

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1006/2006

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr R. Prole

Mr. S. O'Donnell

heard this claim at Dublin on 2nd February 2007

Representation:

Claimant: Mr. Thomas C. White, Assistant General Secretary, TEEU, 5
Cavendish Row, Dublin 1

Respondent: Mr. Nevan Powell BL instructed by Ms Pauline Burke,
Lavery Kirby Gilmartin, Solicitors, The Forum, 29-31 Glasthule Road, Co. Dublin

The determination of the Tribunal was as follows:

Determination:

The Tribunal made a preliminary ruling in the above case. There were two aspects to the preliminary ruling. One that the claim is out of time: the claim must be submitted within six months after the dismissal or within twelve months if the Tribunal determines that exceptional circumstances prevented the lodging of the claim. The second that the claimant was not an employee of the Respondent.

The claimant was not under the PAYE system during the period. It may have been that he should have paid this, although the fact that he did not is not conclusive in itself. He submitted invoices to the respondent and was paid on foot of the invoices. It may be that an employer constructs a situation whereby this system is in place therefore the Tribunal looked at the particular test regarding the invoice. The claimant submitted invoices for his services to parties other than the Respondent. It is clear to the Tribunal that the claimant was self-employed and therefore not an employee of the respondent. For that fundamental reason the Tribunal determine that it has no Jurisdiction in the above case.

In any event the Tribunal find that the claim was not lodged on time. Various reasons were given

as to why the claim was not lodged on time. However, even if the Tribunal found these reasons to be exceptional the Tribunal cannot extend the time beyond twelve months.

Therefore the Tribunal does not have Jurisdiction and the claim cannot proceed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)