

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employeer

CASE NO.
PW75/2006

UD1094/2006

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

under

PAYMENT OF WAGES ACT, 1991 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. Behan BL

Members: Mr. P. Casey
Ms. P. Doyle

heard this appeal at Cork on 11th October 2007

Representation:

Appellant(s) : In person

Respondent(s) : Not present or represented

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by an employer against the recommendation of the Rights Commissioners in the case of Employee V Employer (r-020468-ud-04/MMG, r-020468-pw-04/MMG and r-020411-pw-04/MMG).

Background:

The Rights Commissioner found the following in respect of r-020468-ud-04/MMG and r-020468-pw-04/MMG.

“The claimant was in the employment for two periods i.e. 25/09/2001 until 24/08/2003 when he resigned and then the 19/11/2003 until 07/05/2004. The manner in which the employment relationship ended in 2004 is a matter of dispute. The claimant contends that he was dismissed without notice and the rate of pay at the point of termination was €410 net.

The first issue to arise is that of jurisdiction. The claimant was not in 12 months continuous service for the second period of employment for the purposes of the Unfair Dismissals Act. The claimant is therefore not comprehended by the terms of the Unfair Dismissals Act and I have no jurisdiction in

the matter.

Recommendation

For the reasons set out I cannot make any recommendations under the Unfair Dismissals Act 1977-2003.”

The Rights Commissioner found the following in respect of r-020411-pw-04/MMG.

“The claimant was in continuous employment from 19/11/2003 until 07/05/2005. There is a dispute regarding the manner in which the employment ended.

Recommendation

Based on the evidence available to me I am satisfied that the claimant was dismissed during a telephone conversation. I am satisfied that he was not permitted to work his notice having been removed from the roster and therefore I find he has a valid claim in respect of non-payment of statutory minimum notice. Seclusion Properties Ltd t/a The Old Oak Bar are to pay Mark Burke the sum of € 490 gross and net in settlement of his claim for breach of the Payment of Wages Act, 1991.”

Determination:

Having heard the evidence adduced the Tribunal uphold the Rights Commissioner recommendations r-020468-ud-04/MMG, r-020468-pw-04/MMG and r-020411-pw-04/MMG.

Therefore the Tribunal finds that the respondent in the appeal (Mark Burke) was not covered by the Unfair Dismissals Acts, 1977-2003 and that the appellant (Seclusion Properties Ltd t/a The Old Oak Bar is to pay the sum of € 490 to the respondent under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)