

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF: CASE NO. UD1075/2008

Employee - **claimant**

against

Employer - **respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. M. Flood  
Mr B. Byrne

heard this claim at Dublin on 21st January 2009

Representation:

Claimant(s): Mr John Brady, MABS, 32 Francis Street, Dublin 8

Respondent(s): Mr. Mark Connaughton SC instructed by B. V. Hoey & Co, Solicitors,  
Law Chambers, Fair Street, Drogheda, Co Louth

The determination of the Tribunal was as follows:-

### **Background**

At the commencement of the proceedings a jurisdictional issue was raised by Counsel for the Respondent that his client was not the employer for the purposes of the Unfair Dismissals Acts 1977 to 2007 and in particular Section 13 of the Unfair Dismissals Act 1993 which clearly states that the Agency acting as an Agency is not the employer and that the Tribunal did not have jurisdiction to hear the claim.

The Representative for the Claimant stated that the claimant had worked for a number of years with the Respondent Agency and that the Respondent obtained employment for him with various employers and that accordingly the named Respondent was the claimant's employer.

In response to a question from the Tribunal the Representative for the Claimant confirmed that the Claimant did not have any contract, or other documentary evidence, showing that he was employed directly by the named respondent. However he referred the Tribunal to a form, which described the respondent as the employer.

Counsel for the Respondent explained to the Tribunal that the Respondent had an arrangement with

Revenue whereby it deducted tax and PRSI, from the Agency workers, on behalf of Revenue.

### **Determination**

The claimant registered with the Respondent Employment Agency, which obtained work for him with various employers. The claimant was not directly employed by the Respondent. The Respondent collected tax and PRSI under an arrangement it had with Revenue.

When the facts of this case are considered against Section 13 of the Unfair Dismissals (Amendment) Act, 1993 it is clear that the named respondent is not the claimant's employer.

Section 13 states:

“Where, whether before, on or after the commencement of this Act an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract and whether or not the third person pays the wages or salary of the individual in respect of the work or service), then, for the purposes of the Principal Act, as respects a dismissal occurring after such commencement –

- (a) the individual shall be deemed to be an employee employed by the third person under a contract of employment,
- (b) if the contract was made before such commencement it shall be deemed to have been made upon such commencement, and
- (c) any redress under the Principal Act for unfair dismissal of the individual under the contract shall be awarded against the third person.

The wording of Section 13 is clear, precise and unambiguous. The fact that the named Respondent collected tax and PRSI from the claimant does not make it the employer. The third party assigned to the claimant by the Agency, from time to time is the employer. The Respondent Agency is not. Accordingly the Tribunal does not have jurisdiction to hear this case under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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