EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE	UD762/2010
	RP1029/2010
	MN715/2010

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. P. McGrath BL

Members: Mr. R. Prole
Mr. J. Flannery

heard this case in Dublin on 4 November 2011

Representation:

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Claimant(s):
Ms. Rosemary Mallon BL instructed by
Mr. Manus McClafferty, Maguire McClafferty, Solicitors,
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent(s) :
Mr John Hogan, Leman, Solicitors,
8-34 Percy Place, Dublin 4

The determination of the Tribunal was as follows:-

The claimant, a tennis coach, made claims under unfair dismissal, redundancy and minimum notice legislation based on the period from August 2005 to 1 August 2010. The respondent, a tennis club, argued that it had never actually employed the claimant but, rather, that the claimant was a self-employed tennis coach who had paid his own taxes.

The Tribunal listened to legal submissions made and argued by both the claimant's and the respondent's legal advisers. In addition, the evidence of a Mr. H was heard in relation to the distribution of work and treatment of coaches.

The Tribunal had to look at the relationship between the claimant and the respondent in the years that pre-dated the breakdown of the relationship. The Tribunal had to consider all aspects of the relationship from the contract entered into to those informal and formal understandings which each party had a propos of the other party.

The claimant had no guaranteed income from the respondent. He was expected to give six to eight hours' free time to the club from which exercise he was in a position to build up relations with the club members with a view to giving private lessons to them as and when they requested. The claimant was, therefore, to develop his own rapport with potential clients to make up his own income.

In addition, the club had non-mandatory group coaching sessions in which the claimant could engage if he so desired. These were less lucrative than the one-to-one lessons but presumably opened up an important private client base as he met more club members through these sessions.

Over the years the claimant seemed to have earned a steady income. It was stated in evidence that he was one of the busiest coaches and popular with the members. It seems to have been accepted that the members would book the coach and the court and, whilst the fee charged would (for security reasons) go through the respondent's process, the full amount of the fee payable would revert to the coach whose services had been engaged by the member.

The claimant's representative pointed to the level of control exercised by the respondent over the claimant as being indicative of the classic employer/employee relationship. The Tribunal cannot accept that the wearing of the respondent's t-shirts amounts to anything other than free advertising. However, in considering the prohibition on the claimant from working outside of his arrangement with the respondent the Tribunal must be alerted to an element of control which is not normal in a contract for services. A particular section (paragraph 2.9) of the 2007 contract goes extraordinarily far in that it prohibits the claimant from engaging in <u>any form of business or employment</u> other than self-employment with the respondent company. Such a section goes beyond anything that would normally be seen in a regular contract of employment never mind a contract for services.

As against this, the claimant submitted invoices and was taxed for revenue purposes as a self-employed person. It is accepted that this is not necessarily a determinative factor but the Tribunal has to have some regard for the fact that the claimant operated as a self-employed person for the best part of five years. He certainly never questioned this status.

The Tribunal must go back to the intent of the parties going back to 2005 and beyond. They did periodically enter into agreements for the supply of services which, although certainly badly drafted, must go some way towards giving an indication of what the parties intended their relationship to be.

On balance, the Tribunal is satisfied that the parties intended that this would be a contract for services and that the claimant was not intended to be an employee of the respondent company.

In these circumstances the claimant cannot make a claim under the unfair dismissals, redundancy or minimum notice legislation.

The claims under the Unfair Dismissals Acts, 1977 to 2007, the Redundancy Payments Acts, 1967 to 2007, and the Minimum Notice and Terms of Employment Acts, 1973 to 2005, all fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)