Neutral Citation Number: [2011] IEHC 43

THE HIGH COURT

[2009 No. 1132SP]

IN THE MATTER OF THE REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

IN THE MATTER OF THE MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

AND IN THE MATTER OF AN APPEAL FROM HEARING NO. 26743 OF THE DETERMINATION OF THE EMPLOYMENT APPEALS TRIBUNAL ON THE 31ST JULY 2009

AND IN THE MATTER OF AN APPEAL BY JOHN BARRY, CONOR O'BRIEN, MARY O'CONNOR, MICHAEL SPRATT AND CIARAN DOLAN

BETWEEN

JOHN BARRY, CONOR O'BRIEN, MARY O'CONNOR, MICHAEL SPRATT AND CIARAN DOLAN

APPLICANTS

V.

THE MINISTER FOR AGRICULTURE & FOOD

RESPONDENT

JUDGMENT of Mr. Justice Hedigan delivered on the 9th day of February 2011.

1. This appeal is brought pursuant to section 39 (14) and section 40 of the Redundancy Payments Acts 1967-2003 and section 11(2) of the Minimum Notice and Terms of Employment Act 1973-2001, which each provide for an appeal on a question of law against a decision of the Employment Appeals Tribunal.

2. The appellants in these proceedings are Veterinary Surgeons who worked for the respondent as Temporary Veterinary Inspectors at the Galtee Meats Plant in Mitchelstown, Co Cork. The respondent is a Minister of the Government and has his principal offices at Agriculture House, Kildare St. Dublin 2.

3. The appellants appeal against a determination made by the Employment Appeals Tribunal dated the 31st July, 2009, in which the Tribunal held the appellants were engaged under a contract for services with the Respondent. They seek the following:-

> i) An Order that that the Tribunal erred in law in reversing their previous determination of 12th March, 2007, having found that on the balance of probability, by a majority decision, that the appellants and respondent were engaged in a working relationship that carried sufficient mutuality of obligation to allow them to be classified as employees.
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> ii) An Order that, having considered the various other tests associated with determining whether the appellants were employed under a contract of or for services and in finding that that their Determination from March 2007 applied, the Tribunal erred in law in thereafter reversing their determination of the 12th March 2007, and then finding that all the appellants were engaged under a contract for service with the respondent.
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> iii) An Order that the EAT erred in law in their interpretation of the judgment of the High Court, in determining that the High Court instructed the EAT to change its original determination due to its many errors in law in reaching that original determination.
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> iv) An Order that the EAT erred in law in finding that the High Court directed the EAT to change its original Determination due to its many errors in law in reaching that determination, when the jurisdiction to make such a determination, is a statutory jurisdiction, exclusive to the EAT.
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> v) An Order that the EAT erred in law, in failing to consider, that having heard new evidence, at the renewed hearing in Cork in January 2009, to which the respondent had not objected, that they were entitled to apply the legal principles as enunciated by the High Court, and to make their own determination having regard to the totality of the evidence, and that the EAT erred in law, in finding that they were bound to reverse their decision made on the 12th of March 2007, irrespective of their new findings.

vi) An Order that the EAT erred in law in failing to consider that the additional given evidence given in January 2009, whereby the appellant gave evidence that at times they were paid for being rostered even when no work was made available, was new evidence, together with evidence as already given, upon which a finding of mutuality of obligation would be found, which thereby entitled the EAT to make a new finding such that they were not bound to reverse the determination of the 12th of March 2007.

vii) An Order that the EAT erred in law, in failing to find that it had jurisdiction to find that the appellants were employed by the respondent under a contract of services, having regard to the totality of the evidence and in particular the additional evidence heard in January 2009.

viii) An Order that the EAT erred in law, in failing to find that it had jurisdiction to, and could properly find that mutuality of obligation was present in the relationship between the appellants and the respondent.

ix) An Order that the EAT erred in law in determining that the appellants were engaged under a contract for services with the respondent.

x) An Order that the claim of the Appellants pursuant to the Redundancy Payments Acts, 1967 to 2003 and pursuant to the Minimum Notice and Terms of Employments Acts, 1973 to 2001, be returned to the EAT.

xi) In the alternative to (ix) above, an Order upholding the determination of the EAT that each of the appellants were employed under a contract of service.

4. Following the closure in October 2004 of the Galtee Meats Plant at Mitchelstown Co. Cork, the appellants claimed entitlement to payments under the Redundancy Payments Acts 1967-2003 and under the Minimum Notice and Terms of Employment Act 1973-2001. Entitlement to the payments claimed however depended on the appellants having been employees who were employed by the respondent under a contract of service. The respondent claimed they were not employed under a contract of service and refused to make the payments claimed. Arising from this, the appellant's submitted claims to the Employment Appeals Tribunal on the 20th of April, 2005. The Tribunal issued its determination on the 12th of March, 2007, finding the appellants were employed under a contract of service and were therefore employees.

The respondent appealed the determination of the Employment Appeals Tribunal to the High Court on a point of law. On the 7th July, 2008, judgment was delivered by Edwards J. who found that there was insufficient evidence before the Tribunal from which it could properly find that the appellants were employed by the respondent under a contract of service. Edwards J. found that the Tribunal erred in law in finding that there was mutuality of obligation based on an obligation on the part of the appellants alone with no obligation on the part of the respondent. The Tribunal also erred in failing to consider evidence that the respondent was not obliged to provide work for the appellants, and in failing to attach no weight to evidence that the appellants were entitled to refuse up to 16% of shifts before action would be taken by the respondent. The Tribunal was also found to have incorrectly distinguished relevant and binding authorities from the facts of the case before it.

The claim of the appellants was returned to the Tribunal who heard additional evidence from both parties. On the 31st July, 2009, the Tribunal delivered its determination, at p. 41 it held:-

> "On the balance of probability, by a majority decision that the appellants and the respondent were engaged in a working relationship that carried sufficient mutuality of obligation to allow them to be classified as possible employees. This allowed the Tribunal to consider the various other tests associated with determining whether they were employed under a contract of or for services. In that consideration their determination from March 2007 applies… However, a ruling from the High Court on this case issued in July 2008. The Judge on that case issued eight declarations concluding that the case be returned to the Tribunal. Two contrasting interpretations emerge from the totality of those declarations. One was that the Judge was in effect instructing the Tribunal to change its original determination due to its many errors in law in reaching that determination. Another interpretation was that this ruling was silent on the Tribunal's original determination but critical of its reasoning and flawed approach in law as to how it reached that decision. Following further consultations of this division of the Tribunal and notwithstanding the majority view expressed above, and the relevant legislation, the Tribunal feels bound to accept the former interpretation. Accordingly, the Tribunal reverses its Determination of 12th March 2007, and now finds that all the appellants were engaged under a contract for services with the respondent. It therefore follows that the Tribunal finds that it has no jurisdiction to proceed with substantive hearings on these cases under the Redundancy Payments Acts, 1967-2007 and the Minimum Notice and Terms of Employments Act, 1973 to 2005".

The appellants now appeal this finding by the Employment Appeals Tribunal.

Submissions of the Appellant

5.1 In its determination made on the 31st of July, 2009, the Tribunal found at p.41 that:-

> "…the judge was in effect instructing the Tribunal to change its original determination due to its many errors in law in reaching that determination…Accordingly, the Tribunal reverses its determination of 12th March 2007, and now finds that all the Appellants were engaged under a contract for services with the Respondent"

The appellants submit that the High Court remitted the proceedings simpliciter, without any direction that the Tribunal must reverse its finding. It is submitted that the Tribunal erred in law in finding that it had no jurisdiction to make a determination as to fact, following the High Court's determination on a point of law.

5.2 The appellants referred the court to the case of *Henry Denny and Sons v Minister for Social Welfare* [1998] I I.R. 34 is very instructive to the present case. The appellant Ms Mc Mahon worked as a shop demonstrator for Denny she received a daily rate of pay and her contract described her as an independent contractor. The demonstrations were not carried out under supervision and materials were provided by the company. The question arose as to whether Ms. McMahon was employed under a contract of service or a contract for services. The Supreme Court held that in deciding whether a person is employed under a contact of service or a contract for services, each case must be determined in light of its particular facts. In general, a person will be regarded as being employed under a contract of service and not as an independent contractor (a contract for service's) where he or she is performing service for another person and not for himself or herself. In the present case the veterinary surgeons provided no equipment, they

took directions as to what work to do, it is submitted that under the test laid down in Denny they are employees. It is further submitted that they have a stronger case than Ms. McMahon as she only received travelling expenses if a supermarket could not offer her work whereas the applicants were paid even if there was no work for them to do.

5.3 In his judgment Edwards J. held that there was insufficient evidence before the Employment Appeals Tribunal, on which the Tribunal could properly find that the appellants were employed under a contract of service. It was agreed between the parties that additional evidence would be given by the first named appellant Mr Barry on behalf of all of the appellant's. Mr Barry gave evidence that he worked 52 weeks in the year 2003 and 44 weeks in 2004 and that his conditions of work complied with each of the nineteen criteria on whether an individual is an employee as set out in the "Code of Practice for Determining Employment of Self-Employment Status of Individuals" a document prepared by the Employment Status Group. Evidence was given that the appellants had to turn up for 84% of shifts within every three-month period. This was to ensure they did not miss a significant number of shifts in the busy lambing period during the spring when they would be attending to their other private clients needs. It was claimed by the appellants that failure to comply with the rule could result in loss of seniority which was important because the more senior you were the more regularly you would be offered work.

5.4 In hearing the first appeal the High Court necessarily had to address itself to the issue of its jurisdiction to hear an appeal on a point of law. The entitlement to bring an appeal is governed by Section 39 (14) and section 40 of the Redundancy Payments Acts, 1967 to 2007, and Section 11(2) of the Minimum Notice and Terms of Employment Acts, 1973 to 2001, which each provide for an appeal on a question of law against the decision of the Employment Appeals Tribunal. Edwards J. identified the issue as being whether a determination by the Employment Appeals Tribunal, of the nature of a work relationship between the two parties ought properly to be characterised as a matter of law, as a matter of fact or as a mixed question of law and fact. He drew some assistance from the case *O'Kelly & Others v Trusthouse Forte Plc*. [1983] 3 All E.R. 456, at 477 Sir John Donaldson M.R. addressed the role of an appellate Court in reviewing a decision of a lower Court:-

> "When reviewing such a decision, the only problem is to divine the direction on law which the lower court gave itself. Sometimes it will have been expressed in its reasons, but more often it has to be inferred. This is the point of temptation for the appellate court. It may well have a shrewd suspicion or a gut reaction that it would have reached a different decision, but it must never forget this may be because it thinks that it would have found or weighed facts differently. Unpalatable though it may be on occasion, it must loyally accept the conclusions of fact with which it is presented and, accepting those conclusions, it must be satisfied that there must have been misdirection on a question of law before it can intervene. Unless the direction on law has been expressed it can only be satisfied if, in its opinion, no reasonable tribunal, properly directing itself on the relevant questions of law, could have reached the conclusion under appeal. This is a heavy burden on the appellant."

If as the appellants submit there has been an error of law the court must intervene and either uphold the original finding of the Tribunal or remit the matter back to the Tribunal.

The appellants argue that when a matter is remitted the Tribunal is then obliged to make its own decision in light of the findings of the Higher Court. In the case of *National University of Ireland Cork (Appellant) v Alan Ahern & Others (Respondents)* [2005] 2 I.R. 577. The Labour Court held that there had been discrimination in relation to pay. In the Supreme Court, McCracken J. allowed the appellant's appeal, and remitted the matter back to the Labour Court, finding at 548 that:-

> "a determination that discrimination was not on grounds other than sex, may be a determination of fact, nevertheless, I am quite satisfied that such a finding was not based on the proper consideration of the surrounding circumstances or of the underlying facts. To this degree, I am satisfied that there was an error of law."

The matter was remitted back to the Labour Court for reconsideration in light of the findings made by the Supreme Court. The Labour Court heard additional evidence and addressed the points made by the Supreme Court. Further, the Labour Court stated that it was bound by the findings of the Supreme Court and must make its own decisions in light of those findings. It is submitted that the Tribunal in this case was obliged to make its own decisions in light of the findings made in the High Court.

5.5 Where a case is heard by way of appeal, and is then remitted to the administrative tribunal, it is for that administrative tribunal to apply the law as enunciated by the Appellate Court. The Employment Appeals Tribunal has heard additional evidence and it cannot and should not divest itself of its statutory authority to make the determination in the remitted proceedings. The finding of the High Court, that there was insufficient evidence before the Tribunal on which they could find that the appellants were employed by the respondent under a contract of service was addressed by the additional evidence given, as was the finding that mutuality of obligation was not present.

Edwards J. found that the Tribunal erred in law in failing to consider evidence that the respondent was not obliged to provide work to the appellants and that the appellants did not have an expectation of a particular level of work. It is submitted that these issues were addressed by the additional evidence that the appellants turned up for work because they expected the work to be provided and even when there was no work available they were paid when rostered on. Edwards J. found that the Tribunal erred in law in attaching no weight to the evidence that the appellants were entitled to refuse up to 16% of the shifts before action would be taken by the respondent. It is submitted that this has been addressed by the evidence that the appellants had to accept 84% of the work proffered to them to avoid the risk of sanction i.e. demotion on the panel- an effective loss of their job.

It is submitted by the appellants that the Tribunal correctly finds the essence of "mutuality of obligation" in accordance with the judgment of Edwards J. The Tribunal then correctly directed itself as to the law, i.e. that a finding of mutuality of obligation is not of itself necessarily determinative of the nature of the relationship. The Tribunal then examined the nature of the relationship and found the appellants were employed under a contract of service. It is submitted that the Tribunal then misdirected itself as to the law, in finding that notwithstanding their majority view, they felt bound to accept the interpretation of the judgment of Edwards J. that the judge was in effect instructing the Tribunal to change the original determination. It is submitted that the Tribunal erred in law in ultimately determining that the appellants were employed under a contract for services and it is submitted that their initial finding, by a majority, that each of the appellants were employed under a contract of service should be upheld or the matter should be returned to the Tribunal.

Respondent's Submissions

6.1 The respondent submits that it is incorrect to contend that the finding on the part of the Employment Appeals Tribunal took no account of the additional evidence and submissions that were before it on the 8th January, 2009, and there was nothing in the

determination of the 31st July, 2009, to support this. The respondent claims that the High Court had invited the appellants to advance an alternative proposition as to the nature of the working relationship between the parties, and that the appellants failed to do so. Further, it is submitted that the evidence in relation to the arrangements between the appellants and the respondent in relation to declining shifts was not substantively added to by the witnesses who gave evidence before the Tribunal on the 8th January, 2009.

The respondent submits that the determination of the Tribunal correctly interpreted the decision of Edwards J. and that the Tribunal was both entitled to, and required to, proceed on that basis. The Tribunal concluded that it was required to change its earlier determination of 12th of March, 2007.

6.2 The first-named appellant gave additional evidence of the specific number of hours and weeks worked. The respondents however submit that this evidence was derived from documentation that had already been submitted to the Tribunal. It cannot be described as having the character of new or additional material capable of undermining the High Courts findings. In the alternative, the respondents argue that evidence in relation to the numbers of hours or weeks worked is not in itself capable of bearing on the existence of mutuality.

6.3 The appellant has sought to rely on the 'Code of Practice for Determining Employment of Self-Employment Status of Individuals' which was prepared by the Employment Status Group. The first named appellant gave evidence that his circumstances meet the criteria on whether an individual is an employee as set out in the code. The respondent submits that cannot be determinative of the issue, the Code is not a binding statement of law on the point. The respondent argues that the finding of the High Court contains sufficient guidance on the law so as to enable the Tribunal to perform its duties in accordance with the law. The respondent claims that, firstly, the code makes no reference to the requirement of mutuality of obligation which the High Court has held is necessary to establish the existence of a contract of service and, secondly, the relevant test is whether the person performing work, does so as a person in business on their own account. Edwards J. held that every case must be considered in light of its particular facts. In light of this, the respondent submits that the appellants reliance upon the criteria contained in the Code does not advance the issue as to the existence of mutuality of obligation or, indeed, the existence of a contract of service.

6.4 As regards the evidence given concerning the 16% Rule, Edwards J. held at 231 that:-

> "… the uncontested evidence concerning the arrangements entered into between the [respondents] and the [appellant] was that the latter were entitled to decline at the very least 16% of the shifts offered to them without that refusal having any consequences for their contracts."

The 'appellant' referred to by the High Court is the respondent in the within proceedings and the 'respondent' referred to by the High Court is the appellants in the within proceedings. The respondent submits that the "uncontested evidence" was not added to in any substantive fashion by the witness evidence before the Tribunal. At the hearing of the 8th January, 2009, a witness called by the respondent gave evidence of his view that in practice a Temporary Veterinary Inspector would not be required to work 84% of the shifts offered. The respondent argues that there was no evidence adduced which suggests that the appellants were at risk of not being hired or being put at the back of the list of regular Temporary Veterinary Inspector's if they did not turn up for 84% of their shifts.

6.5 The respondent submits that the question as to whether this appeal involves a question of law has already been answered by the High Court. The judgment of Edwards J. at 221 quoted as follows from the judgment of Donaldson MR in *O'Kelly & Others v Trusthouse Forte Plc* [1983] I.C.R 728 at 478

> "The test to be applied in identifying whether a contract is one of employment or for services is a pure question of law and so is its application to the facts."

In this regard the respondent submits that the determination by the Tribunal on 31st July, 2009, that the appellants were employed on a contract for services is a pure question of law such that this Honourable Court has jurisdiction to adjudicate upon this appeal.

6.6 The respondent relies on the following extract from the decision of Donaldson MR in *O'Kelly & Others v Trusthouse Forte Plc* [1983] I.C.R 728, as cited in the decision of the High Court at 221:-

> "Unpalatable though it may be on occasion, [the appellate court] must loyally accept the conclusions of fact with which it is presented and, accepting those conclusions, it must be satisfied that there must have been a misdirection on a question of law before it can intervene. Unless the direction in law has been expressed, it can only be so satisfied if in its opinion, no reasonable tribunal, properly directing itself on the relevant questions of law could have reached the conclusion under appeal. This is a heavy burden on an appellant."

It is submitted that the appellants have not discharged the "heavy burden" on them to demonstrate that no reasonable tribunal could have reached the determination that they seek to appeal here.

6.7 The appellants contend that the Tribunal confirmed that a contract of service prevailed. What the Tribunal in fact said is that the appellants and respondent were engaged in a working relationship that carried sufficient mutuality of obligation to allow them to be classified as possible employees. This is very different from confirming that a contract for service prevailed. The appellant also contends that the Tribunal erred in law in finding that it had no jurisdiction to make a determination as to fact. The respondent submits that such a finding is to be found nowhere in the Tribunal's determination.

6.8 The respondent argues that the evidence adduced before the EAT on 8th January, 2009, did not advance matters as regards any of the issues before it. It is submitted that the evidence was incapable of grounding any finding that there existed a mutuality of obligation, such as to create a contract of service, in the arrangement between the respondent and appellants. In particular, the respondent submits that there was nothing in the evidence to demonstrate that the respondent was under any obligation to give work to the appellants. It is claimed that the appellants are attempting to imply such a term into the relationship, even though the High Court has made it clear that there is no basis on which to imply such a term.

7. Decision of the Court

7.1 The appellants have claimed entitlement to payments under the Redundancy Payments Acts 1967-2003 and under the Minimum Notice and Terms of Employment Act 1973-2001, following the closure of their place of employment in October 2004. Entitlement to

the payments claimed depends on the appellants having been employees who were employed by the respondent under a contract of service. The respondent claimed they were not employed under a contract of service and refused to make the payments claimed. Arising from this, the appellant's submitted claims to the Employment Appeals Tribunal. The entitlement of the appellants to bring an appeal is governed by section 39 of the Redundancy Payments Acts 1967-2003 which provides that :-

> "The decision of the Tribunal on any question referred to it under this Section shall be final and conclusive, save that any person dissatisfied with the decision may appeal therefrom to the High Court on a question of law."

Section 11(2) of the Minimum Notice and Terms of Employment Act 1973-2001, also provides for an appeal on a question of law against a decision of the Employment Appeals Tribunal.

The question as to whether this appeal involves a question of law has already been answered in the affirmative by Edwards J. who quoted as follows from the judgment of Donaldson MR in *O'Kelly & Others v Trusthouse Forte Plc* [1983] I.C.R 728 at 478

> "The test to be applied in identifying whether a contract is one of employment or for services is a pure question of law and so is its application to the facts."

The determination by the Tribunal on 31st of July, 2009 that the appellants were employed on a contract for services raises a pure question of law therefore this Court has jurisdiction to adjudicate upon this appeal.

7.2 The appellants complain that the Tribunal failed to take account of new evidence and erred in law in finding that the High Court directed it to change its original determination. The onus is on the appellant's to prove that that no reasonable tribunal would have reached the decision that is under appeal. In *O'Kelly & Others v Trusthouse Forte Plc* [1983] I.C.R 728, Donaldson MR held at 221:-

> "Unpalatable though it may be on occasion, [the appellate court] must loyally accept the conclusions of fact with which it is presented and, accepting those conclusions, it must be satisfied that there must have been a misdirection on a question of law before it can intervene. Unless the direction in law has been expressed, it can only be so satisfied if in its opinion, no reasonable tribunal, properly directing itself on the relevant questions of law could have reached the conclusion under appeal. This is a heavy burden on an appellant."

It is understandable that the appellants are dissatisfied with the process and reasoning adopted by the Tribunal in making the determination which they now seek to impugn. This determination might have been better phrased. However the real question here is whether in light of the additional evidence given, the appellants have discharged the burden on them to demonstrate that no reasonable Tribunal could have found against the appellants.

7.3 Edwards J. found there was insufficient evidence before the Employment Appeals Tribunal from which it could properly find that the appellants were employed by the respondent under a contract of service. In particular Edwards J. found that the Tribunal erred in law in finding that there was mutuality of obligation as the respondent was not obliged to provide work for the applicants, and in failing to attach no weight to evidence that the appellants were entitled to refuse up to 16% of shifts before action would be taken by the respondent.

7.4 The appellant attempted to respond to these findings by adducing additional evidence before the tribunal at the hearing of the 8th of January, 2009. With regard to mutuality of obligation; additional information concerning the number of weeks worked was provided by Mr. Barry who gave evidence that he worked 52 weeks in the year 2002 and 44 weeks in 2003. However this evidence was taken from documentation that had already been submitted to the tribunal. Furthermore the fact that a person may do a lot of work is not of itself proof of the existence of mutual obligations on the employer to provide work for the employee and on the employee to perform work for the employer.

7.5 Evidence was given concerning the appellants entitlement to refuse up to 16% of shifts before action would be taken by the respondent. The appellants gave evidence that failure to accept 84% of work could result in demotion. However at the hearing of 8th January, 2009, this evidence was contested by one Mr. Mackessy who stated at p. 78/9 of the Transcript of evidence:-

> "to say that a TVI in a senior position must attend for 84% of the time in my view would be completely--- it would be an inaccurate assumption to say that… in practice on the ground it doesn't work out that way… The Department wasn't in the business of insisting that someone would attend for 84% of the time and if they didn't there would be sanctions."

While the appellants contend that if they did not turn up for at least 84% of their shifts they might no longer be hired, it is noteworthy that no evidence was produced to show that these particular appellants were at risk of not being hired or even being put at the end of the list of regular TVI's offering services to the panel. No evidence was adduced of the existence of any system of monitoring by the respondent to secure compliance with the 16% rule. Mr. Mackessy gave evidence recorded at p. 78/9 of the transcript, to the effect that a rotational policy operated at the Mitchelstown plant and the respondent did not insist that any one individual attend for 84% of shifts and there were no complaints in relation to the operation of the 16% rule at the plant.

7.6 The appellants sought to rely on the "Code of Practice for Determining Employment or Self-Employment Status of Individuals" a document prepared by the Employment Status Group. Mr Barry gave evidence that his circumstances complied with each of the nineteen criteria on whether an individual is an employee as set out in the code. The code however is not a binding statement of law therefore such compliance is not determinative of the issue. The code does not refer to mutuality of obligation which the High Court has held is necessary to establish the existence of a contract of service.

7.7 There was nothing in the additional evidence adduced by the applicants which was of such crucial importance that having heard it no reasonable tribunal would be entitled to conclude that the applicants were employed other than under a contract for service. The heavy onus of proof which the applicants bear has not been borne. I am obliged therefore to refuse the relief sought by the appellants to have their claim returned to the Employment Appeals Tribunal. It is therefore not necessary for me to consider the issue of express directions to the Tribunal as to the correct application of the law to the facts in this case.

7.8 For all the above mentioned reasons, I must disallow the appeal under section 39 (14) and section 40 of the Redundancy Payments Acts 1967-2003 and section 11(2) of the Minimum Notice and Terms of Employment Act 1973-2001, respectively.