

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:		CASE NO.
EMPLOYEE 1	<i>-appellant 1</i>	RP1941/2011
EMPLOYEE 2	<i>-appellant 2</i>	RP1942/2011
EMPLOYEE 3	<i>-appellant 3</i>	RP1943/2011
EMPLOYEE 4	<i>-appellant 4</i>	RP1944/2011
EMPLOYEE 5	<i>-appellant 5</i>	RP1945/2011
EMPLOYEE 6	<i>-appellant 6</i>	RP1946/2011
EMPLOYEE 7	<i>-appellant 7</i>	RP1947/2011
EMPLOYEE 8	<i>-appellant 8</i>	RP1948/2011
EMPLOYEE 9	<i>-appellant 9</i>	RP1949/2011
EMPLOYEE 10	<i>-appellant 10</i>	RP1950/2011
EMPLOYEE 11	<i>-appellant 11</i>	RP1951/2011
EMPLOYEE 12	<i>-appellant 12</i>	RP1952/2011
EMPLOYEE 13	<i>-appellant 13</i>	RP1953/2011
EMPLOYEE 14	<i>-appellant 14</i>	RP1954/2011
EMPLOYEE 15	<i>-appellant 15</i>	RP1955/2011
EMPLOYEE 16	<i>-appellant 16</i>	RP1956/2011
EMPLOYEE 17	<i>-appellant 17</i>	RP1957/2011
EMPLOYEE 18	<i>-appellant 18</i>	RP1958/2011
EMPLOYEE 19	<i>-appellant 19</i>	RP1959/2011
EMPLOYEE 20	<i>-appellant 20</i>	RP1960/2011
EMPLOYEE 21	<i>-appellant 21</i>	RP1961/2011
EMPLOYEE 22	<i>-appellant 22</i>	RP1962/2011
EMPLOYEE 23	<i>-appellant 23</i>	RP1963/2011
EMPLOYEE 24	<i>-appellant 24</i>	RP1964/2011
EMPLOYEE 25	<i>-appellant 25</i>	RP1965/2011
EMPLOYEE 26	<i>-appellant 26</i>	RP1966/2011
EMPLOYEE 27	<i>-appellant 27</i>	RP1967/2011
EMPLOYEE 28	<i>-appellant 28</i>	RP1968/2011
EMPLOYEE 29	<i>-appellant 29</i>	RP1969/2011
EMPLOYEE 30	<i>-appellant 30</i>	RP1970/2011
EMPLOYEE 31	<i>-appellant 31</i>	RP1971/2011
EMPLOYEE 32	<i>-appellant 32</i>	RP1972/2011
EMPLOYEE 33	<i>-appellant 33</i>	RP2124/2011

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

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 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 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 between the respondent and the new company.

### **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 re-opened the store. 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 the new company, as it was not within a four-week period of their dismissal 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 Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

<i>Appellant 1</i>	<i>Appellant 2</i>
Date of Birth: 23 March 1962	Date of Birth: 12 January 1965
Date of Commencement: 01 January 1980	Date of Commencement: 10 November 2004
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €320.55	Gross Weekly Wage: €303.69

<i>Appellant 3</i>	<i>Appellant 4</i>
Date of Birth: 12 June 1956	Date of Birth: 15 September 1956
Date of Commencement: 01 October 2005	Date of Commencement: 06 October 2003
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €269.94	Gross Weekly Wage: €230.77

<i>Appellant 5</i>	<i>Appellant 6</i>
Date of Birth: 19 March 1991	Date of Birth: 26 November 1963
Date of Commencement: 02 July 2007	Date of Commencement: 15 October 2002
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €81.57	Gross Weekly Wage: €589.00

<i>Appellant 7</i>	<i>Appellant 8</i>
Date of Birth: 28 March 1965	Date of Birth: 02 August 1950
Date of Commencement: 01 June 1983	Date of Commencement: 22 April 1996
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €526.50	Gross Weekly Wage: €382.40

<i>Appellant 9</i>	<i>Appellant 10</i>
Date of Birth: 19 December 1970	Date of Birth: 19 October 1964
Date of Commencement: 07 October 1988	Date of Commencement: 01 January 1986
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €269.94	Gross Weekly Wage: €550.88

<i>Appellant 11</i>	<i>Appellant 12</i>
Date of Birth: 21 November 1960	Date of Birth: 13 February 1965
Date of Commencement: 29 November 2004	Date of Commencement: 27 February 1990
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €296.67	Gross Weekly Wage: €359.92

<i>Appellant 13</i>	<i>Appellant 14</i>
Date of Birth: 09 April 1947	Date of Birth: 11 January 1962
Date of Commencement: 19 January 1998	Date of Commencement: 18 March 1980
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €220.00	Gross Weekly Wage: €420.00

<i>Appellant 15</i>	<i>Appellant 16</i>
Date of Birth: 31 March 1970	Date of Birth: 24 April 1954
Date of Commencement: 18 October 1999	Date of Commencement: 09 June 1997
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €425.00	Gross Weekly Wage: €240.00

<i>Appellant 17</i>	<i>Appellant 18</i>
Date of Birth: 09 July 1946	Date of Birth: 20 May 1972
Date of Commencement: 14 May 1990	Date of Commencement: 06 January 1992
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €449.90	Gross Weekly Wage: €269.94

<i>Appellant 19</i>	<i>Appellant 20</i>
Date of Birth: 31 May 1950	Date of Birth: 11 November 1969
Date of Commencement: 09 July 1997	Date of Commencement: 22 May 2004
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €235.94	Gross Weekly Wage: €303.56

<i>Appellant 21</i>	<i>Appellant 22</i>
Date of Birth: 30 May 1962	Date of Birth: 18 January 1966
Date of Commencement: 01 January 1981	Date of Commencement: 01 January 1985
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €455.00	Gross Weekly Wage: €269.94

<i>Appellant 23</i>	<i>Appellant 24</i>
Date of Birth: 16 November 1942	Date of Birth: 28 October 1948
Date of Commencement: 03 July 1989	Date of Commencement: 02 March 1989
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €365.34	Gross Weekly Wage: €376.89

<i>Appellant 25</i>	<i>Appellant 26</i>
Date of Birth: 30 November 1947	Date of Birth: 24 February 1966
Date of Commencement: 01 June 1985	Date of Commencement: 01 January 1984
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €535.60	Gross Weekly Wage: €600.00

<i>Appellant 27</i>	<i>Appellant 28</i>
Date of Birth: 12 December 1950	Date of Birth: 08 August 1951
Date of Commencement: 04 January 1976	Date of Commencement: 27 October 1998
Date of Termination: 05 June 2010	Date of Termination: 05 June 2010
Gross Weekly Wage: €600.00	Gross Weekly Wage: €204.00

<i>Appellant 29</i>		<i>Appellant 30</i>	
Date of Birth:	15 August 1967	Date of Birth:	12 September 1962
Date of Commencement:	19 March 2008	Date of Commencement:	01 January 1979
Date of Termination:	05 June 2010	Date of Termination:	05 June 2010
Gross Weekly Wage:	€95.00	Gross Weekly Wage:	€308.39

<i>Appellant 31</i>		<i>Appellant 32</i>	
Date of Birth:	03 November 1949	Date of Birth:	11 March 1967
Date of Commencement:	02 March 1989	Date of Commencement:	30 November 2006
Date of Termination:	05 June 2010	Date of Termination:	05 June 2010
Gross Weekly Wage:	€559.70	Gross Weekly Wage:	€247.92

<i>Appellant 33</i>	
Date of Birth:	06 February 1964
Date of Commencement:	01 January 1984
Date of Termination:	05 June 2010
Gross Weekly Wage:	€303.69

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)