

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee  
against

*-Appellant* RP464/2009

Employer

*-Respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly B.L.

Members: Mr. P. Pierce  
Mr. J. Maher

heard this appeal at Dublin on 25th August 2009

#### **Representation:**

Appellant: In person

Respondent: Mr. Alan Barry, IR/HR Executive, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

#### **The decision of the Tribunal was as follows:**

##### Respondent's Case:

The Regional Manager gave evidence to the Tribunal. The respondent is an employment agency supplying persons to the construction sector. The appellant was one of a number of individuals on a list to be called in the event of a client of the respondent requiring persons for a period of time.

At the time of registering a person with the agency the respondent draws the attention of the person to the fact that they are free to register with other employment agencies and that they are free to accept other work. Persons registered with the respondent are informed of this verbally and in writing.

The appellant worked in the residential, construction industry, which has seen a reduction in the volume of work since mid 2008 and the appellant has not been supplied with work since January 2009. The respondent relies on individuals registered with them to contact them for work. The appellant remains one of 2,500 people on the respondent's "live" list. The respondent did not receive a request from the appellant for a P45.

A document entitled *Terms of Assignment of Temporary Workers* was opened to the Tribunal. Section 2.2 states:

*The Temporary Worker is under no obligation to accept any Assignment, which may from time to time be offered to him or her by the Employment Business from time to time, but on acceptance of any Assignment he/she will supply his/her services to the Employment Business in order to enable it to supply services to the Client.*

Section 2.4 states:

*The Temporary Worker acknowledges that there may be periods when no suitable work is available, and agrees that his/her suitability for a particular Assignment shall be determined solely by the Employment Business taking account of all relevant factors including the personal information supplied by the temporary worker to the Employment Business.*

The appellant signed and dated this document when he registered with the respondent in April 2006.

In reply to questions from the Tribunal, the Regional Manager confirmed that the appellant worked for one client from the 12<sup>th</sup> April 2006 to January 2009. The appellant did not have a separate contract with the client. The respondent paid the appellant on a weekly basis in accordance with the Registered Employment Agreement. The respondent also paid contributions for the appellant to the construction pension scheme. A screenshot of the appellant's record card with the respondent was opened to the Tribunal. This showed the last recorded contact from the appellant was received on the 28<sup>th</sup> January 2009.

#### Appellant's Case:

It was the appellant's evidence that he worked for the respondent for over two years without incident but he had not been allocated work since January 2009. The appellant contacted the respondent on numerous occasions for more work but often he did not receive a response. He also attended the respondent's premises on a number of occasions. The respondent did provide him with a docket, which enabled him to receive social welfare payments. The docket stated that the appellant was still working for the respondent but no work was available to him. The appellant submitted an RP9 form seeking a redundancy payment from the respondent. His last attempted contact with the respondent was in February 2009.

#### **Determination:**

The Tribunal carefully considered the evidence adduced. The Tribunal is satisfied that the agreement between the parties which was signed by the appellant, did not constitute an employee/employer relationship. In reaching its decision the Tribunal considered section 2.3 of the document entitled, *Terms of Assignment of Temporary Workers*, which states,

*"This Agreement does not give rise to a contract of employment between the Employment Business and the Temporary Worker."*

The appellant was under no obligation to the respondent and was free at all times to take up work with another entity. The appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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