

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

PW72/2006

against the recommendation of the Rights Commissioner in the case of:

Employee - v -Employer

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr D. Moore
Mr. P. Woods

heard this appeal at Wicklow on 27th July 2007

Representation:

Appellant :

Ms Gillian Reid, B.L., instructed by Ms. Deirdre Burke, D. M. Burke & Co.,
Solicitors, 1Bridgewater, North Quay, Arklow, Co. Wicklow

Respondent :

Mr Conor Power, B.L., instructed by Ms. Triona Sugrue, Eugene F. Collins,
Solicitors, Temple Chambers, 3 Burlington Road, Dublin 4

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner Ref: r-039541-pw-06/MMG dated 29th August 2006. The employee is hereinafter referred to as the appellant and the employer is referred to as the respondent

Background:

By way of letter dated 2nd October 2006 the appellant's legal representative notified the Tribunal of its appeal against the Rights Commissioners decision referred to above. The Tribunal secretariatsent a copy of this letter to the respondent on 3rd October 2006. Form T1B was received by theTribunal on 6th October 2006 and the Tribunal secretariat also sent a copy of this form to the

respondent.

Preliminary issue:

Counsel for the respondent stated that the Tribunal did not have jurisdiction to hear this appeal as the appellant has not fulfilled the requirements as specified under section 7(2) of the Payment of Wages Act, 1991. This section states:

“An appeal under this section shall be initiated by a party by his giving, within 6 weeks of the date on which the decision to which it relates was communicated to him -

(a) *a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under subsection(3) and stating the intention of the party concerned to appeal against the decision, and*

(b) *a copy of the notice to the other party concerned”*

The letter dated 2nd October 2006 does not contain the particulars as specified in subsection 3 of the said regulations. Section 7(2)(b) is very specific and in this case the appeal was sent to the Tribunal but the appellant failed to send a copy to the respondent. The sending of the appeal to the Tribunal alone does not satisfy the statute therefore the Tribunal does not have jurisdiction to hear this appeal.

Counsel for the appellant could not say when the decision was communicated to the appellant and stated that it could have been three or four weeks after the date of signature before it was communicated to her. Counsel sought a postponement of the case in order to hear a witness in relation to date of communication of decision.

Counsel for the respondent stated that regardless of when the decision was communicated a copy of the decision was not sent to the respondent by the appellant. Section 7(2) places independent onus on the appellant to notify the respondent.

Determination:

Section 3 (a) (b) and (c) of the Payment of Wages (Appeals) Regulations, S.I. No. 351 of 1991 set out the particulars which shall be contained in the notice of appeal. The format of the letter dated 2nd October 2006 does not comply with the said Regulations. Whilst Form T1B was received by the Tribunal on 6th October 2006 the appellant failed to inform the respondent of the appeal by not sending a copy of the letter of 2nd October 2006 or Form T1B directly to the respondent within the stipulated period under Section 7 (2) of the Payment of Wages Act 1991 therefore the Tribunal does not have jurisdiction to hear this appeal.

In relation to the application for postponement the Tribunal did not feel it necessary to hear the

witness in question as the notice of appeal was not sent to the respondent as outlined above.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

