

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE *-appellant*

CASE NO.  
RP2125/2011

against  
EMPLOYER *-respondent*

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: In Person

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

#### **Background**

The 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 appellant was informed that the respondent was going into liquidation and confirmed that her position was redundant.

On the 26<sup>th</sup> of July 2010 a new company re-opened the store. The appellant commenced work with the new company and was an employee until she was again made redundant on the 27<sup>th</sup> of January 2011.

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

#### **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 the respondent and the new company that opened on the premises. 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 appellant started employment with the new company, as it was not within a four-week period no employment existed to transfer to the new company. The Tribunal determine that the respondent was her employer and made her redundant. Therefore the appellant is awarded a statutory lump sum under the Acts based on the following criteria:

Date of Birth:	6 <sup>th</sup> May 1956
Date of Commencement:	22 <sup>nd</sup> September 1997
Date of Termination:	5 <sup>th</sup> June 2010
Gross Weekly Wage:	€269.94

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)