

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

MN106/2007

against

Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr J. Walsh  
Mr P. Trehy

heard this claim at Dublin on 28th June 2007

Representation:

\_\_\_\_\_

Claimants(s): Mr. Blazej Nowak, Emigrant Advice Centre, 1 Cathedral Street, Dublin 1

Respondent(s) XXXX

#### **Claimant's Case**

The claimant told the Tribunal that he did not own his own business. When he commenced employment with the respondent he was informed that he would earn €450 per week.

He did not work for any other employer and he worked an average of forty hours a week. Initially he worked five days a week and his hours of work were flexible. He usually worked Monday to Friday and he worked Saturdays and Sundays to do extra work. He then worked twelve hours a day on Mondays and Tuesdays. He agreed with his employer that he did not have to go to work on Wednesday. He was not allowed to subcontract work. All materials were provided by the employer. He did not receive holiday pay.

The claimant stated that a friend in Dublin told him about the job. The claimant applied for the job by e-mail and he was offered the job over the telephone. He had three days to think about it and he was informed that he would work in the Dublin office. The respondent issued invoices to the claimant which he had to sign in order for him to receive payment.

In cross-examination the claimant stated that in January 2007 he was informed that he was supposed to set up an invoice. He had access to e-mail in the respondent company. He did not

work for another company while he was employed with the respondent. The owner of the newspaper owned the computer that the claimant undertook work on. His own private hard drive that he had was full and he copied some of his own work on the company's hardware. When asked how long it took to set up the newspaper he responded that his job never got easy. He spent twenty-two hours in work on Monday and Tuesday and he spent time in the office on Thursday and Friday. He was never told that he could not undertake employment for another employer. When asked if he was told it did not matter how much time he spent setting up the newspaper he responded that the paper had to be ready on time. When asked if it was possible for someone else to undertake his job he responded that another graphic designer could do it. During this time he did not have access to an Internet at his home. After one month his family came to live in Dublin.

In answer to questions from the Tribunal the claimant stated that invoices were always given to him with his wages. He treated the signature on the invoice as confirmation that he was paid money. He was told that he would get payslips and when he enquired about PRSI and an increase in salary in January 2007 he was fired two weeks later. The claimant was not registered for V.A.T and the respondent did not ask him why he was not. His understanding was that he received €450 each week and that his employer paid his tax and PRSI. If he reported late for work on Thursday and Friday he received a call to come in earlier. When asked if graphic designers had to provide their own equipment he responded that a couple of designers must have their own equipment. The respondent provided all the technology that was necessary for him to complete his job. He was unable to undertake his work at home. Initially when he was offered the job over the telephone he asked if it was a full time job and he was informed that the employer was responsible for the tax and PRSI. He asked for this to be confirmed but he did not receive anything in writing. He undertook all his work on the office computer and he did not take home the office computer.

### **Respondent's Case**

The owner of the respondent company told the Tribunal that the claimant worked as a subcontractor. The claimant was told the difference between invoices and payslips and the way of work. The claimant could work at home. The claimant did not have his own equipment and he could use the equipment that belonged to the office. The claimant was never told that he was supposed to pay VAT.

In cross-examination the owner stated that what happened on 25 January 2007 was that the claimant was informed that he was not the owner of the newspaper. He did not agree to that and he treated the newspaper as his own. The claimant did not want to co-operate and they could not work together any more. The claimant received the money for the work that he had undertaken. He could not recall why he gave a P45 to someone who undertook work in the company.

### **Determination**

It is clear from the evidence that the claimant was an employee. It was clear that the claimant did not satisfy the criteria as set out in the Code of Practice for determining Employment or Self-Employment status of individuals. The claimant is entitled to one week's wages in lieu of notice in the amount of €450, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_

(CHAIRMAN)

