

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1117/2009, RP1270/2009
MN1129/2009

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms V. Gates

Members: Mr. L. Tobin
Mr A. Butler

heard this claim at Wicklow on 9th April 2010

Representation:

Claimant : Mr. Gus Cullen, Augustus Cullen Law, Solicitors, 7 Wentworth Place,
Wicklow Town, Wicklow

Respondent : Mr Michael McNamara, C.J. Louth & Son, Ferrybank, Arklow, Co. Wicklow

The determination of the Tribunal was as follows:

The claim under the Unfair Dismissals Acts, 1967 to 2007 was withdrawn at the outset of this hearing.

It was the respondent's contention that not only did it not make the claimant redundant but that it was not the employer of the claimant.

Preliminary Issue

The town clerk outlined the relationship between the respondent, the claimant and another involved entity called Foras Áiseanna Saothair (FÁS) which is the national training and employment authority. For ten years up to the summer of 2008 the respondent acted as sponsor of a scheme run by that body. The respondent advertised for the position of a Community Employment Supervisor for the scheme in 1998 and FÁS appointed the claimant to that post. The main function of such supervisor was to ensure that the work under this particular scheme was properly carried out. From the respondent's point of view it was the town foreman who oversaw the running of those works and that scheme.

The respondent paid the wages of the claimant. That remuneration was set by FÁS which in turn reimbursed the respondent for those payments. The witness acknowledged, however, that the claimant's payslips, P60s and P45 named the respondent as the claimant's employer. He maintained that at all times the claimant came under the control and direction of the national training and employment authority. The claimant was never treated as a local authority employee. This sponsored scheme was renewed on a year-to-year-basis and the claimant remained supervisor on a verbal and informal contract between all concerned parties.

The witness received a letter dated 1 May 2008 from a development officer with FÁS. That letter confirmed that arrangements were being finalised to transfer the operation of the community employment project to another entity. The transfer date was set for 20 June 2008. In acknowledging that letter the town clerk asked the letter writer to confirm there would be no claims, redundancy or otherwise arising from this transfer relating to the claimant. By reply dated 4 June that development officer wrote:

Regarding the situation of the supervisor I wish to confirm that he is transferring with the Programme. As this is a continuing programme the question of severance payment does not arise.

Even though the witness had doubts about the viability of this transfer neither he nor the respondent had any influence over it. FÁS had control of the scheme and could determine how it was run. In the event the proposed new sponsor was not in a position to activate that transfer and the claimant was sent to a local sports club on an interim arrangement. There was no consultation or involvement between the respondent and the claimant over this change and the witness understood this transfer was between FÁS, the claimant and the incoming new sponsor. Therefore the claimant was transferred to employment with Arklow Tidy Towns on the same basis and same rates of pay.

Claimant's Case

The claimant was aware he was on a FÁS scheme from 1998. He also believed that his employer was the respondent as that entity paid his wages, issued P60s in its name to him, and paid him when he was out on sick leave. While denying that FÁS was his employer the witness acknowledged that this organisation informed him of his transfer elsewhere as he did not personally seek a transfer. He felt that the respondent had made him redundant when his relationship with it ceased in the summer of 2008.

Determination

Having carefully considered the evidence the Tribunal finds that there was no termination of employment on 20 June 2008 and therefore the respondent has no liability in this case. Accordingly, the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

