

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:	CASE NO.
EMPLOYEE 1 - <i>appellant 1</i>	RP1928/2011
EMPLOYEE 2 - <i>appellant 2</i>	RP1929/2011
EMPLOYEE 3 - <i>appellant 3</i>	RP1931/2011
EMPLOYEE 4 - <i>appellant 4</i>	RP1932/2011
EMPLOYEE 5 - <i>appellant 5</i>	RP1933/2011
EMPLOYEE 6 - <i>appellant 6</i>	RP1934/2011
EMPLOYEE 7 - <i>appellant 7</i>	RP1935/2011
EMPLOYEE 8 - <i>appellant 8</i>	RP1936/2011
EMPLOYEE 9 - <i>appellant 9</i>	RP1937/2011
EMPLOYEE 10 - <i>appellant 10</i>	RP1938/2011
EMPLOYEE 11 - <i>appellant 11</i>	RP1939/2011
EMPLOYEE 12 - <i>appellant 12</i>	RP1940/2011

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:

Appellants: Ms Mary Seery Kearney B.L. instructed by,  
Damar Consultancy Limited, Shamwari, 4 Redhills Park, Ellistown, Co Kildare

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. They were made redundant from respondent 2 on the 11<sup>th</sup> of January 2011.

All parties involved in the case agree the facts and maintain that no transfer of undertakings took place between respondent 1 and respondent 2.

### **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:

<i>Appellant 1</i>		<i>Appellant 2</i>	
Date of Birth:	20 February 1968	Date of Birth:	04 August 1951
Date of Commencement:	01 January 1988	Date of Commencement:	28 February 2000
Date of Termination:	05 June 2010	Date of Termination:	05 June 2010
Gross Weekly Wage:	€225.00	Gross Weekly Wage:	€274.45

<i>Appellant 3</i>	<i>Appellant 4</i>
Date of Birth: 12 December 1947	Date of Birth: 10 May 1947
Date of Commencement: 20 September 1999	Date of Commencement: 07 March 2002
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €253.08	Gross Weekly Wage: €337.44

<i>Appellant 5</i>	<i>Appellant 6</i>
Date of Birth: 21 May 1952	Date of Birth: 28 March 1951
Date of Commencement: 09 September 1991	Date of Commencement: 06 January 1994
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €179.96	Gross Weekly Wage: €269.94

<i>Appellant 7</i>	<i>Appellant 8</i>
Date of Birth: 18 April 1958	Date of Birth: 08 June 1947
Date of Commencement: 25 September 1995	Date of Commencement: 18 March 1993
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €269.94	Gross Weekly Wage: €269.94

<i>Appellant 9</i>	<i>Appellant 10</i>
Date of Birth: 16 July 1976	Date of Birth: 17 November 1938
Date of Commencement: 16 September 2002	Date of Commencement: 01 January 1978
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €241.02	Gross Weekly Wage: €382.40

<i>Appellant 11</i>	<i>Appellant 12</i>
Date of Birth: 19 January 1952	Date of Birth: 07 September 1945
Date of Commencement: 20 October 1992	Date of Commencement: 05 July 1993
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: € 269.94	Gross Weekly Wage: €85.28

These awards are made subject to the appellants 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)