

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee
- *claimant*

UD667/2008

against

Employer
- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr D. Hegarty
Ms H. Kelleher

heard this claim at Bantry on 26th January 2009

Representation:

Claimant: Ms Colette Herlihy, Casey & Co, Solicitors, 83 Nth Main St, Bandon, Co. Cork

Respondent: XXXX

The determination of the Tribunal was as follows:

Respondent's case:

The claim herein should be against the end user of the claimant's services as provided in section 13 of Unfair Dismissals Act. The above-named respondent is an employment agency and not the claimant's employer. Another banksman was subsequently required by the end user and he worked until the end of February 2008. This job had been offered to the claimant, but he refused it.

Claimant's case:

The claimant believed that the named respondent was his employer.

The claimant finished work for the named respondent on Friday, 11 January 2008. He commenced employment with another employer on the same site on Monday, 14 January 2008, but was earning

€276 less per week. He stayed on this site until mid March when he was let go. He denied that he was offered an opportunity to restart work with the respondent shortly after his dismissal.

Determination:

Section 13 of the Unfair Dismissals (Amendment) Act, 1993 provides:

“Where, whether before, on or after the commencement of this Act, an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract and whether or not the third person pays the wages or salary of the individual in respect of the work or service), then, for the purposes of the Principal Act, as respects a dismissal occurring after such commencement –

- (a) the individual shall be deemed to be an employee employed by the third person under a contract of employment,
- (b) if the contract was made before such commencement, it shall be deemed to have been made upon such commencement, and
- (c) any redress under the Principal Act for unfair dismissal of the individual under the contract shall be awarded against the third person.

The uncontroverted evidence before the Tribunal was that the respondent named herein was an employment agency. The claimant was performing his work for a third party. Accordingly, the Tribunal in applying the above section 13 dismisses the claim under the Unfair Dismissals Acts 1977 to 2007 against the respondent named herein.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

