

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
EMPLOYEE 1 *-appellant 1*

CASE NO.  
RP2638/2011

EMPLOYEE 2 - *appellant 2*

RP2639/2011

Against

EMPLOYER 1 *-respondent 1*

EMPLOYER 2 *-respondent 2*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S. C.

Members: Ms J. Winters  
Mr J. Flannery

heard this appeal at Trim on 19th February 2013

#### **Representation:**

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Appellant: Mr. Peter O'Brien B.L. instructed by,  
Murphy Coady & Company, Solicitors, Commons Road, Navan, Co Meath

Respondent 1: Mr. David Van Dessel, Kavanagh Fennell, Simmonscourt House,  
Simmonscourt Road, Ballsbridge, Dublin 4

Respondent 2: Kane Tuohy Solicitors, The Malt House North, Grand Canal Quay, Dublin 2

#### **Background**

The first Respondent business, a fashion store was forced to close on the 5<sup>th</sup> of June 2010 making all of the employees redundant. By letter of the 8<sup>th</sup> of June 2010 the appellants were informed that the respondent was going into liquidation and confirmed that their positions were redundant.

On the 26<sup>th</sup> of July 2010 Respondent 2, a new company re-opened the store. The appellants commenced work with the new company on that date.

All parties involved in the case agree the facts and maintain that no transfer of undertakings took place and that respondent 1 is responsible for the redundancy of the appellants.

## Determination

It was put to the Tribunal to decide whether in fact a transfer of undertakings did take place within the meaning of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 between respondent 1 and respondent 2. The Tribunal determines that the necessity for this decision does not arise as, in the first instance, a dismissal as prescribed in Sec 9 of the Redundancy Payments Act 1967 took place. A dismissal as defined by the Act is;

9.—(1) For the purposes of this Part an employee shall, subject to this Part, be taken to be dismissed by his employer if but only if—

*a)* the contract under which he is employed by the employer is terminated by the employer, whether by or without notice,

(2) An employee shall not be taken for the purposes of this Part to be dismissed by his employer if his contract of employment is renewed, or he is re-engaged by the same employer under a new contract of employment, and—

*(b)* in any other case, the renewal or re-engagement is in pursuance of an offer in writing made by his employer before the ending of his employment under the previous contract, and takes effect either immediately on the ending of that employment or after an interval of not more than four weeks thereafter.

Regardless of the fact that the appellants started employment with respondent 2, as it was not within a four-week period no employment existed to transfer to the new company. The Tribunal determine that respondent 1 was the appellants' employer and made them redundant. Therefore the appellants are awarded a statutory lump sum under the Acts based on the following criteria:

### *Appellant 1*

Date of Birth:	30 <sup>th</sup> July 1943
Date of Commencement:	3 <sup>rd</sup> July 1989
Date of Termination:	5 <sup>th</sup> June 2010
Gross Weekly Wage:	€269.94

### *Appellant 2*

Date of Birth:	9 <sup>th</sup> November 1946
Date of Commencement:	3 <sup>rd</sup> July 1989
Date of Termination:	5 <sup>th</sup> June 2010
Gross Weekly Wage:	€297.38

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

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)