

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE 1 – *appellant 1*

CASE NO.
RP940/2011
MN735/2011
WT276/2011

EMPLOYEE 2 – *appellant 2*

RP941/2011
MN736/2011
WT277/2011

Against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P McGrath BL

Members: Mr W Power
Mr T Brady

heard this appeal at Dublin on 3rd September 2012 and 26th November 2012

Representation:

Appellant(s): Mr Stephen Boggs BL, instructed by:
Ms Avril Gallagher
Gallagher & Company, Solicitors
5 Ranelagh Village, Ranelagh, Dublin 6

Respondent(s): Company representation

The decision of the Tribunal was as follows:-

Summary:

The appellants were employed as kitchen and wait staff at a golf club, one for ten years and the other for 15 years. During the course of their employment they worked for the various caterers who held the hospitality contract consecutively.

The appellants have made claims under the Redundancy Payments Acts, Minimum Notice Acts

and the Organisation of Working Time Act against the respondent (the last caterer they worked under).

On February 14th 2011 the owner of the respondent company informed the appellants that as his contract was not being renewed he could no longer employ them. His contract ceased on February 28th 2011, which was the last day the appellants worked. When he signed the original contract it stated that he was responsible for the appellants' pay and conditions and for any redundancy payment that they might be entitled to. The appellants' service was continuous. The owner paid the appellants' wages and issued their P60s.

The owner of the respondent company gave evidence that when he won the tender he told the General Manager of the golf club that he would not be able to afford to pay the appellants' redundancy payment should his business get into difficulties. He contended that the General Manager assured him that in that event the club would take care of the appellants. He did not get this assurance in writing.

A new caterer took over the catering contract on March 1st 2011. The witness asked the General Manager of the club why this caterer was not taking on the appellants as he had been required to do. The General Manager told him that the new caterer was bringing her own staff and that the appellants were no longer wanted. The witness was unable to pay the appellants' redundancy payment and considered that it was the golf club's responsibility to pay it. The club's representative contended that it was not the employer and that a transfer of undertakings occurred between the previous caterer and the respondent company.

Determination:

The Tribunal is satisfied that the named respondent company was the appellants' employer and that a redundancy situation occurred. Accordingly, the appellants are entitled to redundancy lump sum payments under the Redundancy Payments Acts, 1967 to 2007, based on the following information:

Appellant 1:

Date of Birth:	29 November 1961
Date of Commencement:	30 March 2001
Date of Termination:	28 February 2011
Weekly Gross Pay:	€330.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Appellant 2:

Date of Birth:	6 October 1950
Date of Commencement:	2 April 1996
Date of Termination:	28 February 2011
Weekly Gross Pay:	€330.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal dismisses the claims under the Minimum Notice and Terms of Employment Acts,

1973 to 2005, and the Organisation of Working Time Act, 1997, as no evidence was adduced concerning these acts.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)