

**EMPLOYMENT APPEALS TRIBUNAL**

APPEALS OF:  
EMPLOYEE

*-appellant*  
against

CASE NO.  
RP9/2010  
MN10/2010  
WT5/2010

EMPLOYER  
*-respondent*

EMPLOYER  
*-respondent*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Lucey  
Members: Mr G. Andrews  
Ms S. Kelly

heard this appeal at Limerick on 8th April 2011

Representation:

Appellant: Mr. John Hickie Solicitor  
3a Old Clare Street, Limerick city.

Respondent: Ms Michelle O'Riordan, Holmes O'Malley  
Sexton, Solicitors, Bishopsgate, Henry Street, Limerick

**Respondent's case:**

The Tribunal heard evidence from the owner of the Respondent (RD). He explained that he is friend of the claimant for many years.

He was growing a property portfolio. He was looking for a person or management company to manage the tenants and collect rents. He told the claimant that if he did this it would be "on his own bat".

The claimant told him the name of the accountants that would be managing his accounts and he confirmed this with the accountants. The claimant exercised all of the duties of a management company, by co-ordinating tenant needs, collecting rents. The claimant called to his office once

a week to deliver the rent that he had collected. The claimant assured him that he had always been self-employed. He paid the claimant €1,600.00 per month. He did not deduct tax because the claimant “was his own man”. His hours of work were up to himself. If the claimant was to take holidays he just told him that he would not be around; he did not have to ask to go on holidays. All the properties were owned by him in his own personal capacity. The claimant himself provided the rent books.

In cross-examination

He agreed that he had considered using other management companies. He did provide the claimant with a mobile phone and this was to contact tenants and prospective tenants i.e. a contact number from the advertisement of property to let.

Regarding maintenance the claimant would phone the window person or the locksmith people.

Regarding the claimant being on the van insurance certificate that it was an open policy and the claimant had needed the van to travel to a country location. It could have been that the claimant drove the van for six months.

It was put to the witness if the claimant had always been self-employed and he replied that he had confirmed this was so with the claimant’s accountants.

He was asked if the claimant asked him to register his employment (with him). He explained that “no and it was proved, in that when I had a job full time (he offered the claimant a job in his public house) he could not do it because of his health”. He was the master of his own hours.

The claimant took on the role as an entrepreneur. The claimant had the keys to the properties “as a sole agent”. The claimant did not deliver goods on his behalf he did not give the claimant instructions. The claimant was not given a per diem rate.

The Tribunal heard evidence from a witness who had attended meetings where the owner and the claimant were present and she confirmed that the claimant did not ask to be registered as an employee. Regarding the van it was an open insurance policy and anyone could drive it.

#### **Claimant’s case:**

The Tribunal heard evidence from the claimant. He explained that he knew the Respondent owner from when they grew up together in a neighbourhood.

He was unemployed and asked RD if he had work and they discussed a job. RD showed him a building and gave him the keys. RD told him to go into the building whilst he was away. He was to collect rents and to paint apartments. Anything could be involved in the job. He collected items and it was RD who instructed him to collect items. It was he who drove the VW caddy bringing paints and tools to buildings.

He was not appointed as a management company; he had no management skills and he had no company set-up for that purpose.

The commencement of his contract was informal. He was concerned as to his status in the company and spoke to the accountants twice or three times about it. It was his understanding that the company was in the process of registering him as an employee. He spoke to RD face to face eight or ten times a week. He spoke to RD on a daily basis by phone. The conversations could be about anything.

The work to be done was a lot of work and could run into the weekends. Repairing locks at the weekend, or tending to fire alarms. He also delivered computers for RD.

He collected items for the apartments for RD. He went to RD and got a cheque for the items and then went to collect the goods. He had a fuel card for the van.

Regarding holidays he had to notify RD when he wanted to go on holidays. He was not asked by the Respondent to produce Revenue Commissioner documents regarding being a contractor.

**Determination:**

The Tribunal are unanimous in its determination that the claimant was not an employee of the respondent company. Accordingly, the claim under the Redundancy Payments Acts, 1967 to 2007, must fail.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 To 2005, fails.

The claim under the Organisation of Working Time Act, 1997, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

