

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
EMPLOYEE *-claimant*

CASE NO.  
UD1473/2011  
MN1553/2011

Against

EMPLOYER – *respondent*

EMPLOYER - *respondent*

EMPLOYER *-respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes B.L.

Members: Mr M. Murphy  
Mr N. Dowling

heard this claim at Trim on 27th September 2012

#### **Representation:**

Claimant: Colm Murphy & Co, Solicitors, Unit 13a, Main Street, Ongar, Dublin 15

Respondent: In Person

#### **Preliminary Issue**

#### **Respondent's Case**

The respondent made the application that the claimant does not have the required service to take a claim under the Unfair Dismissals Acts, 1973 to 2007.

The respondent business is a wedding and events venue that commenced trading in May 2009. It was always the intention to use contracted catering and bar services. The respondent engaged M.E. catering services for events which provided the claimant (who said he was a private contractor trading as C.S.) as bar staff. In August 2009 M.E. catering got into financial difficulties so ceased trading. From August 2009 the respondent engaged the claimant's services to provide bar staff. There was no formal contract in place between the claimant and the respondent. The respondent repeatedly requested invoices from the claimant for the services he provided to the respondent. To ensure the claimant's staff were legitimate the respondent requested their PPS numbers from the claimant. There were 14 events held in

the venue to the 31<sup>st</sup> of December 2009; the claimant's services were not engaged for all of those events. The claimant worked on the same basis for other venues and was therefore not always available. The respondent provided a letter from a contractor stating that they engaged the claimant's company to provide bar services/staff.

There was a supervisor rate of pay of €15.00 which the claimant was on; this reduced to €12.50 when he became a direct employee, as the respondent was now liable for statutory employer contributions. Due to the difficulty in getting invoices from the claimant the respondent made the decision to employ the claimant and his staff directly from the 1<sup>st</sup> of January 2010. Prior to this the claimant e-mailed the respondent with the hours worked of each of the staff. The claimant worked as a direct employee until the 17<sup>th</sup> of August 2010. Therefore the claimant does not have the required service to take a claim.

A number of employees of the respondent gave evidence to say they believed the claimant was their 'boss' as he paid them their wages at the end of the night.

### **Claimant's Case**

The claimant commenced working for the respondent in May 2009. He initially worked as bar staff with the catering company but the respondent 'took the bar back.' The claimant was approached and asked to manage the bar by the respondent; he agreed. At the end of the first night worked at the venue the respondent asked the claimant to calculate the hours worked of all the bar staff. The respondent then compiled all the staff wages and the claimant, as manager, passed the wages on. The claimant sent an e-mail to the respondent confirming the rates of pay for both the claimant, the bar staff and the lounge staff. As the result of an e-mail from the respondent requesting the staff's PPS numbers, the claimant was led to believe that as the respondent was newly formed all of the paperwork i.e. tax and P.R.S.I. deductions would be 'sorted out later.'

The trading name the respondent believes the claimant was using was not registered until 2010. The claimant was working for other venues as a part-time direct employee and can provide payslips received for those venues. The claimant submitted his PPS number to the respondent in September 2009 and always believed he was a direct employee. The claimant disputes that he was ever requested to produce invoices. At the end of 2010 the claimant, through his company provided staff to the contractor as mentioned in the respondent's evidence.

### **Preliminary Determination**

The respondent has not satisfied the Tribunal that the claimant was not an employee. The Tribunal therefore accept jurisdiction to hear this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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