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## The Dominos Fall: The WRC applies the Domino's judgment for the first time

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Ireland

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The Workplace Relations Commission has applied the Supreme Court decision in *The Revenue Commissioners v Karshan (Midlands) Ltd [2023] IESC 24* (“**Karshan**”) for the first time in the case of *Matthew McGranaghan v MEPC Music Limited (ADJ-00037668)*.

Mr McGranaghan (the “**Complainant**”), a fiddler who worked for the Michael English Band for six years, has been awarded nearly €44,000 by the WRC for unfair dismissal and breaches of employment rights. The WRC ruled that the Complainant was not a contractor, as claimed by the band's management, but an employee, thus giving the WRC jurisdiction over his complaints.

The Complainant was dismissed in September 2021 after raising concerns about his employment status. The WRC found that he was unfairly dismissed and awarded him compensation for breaches of several employment laws. This case marks a significant application of the Supreme Court's recent ruling on the distinction between employees and contractors within the entertainment industry.

The WRC in coming to its decision asked itself three questions:

1. Was the Complainant a contractor or an employee.
2. Was the claim made within the required timeline of the legislation.
3. Was there a breach of the legislation based on the alleged claims and if so, what is the appropriate redress for same.

In determining the first question, the WRC referenced the *Karshan* case and the 5-step test laid out which is to be considered when determining if a worker is an employee or a self-employed contractor.

The five-step test consists of the following considerations:

1. Does the contract involve the exchange of a wage or other remuneration for work?
2. Has the worker agreed to provide their services personally and can they sub-contract their work?
3. Does the business control what, how, when and, or where the work is done?
4. What do the facts and circumstances say about the true nature of the relationship between the business and the worker?
5. Is there any legislation that would change the answers to any of the above questions?

The WRC Adjudication Officer, Caroline Reidy went into great detail in addressing each of these five questions and found that the facts of the case could not support the Complainant being self-employed. In deciding that the Complainant was an employee, the Adjudication Officer considered

all the evidence presented by the parties both orally and in written submission as well as the “totality” of the relationship between the parties.

The Adjudication Officer placed a lot of emphasis on the control exercised over the Complainant. He had no flexibility as to when he performed work as the gigs were scheduled in advance, he was told what music to play and wore the band uniform.

For all employers, this case is an important reminder to carefully consider the types of workers who provide services to your business. If you regularly use contractors, we recommend that you take advice on the nature of their engagement as soon as possible.

If you have any queries about this or other employment or tax matters, please contact our employment or tax teams.

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