

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
MN298/2007, WT128/2007

Against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Mr G. Hunter

heard this claim at Letterkenny on 29th April 2008

Representation:

Claimants : McGuinness & Canavan, Solicitors, 42 Great James Street, Derry, BT48 7DW

Respondent : Robert Sweeney, Solicitors, 2, Crerand House, Larkins Lane,
Letterkenny, Co. Donegal.

The decision of the Tribunal was as follows:

Based on the evidence and actual attendance of the respondent the Tribunal is satisfied that the company was on proper notice of this hearing. The respondent did not take the opportunity to amend the T 2 form to state the correct legal name of the entity that had a working relationship with the claimant.

Having heard and considered the evidence in this case the Tribunal finds on balance that the claimant was an employee of the respondent. An unclear and unsatisfactory loose arrangement between the claimant and the respondent existed during the course of their employment relationship. The onus was on the respondent to establish that relationship was greater than the claimant's and that onus was not properly discharged. The Tribunal noted that the respondent had responsibility for the vehicle and fuel used by the claimant. In addition the respondent had control of the claimant's work schedule and the claimant in turn could not sub-contract his work nor undertake to carry other goods and services on behalf of a third party while under the direction of the respondent.

The Tribunal prefers the evidence of the respondent in relation to the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and as a consequence that appeal fails.

The appeal under the Organisation of Working Time Act, 1997 succeeds and the appellant is awarded €700.00 as compensation for outstanding holiday entitlements under that Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

