

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1895/2010

against  
EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Smith

Members: Mr D. Morrison  
Ms A. Moore

heard this claim at Letterkenny on 12th March 2012

Representation:

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Claimant: Mr Kevin McElhinney, Gibson & Kelly, Solicitors, Port Road,  
Letterkenny, Co. Donegal  
O'Gorman, Solicitors, Munster House, 75a O'Connell Street,  
Limerick

Respondent: Mr. Terry Macnamara, Ibec, 3rd Floor, Pier 1, Quay Street,  
Donegal Town, Co Donegal

The determination of the Tribunal was as follows:-

#### **Preliminary Issue**

At the outset a jurisdictional point was raised in that the respondent did not accept that the claimant had been an employee.

The respondent contended that the claimant was not an employee of the respondents as defined in section 1 of the Unfair Dismissal Acts and that accordingly the Tribunal did not have jurisdiction to hear the case under the under the said Acts. They claimed he was self-employed.

Evidence was provided to the Tribunal of a Memorandum of Agreement signed by the claimant acknowledging that he was self-employed. JF the general manager in his sworn evidence stated that the claimant was not on the P351's, did not receive P60's and did not get a P45. He was registered for VAT and registered as a self-employed person. He received no annual leave or public holiday entitlement.

The claimant did not go into evidence.

**Preliminary Determination**

From the evidence adduced the Tribunal, rules that it does not have jurisdiction to hear this case under the Unfair Dismissals Acts, 1977 to 2007. and the claim necessarily fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

