

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

EMPLOYEE *-appellant*

CASE NO.

RP2703/2011

MN2137/2011

against

EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K. T. O'Mahony B.L.

Members: Mr. J. Hennessy
Ms S. Kelly

heard this appeal at Clonmel on 20th November 2012

Representation:

Appellant: Ms Kathleen Burke, Patrick J O'Meara & Co,
Solicitors, Liberty Square, Thurles, Co Tipperary.

Respondent: MD of Respondent

The determination of the Tribunal was as follows:-

The appellant claimed a redundancy payment based on her service, which she contended commenced in August 1994 with the previous owner of the business and ended when her employment was terminated by the respondent on 30 July 2011. The appellant contended that the respondent had taken over the business in June 2006. The director of the respondent company denied that there had been a transfer of the business from the appellant's previous employer to the respondent in June 2006. He had calculated the appellant's redundancy payment, on her service with his company from June 2006, when the company had taken lease on the premises. The appellant did not accept the redundancy payment.

Summary of the Evidence

The appellant began her employment in the respondent's discount shop as a shop assistant in August 1994, when the business was owned by PO. The appellant's position was that PO closed the shop on 31 May 2006. She continued to work in the shop during the time it was closed and was introduced to the respondent on 6 June when he visited the shop in the company of third person. On that day he shook hands with the staff and welcomed them to the business. Her position was that MD opened the shop on or around 12 June 2006, when he brought a delivery to the store and told the employees that they would have to work a

week in hand. The appellant's position was that the same staff (including herself) continued working in the same premises selling the same stock until the respondent closed it on 31 May 2006.

The respondent's position was that there was no transfer of the business. He took out a new lease on the premises on different terms to the previous leaseholder. He signed the lease on 13 June 2006 and began trading in the shop on 23 June. Prior to May 2006 he had been one of the many suppliers of goods to PO. PO had taken van-loads of goods from the shop to his other shop in Longford. The director had retention of title on the goods PO had left in the shop. The director's position was that he took on the staff because they knew the business. The business under PO had failed and there was no good will to transfer.

Determination:

Having considered the evidence the Tribunal is satisfied that there was a transfer of an economic entity to the respondent and that the same staff continued to work in the same premises, selling the same stock. Accordingly, under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003, the appellant's service is continuous from the time of the commencement of her employment with PO in August 1994. Thus, the appeal under the Redundancy Payments Acts 1967 to 2007 succeeds and the Tribunal awards the appellant a redundancy lump sum payment based on the following data:

Date of Birth:	10 th November 1965
Date of Commencement:	14 th August 1994
Date of Termination:	30 th July 2011
Gross Pay:	€412.50

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

The appellant received the respondent's letter of 25 July 2011 on 29 July, giving her notice that her employment was being terminated on 30 July. In the circumstances, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds and the Tribunal awards the appellant the sum of €3,217.50 (being equivalent to seven weeks' and four days' pay) as compensation in lieu of notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)