

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP275/2007

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Brennan B.L.

Members: Mr. M. Noone
Ms. M. Mulcahy

heard this appeal at Dublin on 2nd November 2007

Representation:

Appellant: In person

Respondent: Managing Director

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant commenced employment on the 3 February 2005 on the respondent's building site after contacting the respondent about employment opportunities. The appellant was asked to register with an employment agency and his wages were paid through the agency for approximately four months. After this time the appellant spoke to the Managing Director. The appellant said it did not make sense that he was working for an agency when all of the work he carried out was for the respondent. The appellant was paid directly by the respondent from the 6 June 2005 onwards. The appellant remained in the employment of the respondent until the 5 February 2007 when the company was closing down.

Answering questions from the Tribunal, the appellant stated that a director of the employment agency (and also the Managing Director of the respondent) told the appellant at the time he was commencing employment that he would be working for the respondent but his salary would be received from the employment agency.

Respondent's Case:

The Managing Director (hereafter referred to as MD) stated that the company's payroll records show that the appellant's employment ended on the 2 February 2007. The company was closing down and the appellant received three weeks notice. MD is also a director of the employment agency with whom the appellant was employed.

Answering questions from the Tribunal, MD confirmed that initially the employment agency had paid the appellant's wages. MD is one of five directors of this agency. The respondent paid an amount to the agency that included wages and an agency fee. The employment agency carried the onus of the employment rights. MD confirmed the employment agency penalises the respondent if employees start work directly with the respondent but MD does not know if this happened in the appellant's case. MD was the person who instructed the appellant's work. MD became a director of the respondent on the 18 January 2007. MD believed the appellant did not receive a contract of employment.

Determination:

The Tribunal determined on the basis of the evidence and the facts produced at the hearing that the appellant was at all times in the employment of the respondent. The work upon which the appellant was engaged for all of the time was under the control and management of the said company.

The appellant has the requisite service required under the legislation to enable him to succeed under the terms of the Redundancy Payments Acts, 1967 to 2003. The Tribunal awards the appellant a lump sum payment based on the following criteria:

Date of Birth:	8 May 1978
Date of Commencement:	3 February 2005
Date of Termination:	5 February 2007
Gross Weekly Pay:	€585.00

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)