

EMPLOYMENT APPEALS TRIBUNAL

Correcting Order

APPEALS OF:	CASE NO.
EMPLOYEE – <i>appellant No 1</i>	RP1389/2010
EMPLOYEE – <i>appellant No 2</i>	RP1390/2010
EMPLOYEE – <i>appellant No 3</i>	RP1417/2010 MN1002/2010

against
EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Ms J. Winters
Mr T. Brady

heard this appeal at Trim on 24th May 2011
and 19th October 2011

Representation:

Appellants: Mr. Tommy Grimes, Meath Council Trade Unions, 14 Fr
McCullen Park, Kells, Co Meath

Respondent: Mr. James Allen, Solicitor, James Allen & Co, 49 Laurence St, Drogheda,
Co. Louth

This decision of the Tribunal is as follows;

This Correcting Order should be read in conjunction with the Order signed on the 12th of December 2011.

Appellant 1 should have a start date of the 6th of April 1998 and not 15 March 1997 as stated in the

original order.

Appellant 3 has received 2 weeks' notice so is entitled to the remaining 6 weeks, (equating to €4,910.40), under the under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and not the full 8 weeks as stated in the original order.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

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EMPLOYEE – *appellant No 2*

EMPLOYEE – *appellant No 3*

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Preliminary Issue

The respondent's solicitor submitted that the appellants were employed by his clients' deceased father for a number of years up to September 2004, when the father died. At no time prior to that date were his clients the employer. Following the death of his clients' father there was a break in all of the appellant's service for approximately three months and his clients commenced a new business in February 2005. The new business traded under the identical name as it had previously traded, but with different owners. The appellants agreed that there was a break in their employment around this time but they were not issued with P45's and returned to work in February 2005

carrying out similar duties as they had done up to September 2004.

The respondent's solicitor submitted that a genuine redundancy situation existed in or around September 2004 and his clients should not be liable for any redundancy payment prior to that date. The executor of the estate of the deceased is in a position to execute an RP50 form for the appellants' period of employment up to September 2004. He accepted that his clients are responsible for redundancy payments in respect of the appellants' service from February 2005 until the termination of their employment in March 2010.

Determination

After careful consideration the Tribunal is of the view that the respondents continued the same business as was conducted by their father under the same business name, and that continuity of the appellants' service was preserved. While there was a break of a few months before the sons could actively run the business, this interruption was a lay off within the meaning of the Acts, and did not break continuity.

The Tribunal therefore finds that the respondents are liable for the previous service with their father. The appellants have already been paid in respect of their later service from 2005 onwards. The Tribunal decides that the appellants are entitled to redundancy payment based on the following, but after allowing the respondents credit for the payments already made.

Appellant No 1

Date Of Birth:	1 October 1968
Date of commencement of employment:	15 March 1997
Date of termination of employment:	3 March 2010
Gross weekly pay:	€700.00

Appellant No 2

Date of Birth:	3 August 1954
Date of commencement of employment:	9 May 1996
Date of termination of employment:	3 March 2010
Gross weekly pay:	€818.40

Appellant No 3

Date of Birth:	16 July 1950
Date of commencement of employment:	15 June 1988
Date of termination of employment:	3 March 2010
Gross weekly pay:	€818.40

These awards are subject to the appellants having been in employment, which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

The Tribunal also awards *Appellant No 3* €6547.20 compensation (this being the equivalent of 8 weeks pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Please note that a weekly ceiling of €600 applies to any payments from the Social Insurance Fund.

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This _____

(Sgd.) _____
(CHAIRMAN)

