A because the business had been transferred to a new employer. There had been no break of service but the claimants had established that there were tax issues outstanding with the previous owner. The claimants were given leave to make an application to the Tribunal under Section 39 of the Terms of Employment Information Act and the Tribunal acceded to the application allowing the correct employer to be cited on a new T1A.

On the second day of hearing the claimants produced copies of some payslips and P60's for 2009. The representative acting for the respondent said that they had attempted to resolve the matter but the payment had been declined. He also stated that proof of two years of payslips had not been produced and the claimants may not be eligible under the Social Welfare Consolidation Act. He did not dispute that they worked at the establishment but did dispute their eligibility.

Determination:

S.I. No. 131/2003 — European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, state as follows:

“Application.

3. (1) *These Regulations shall apply to any transfer of an undertaking, business, or part of an undertaking or business from one employer to another employer as a result of a legal transfer (including the assignment or forfeiture of a lease) or merger.*

(2) *Subject to this Regulation, in these Regulations - “transfer” means the transfer of an economic entity which retains its identity; “economic entity” means an organised grouping of resources which has the objective of pursuing an economic activity whether or not that activity is for profit or whether it is central or ancillary to another economic or administrative entity.*

(3) *These Regulations shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain....*

Rights and obligations.

4. (1) *The transferor's rights and obligations arising from a contract of employment existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee.*

(2) *Following a transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement.”*

From the evidence and information given to the Tribunal, the Tribunal determines that the respondent, as the ultimate transferee, is the employer in this case.

As per the Redundancy Payments Acts 1967 to 2007 an employee must be in insurable employment under the Social Welfare Consolidation Act, 2005.

The Tribunal determines that if for some reason there is a failure to pay the social insurance this will not remove the protection of the legislation from a claimant. The Tribunal determines that the claimants were in insurable employment by reason of the nature of the employment.

Having found that a transfer of undertakings occurred, the Tribunal is satisfied from the evidence adduced that the appellant's employment terminated by reason of redundancy. The Tribunal finds that they are entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Claimant A

Date of Birth:	20th October 1982
Date of Commencement:	17th April 2006
Date of Termination:	22 nd August 2010
Gross Weekly Pay:	€480.00

Claimant B

Date of Birth:	23 rd January 1981
Date of Commencement:	26 th September 2005
Date of Termination:	22 nd August 2010
Gross Weekly Pay:	€440.00

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

