

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *Appellant*

CASE NO.
RP3115/2009
MN2449/2009

against
EMPLOYER - *Respondent*

under

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: Mr G. Hanlon

Members: Mr F. Cunneen
Ms. E. Brezina

heard this appeal at Dublin on 19th August 2010

Representation:

Appellant: In Person

Respondent: Mr. Stephen Sands, Construction Industry Federation,
Construction House, Canal Road, Dublin 6

The decision of the Tribunal was as follows:

Background:

There was a dispute between the parties as to the nature of the appellant's engagement by the respondent company. It was the company's position that the appellant was engaged as a self-employed individual under a contract for service until December 2008 at which time the appellant was informed that a decision had been taken to terminate her contract for services. It was the appellant's position that she was engaged on a contract of service and as an employee was therefore entitled to a redundancy payment under the Acts based on her service.

A Scope decision dated 5th June 2009 was opened to the Tribunal. The Deciding Officer concluded that the appellant was employed under a contract for services and that a normal employer/employee relationship did not exist. The appellant stated that at the time of the Scope hearing she did not have a copy of her contract of employment to submit to the Deciding Officer. The appellant now holds a copy of her contract of employment and she had since appealed the Decision of the Deciding Officer. At the time of this hearing the appellant was still awaiting the outcome of the

appeal.

Appellant's Case:

The appellant commenced employment with the respondent company in May 2000 as a Contracts Manager. During 2002 she was issued with an employment contract. This document was opened to the Tribunal.

The appellant confirmed that she had not received payment for holidays during her eight years of employment with the respondent. She confirmed that she charged VAT on the invoices submitted to the company. The appellant had previously worked for a company on a contract basis and when she began work with the respondent it was easiest to retain her VAT-registered status.

Respondent's Case:

The Financial Controller gave evidence that the respondent company provides mechanical services for large projects. During 2008 the company suffered a decline in business and as a result a number of cost-cutting exercises were implemented in conjunction with a review of the company's expenses.

The appellant was engaged as Contracts Manager on a contract for services in 2000 by the then Managing Director (the appellant's husband). The appellant submitted monthly invoices to the company for the services she provided and VAT was charged on each invoice. The appellant could control what hours she work but employees had set hours of employment. PAYE and PRSI were deducted for employees but not for the appellant. Company employees are paid weekly, have payslips, are part of a sick pay scheme, are paid for annual leave as well as having other benefits such as fuel cards and health insurance. The number of direct employees reduced from 40 employees at the beginning of 2008 to 13 employees by late 2008. As a result, the appellant was informed in December 2008 that her contract for services was terminated.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. It is apparent from the evidence that the appellant did not enjoy the same benefits as direct employees and that the nature of her employment was on a contract for services basis. Based on the evidence the Tribunal is satisfied that the appellant does not have an entitlement to a redundancy payment, as she was a self-employed individual for the duration of her engagement with the respondent company. Accordingly, the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)