

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE 1 - claimant No 1

EMPLOYEE 2 – claimant No 2

CASE NO.

RP1238/2012

UD809/2011

MN871/2011

RP1239/2012

UD810/2011

MN872/2011

against

EMPLOYER 1 – *first-named respondent*

EMPLOYER 2 - *second-named respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. O'Mahony B.L.

Members: Mr G. Andrews

Mr F. Dorgan

heard this claim at Limerick on 26th November 2012

Representation:

Claimant(s) : Mr Donal O'Rourke BL instructed by McMahon O'Brien, Solicitors, Mount Kennett House, Henry Street, Limerick

Respondent(s) : In Person (not legally represented)

The claims under the Unfair Dismissals Acts 1977 to 2007 were withdrawn during the course of the hearing.

Summary of Evidence

The Tribunal heard evidence from the first-named respondent that the claimants were employed as beauty therapists by his wife at her beauty salon for a number of years. Following his wife's

death in April 2007 the first-named respondent took over the operation of the business and in that regard formed a limited company, which was incorporated on 10 May 2007. He and his daughter (the second-named respondent) were the directors of that company. The claimants continued working in the salon without any interruption to their employment. The business was declining and in January 2010 the company was liquidated and the business reverted to the first-named respondent as a sole trader. The claimants continued working in the salon but their hours were reduced to three days per week. In December 2010 eviction proceedings were pending in the court against the first-named respondent for failure to pay rent. The salon closed on 13 December 2010. The first-named respondent forfeited his interest in the lease and a new lease on the salon premises was negotiated by the second-named respondent, who paid a large sum of money in respect of monies owing to the landlord. The business was closed for 48 hours during the negotiations and then re-opened under the second-named respondent as a waxing salon. The claimants were not retained in the employment. The second-named respondent employed beauticians on an as needs basis, which was generally for around two hours on occasional days. The Tribunal was told that the claimants were not provided with payslips, contracts of employment or terms and conditions of employment. They never received P60s and were not given P45s following the termination of their employment.

Determination

The Tribunal considered the evidence adduced in relation to the claimants' employment and is satisfied that the claimants had continuity of service through a number of transfers of undertakings by virtue of the *European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003* and they maintained continuity of service despite the liquidation of the company as the business continued in operation throughout and after the liquidation. The Tribunal determines that the claimants were ultimately dismissed by the first-named respondent by reason of redundancy on 13 December 2010. It awards each claimant a lump sum payment under the Redundancy Payments Acts 1967, based on the following information:

Claimant No 1

Date of Birth:	8 September 1982
Date of commencement of employment:	21 February 2002
Date of termination of employment:	13 December 2010
Gross weekly pay:	€400.00

The Tribunal also awards claimant No.1 the sum of €1,600.00, this sum being the equivalent of four weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Claimant No 2

Date of Birth:	1 January 1981
Date of commencement of employment:	14 February 2004
Date of termination of employment:	13 December 2010
Gross weekly pay:	€400.00

The Tribunal also awards claimant No.2 the sum of €1,600.00, this sum being the equivalent of four weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

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

The awards herein are made against the first-named respondent. All claims against the second-named respondent are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)