

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO

EMPLOYEE – *appellant*

RP85/2009

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin
Members: Ms. M. Sweeney
Ms. P. Doyle

heard this appeal at Cork on 16th October and 3rd December 2009

Representation:

Appellants: Mr. Daniel Snihur, Independent Workers Union,
55 North Main Street, Cork.

Respondent: Mr. Michael Doody, Solicitor, 21 South Mall, Cork

Respondent's Case

The respondent in this case did not pay the appellants a redundancy payment because they consider that they were not the employer of the appellants. The respondent is a recruitment agency and recruited the appellants but did not employ them. Unfortunately no contracts exist between the agency and the purported employer. The appellants did not have contracts of employment.

The contracts manager for the respondent gave evidence. She placed people in employment. She met each potential employee and when a prospective position arose she submitted CVs to the company and accompanied the candidates to the induction process. After induction the placement company choose the employees.

The contracts manager paid the employees on foot of an email from the placement company. The respondent also made all the statutory deductions from the appellants pay. She was involved with matters relating to time keeping, disciplinary matters and holidays of the appellants.

The respondent did not regard itself as the employer at any stage. The decision to make the appellants redundant was made by the placement company.

Claimant's case

The legal representative of the placement company gave evidence. The respondent was not merely a payroll provider but was the effective employer. The placement company bought skills provided by employees of the respondent who were screened and interviewed before being placed.

The H.R. Manager of the placement company gave evidence. The claimants were never on the payroll of the placement company. Kingsley had full responsibility for the payment of wages to the claimants. When they took holidays this had to be cleared by Kingsley. There was a clear distinction between Kingsley staff and the placement company's own staff, for example, Kingsley staff could not join the social club and they were paid different rates of pay than other staff.

The claimant gave evidence. His understanding was that he was employed by Kingsley. His pay slips and P45 were from Kingsley. Holidays had to be approved by Kingsley. He could not join the social club of the placement company because he was not employed by them.

Determination

Having regard to the evidence adduced and with regard to section 3(c) of the Redundancy Payments Act 2003 the Tribunal are satisfied that the claimant was employed by Kingsley Recruitment Limited.

The tribunal awards the claimant a lump sum redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	
Commencement Date	29 th Aug. 2005
Date notice received	10 th Sept. 2008
Termination date	10 th Sept. 2008
Gross pay	€461.37

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)