EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE	UD231/2011
	MN229/2011

against

EMPLOYER

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 J. Sheedy

Members: Mr. P. Casey
Mr. J. Flavin

heard this case in Cork on 5 July 2012, 4 October 2012 and 26 November, 2012

Representation:

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Claimant(s):
Ms. Sandra Walsh BL instructed by
Mr. Henry McCourt, McCourt Mullane & Company, Solicitors,
St. Mary's Road, Midleton, Co. Cork

Respondent(s):
Mr. David Farrell, IR/HR Executive, IBEC,
Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

It was alleged that the claimant (whose occupation was stated to have been that of a mechanic) was unfairly dismissed from an employment that began in mid-1991 and ended in late June 2010. His gross weekly pay was alleged to have been approximately one thousand euro. In theclaim it was asserted that the claimant was informed by his employers that they intended to move from premises in Tivoli, Cork and that the claimant's services were no longer required. Itwas stated that the claimant was told on Wednesday 23 July 2010 that he should remove his belongings from Tivoli as the premises would be closed on Friday 25 July 2010. He did this andsubsequently sought compensation under unfair dismissal and minimum notice

legislation.

Disputing the claims, the respondent submitted that, in order to bring an unfair dismissal claim, a claimant must establish that he is an employee i.e. an individual who entered into or worked under a contract of employment. It was contended that the claimant had been, at all times, an independent contractor under a contract for services, that the claimant had never, at any time, been employed by the respondent under a contract of service and that, accordingly, he had never been an employee of the respondent. Therefore, it was submitted that the Tribunal did not have jurisdiction to hear a claim from the claimant.

Preliminary issue

Referring to case law (**Denny & Sons [Ireland] Limited v The Minister for Social Welfare)**, the claimant's representative stated that the claimant was under a "contract of services" as he was under 100% control of the respondent, time off had to be notified and he was on call 24/7. The respondent controlled the premises where the claimant worked and paid all associated expenditure. All equipment was supplied by the respondent. The claimant's services were fully integrated into the day to day services of the respondent (**Inspector of Taxes v Mooney).** The claimant was not free to perform duties for others from the premises.

The respondent maintained that the claimant was employed under a "contract for services" and was not an employee. The fixtures and fittings were leased from Topaz and the claimant provided his own hand tools. The claimant was not provided with personal protection equipment. The claimant organised his work around a set yearly schedule and invoiced the respondent for trailer maintenance. He did not have to attend to repairs immediately and he was not paid for holidays taken.

In reply to the Tribunal, the respondent's representative stated that start/finish times were not fixed. The claimant's representative thought that PRSI was class S as a self-employed person.

The claimant's representative stated that the provision of personal equipment by the respondent was in dispute. Invoices that the respondent stated had been paid had not in fact been paid. The claimant's representative disputed that the claimant did not have to attend to repairs immediately. Both sides agreed that there was nothing in writing by way of engagement of the claimant.

The Tribunal, having considered the preliminary issue, decided to hear the case in full in order to establish the claimant's status because there was no written contract of agreement between the parties and further, verbal and written submissions made by both parties were in conflict on a number of important issues.

Determination:

After the Tribunal afforded both sides the opportunity to present their case including the

examination and cross-examination of witnesses various aspects of the case were considered. The claimant did not appear to have had the formal, fixed weekly wage of an employee. His supply of a lorry was indicative of his having been a contractor. Also, the claimant had a Class S stamp (normally for self-employed people) for taxation purposes. He had a V.A.T. number which distinguished him from what would be expected of someone who might have been considered an employee. It was presumed that his having a V.A.T. number would have enabled him to claim back V.A.T. although this was not a recourse that would be availed of by a typical employee.

It did not appear that there had been the usual employer-employee relationship between the claimant and the respondent. The claimant did not appear to have been covered by the Organisation of Working Time Act, 1997, in respect of holidays or hours of work. He was not considered by the Tribunal to have been an employee as is commonly understood.

Therefore, taking all of the evidence in the round, the Tribunal is unanimously of the view that the claimant, in his relationship with the respondent, was a self-employed contractor rather than an employee. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, and the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, both fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)