

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.
RP761/2011

EMPLOYEE - *claimant*

UD543/2011
MN587/2011

against

EMPLOYER 1– *respondent No 1*

EMPLOYER 2 – *respondent No 2*

EMPLOYER 3 – *respondent No 3*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr. W. O'Carroll
Mr T. Gill

heard this claim at Galway on 15th January 2013

Representation:

Claimant(s) : Mr. Paul Mc Nulty BL instructed by O'Hara, Solicitors, Cross Street, Athenry,
Co Galway

Respondent(s) : Ms Sarah Hearn, LMGA, 35-39 Ushers Quay, Dublin 8 on behalf of
respondent No 1

Ms Gail Heverin, Eric Gleeson & Co, Shop St, Tuam,
Galway on behalf of respondent No 2

No appearance on behalf of respondent No 3

Preliminary Point

The claims against the third named respondent were withdrawn by the claimant's representative at the commencement of the hearing. The claimant's representative also withdrew the claim under the Redundancy Payments Acts against the first and second named respondents.

Determination

The Tribunal heard evidence that the second named respondent operated as an employment

agency and placed the claimant in employment following a request from the third named respondent. The claimant was employed as a general operative in a water treatment plant. The Tribunal heard further evidence that the first named respondent engaged the services of the third named respondent to carry out specific works related to de-sludging in the water treatment plant. The third named respondent provided all the equipment and labour required to carry out that work, and the evidence showed that the first named respondent only had a supervisory role in the plant in relation to the first named respondent's employees. The claimant gave evidence that he would contact the third named respondent if he had a difficulty and would then contact the first named respondent. It was clear that the claimant was the only operative working on the third named respondent's machines and further was the only person working on de-sludging works.

Mr .C gave evidence on behalf of the second named respondent and the the Tribunal prefers the evidence of Mr. C in relation to the role of the plant manager known as Mr.D. It is clear to the Tribunal from the evidence heard that the provision of services for dewatering of alumina sludge and disposal of contents was a specialized specific contract to deal with the sporidia problem that arose at the relevant time in the water supply. It was confined to the output area only of the treatment plant. It is clear from the documentation in relation to this contract and the oral evidence heard that the third named respondent was to provide the labour to effect this contract.

The Tribunal do not consider the sole fact of the place of work nor the fact that Mr. D gave the claimant his notice as being relevant to creating an employment relationship between the claimant and the first named respondent. The Tribunal therefore determine that there was no employment relationship between the claimant and the first named respondent, and in those circumstances the claims against the first named respondent under the Unfair Dismissals Acts and the Minimum Notice and Terms of Employment Acts fail and are hereby dismissed.

The claims against the second named respondent under the Unfair Dismissals Acts and the Minimum Notice and Terms of Employment Acts also fail on the preferred evidence of Mr. C and are hereby dismissed

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)