

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**

EMPLOYEE - *Claimant*

MN1527/2011

Against

EMPLOYER - *Respondent*

under

**CASE NO.**

RP1908/2011

UD1434/2011

WT569/2011

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. A. O'Mara  
Mr F. Barry

heard this claim at Dublin on 13th December 2012

**Representation:**

Claimant: Ms. Caroline Lindsay Poulsen, B.L., instructed by Mr Paul Maher, O'Leary Maher, Solicitors, 191 Howth Road, Killester, Dublin 3

Respondent: Mr. Ray Ryan, B.L., instructed by Mr Kieran Kelly, Fanning And Kelly, Solicitors, 2 Hatch Lane, Hatch Street, Dublin 2

The determination of the Tribunal was as follows:-

**Preliminary Issue**

The representative for the respondent stated that he did not believe the Tribunal had jurisdiction to hear the claimant's claim. There was dispute about the claimant's contract of employment. The respondent said the claimant was employed on a contract for service.

The claimant told the Tribunal that he commenced working with the company in the

1980's doing relief work. He was delivering papers in the Dublin area. He later approached the transport manager to seek work for himself. He was provided with a route, rate of pay and an area. He has been operating on that basis since then.

The claimant's route was operated daily and he would attend the company depot daily to collect his papers and magazines. The claimant understood his position to be permanent. He was unable to decline work if it did not suit or if he was sick. It was his responsibility to provide a relief driver to cover his route. His choice of cover could be vetoed by the respondent.

The claimant told the Tribunal that he was the owner of the van used for his deliveries. He was responsible for insuring, taxing and fuelling the vehicle. The claimant would submit an invoice to the respondent to request payment for work completed. The claimant was initially paid by cheque, and then electronic fund transfer.

In March 2011 the claimant was informed that he was given with one month's notice and would no longer work for the respondent from 30<sup>th</sup> April 2011. On 20<sup>th</sup> April he received a phone call from TF which resulted in him no longer working for the respondent. The claimant emailed the respondent during his notice period to enquire if he could carry out work for other drivers. The respondent said it could not allow it at the present time.

During cross examination the claimant confirmed that he sent monthly invoices, inclusive of tax, to the respondent. He was vat registered and paid vat in respect of his employment with the respondent.

The claimant has worked full time for another respondent since 2000. For 10 years prior to this he worked part time for the same respondent.

If the claimant engaged a relief driver to operate his delivery route he would pay that driver directly at the same rate of pay that he received from the respondent. The claimant did not have to personally carry out the deliveries but he had to guarantee that the person put in to do the work would do it properly.

The claimant confirmed that the van was his own, it was not branded, and he could use it to carry other materials

The claimant worked for the respondent for 23 years. During that time he never sought or received payment in respect of holidays or sickness.

### **Preliminary Determination**

Having considered all of the evidence adduced at the hearing of the above case the Tribunal finds the claimant was under a contract for service. The claimant had to provide his own van, pay his own income tax, VAT, maintain insurance and he was not entitled to payments that normally accrue to employees. In addition to that he was in a position to engage other persons to carry out his duties if he wasn't available.

On balance, therefore, the Tribunal finds in fact that the claimant was not an employee. He was self employed under a contract for service. Accordingly, the Tribunal has no jurisdiction to hear the claimant's case and dismisses the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, Redundancy Payments Acts 1967 to 2007, Unfair Dismissals

Acts 1977 to 2007 and Organisation of Working Time Act, 1997.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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