

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:

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 5th of June 2010 making all of the employees redundant. By letter of the 8th of June 2010 the appellants were informed that the respondent was going into liquidation and confirmed that their positions were redundant.

On the 26th 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:

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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 |

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| <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)