

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employer

CASE NO. PW76/2007
TE49/2007

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

Employee
vs
Employer

under

PAYMENT OF WAGES ACT, 1991 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr F. Moloney
Ms K. Garvey

heard this appeal at Dublin on 7th January 2008

Representation:

Appellant: Mr. Marcin Szulc, Maguire McClafferty, Solicitors,
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent: Mr Blazej Nowak, Emigrant Advice, 1a Cathedral Street,
Dublin 1

This case came before the Tribunal by way of an appeal by the employer against the recommendation of a Rights Commissioner Ref: 048338-pw-06, 049013-te-07. The employer was seeking to have the recommendation varied in relation to Payment of Wages Act and upset in relation to the Terms of Employment (Information) Act.

The decision of the Tribunal was as follows:

Background:

The respondent worked as a sales assistant at the appellant's food store for approximately 6 weeks, beginning on the 14th August 2006. There was a conflict of evidence with regard to the date of termination of employment, with the appellant stating that it was on the 27th September 2006 and the respondent claiming it was the 26th September 2006. There was no contract of employment.

For clarity the appellant will be referred to as the employer and the respondent as the employee.

Appellant's case:

In evidence the employer said that on the 13th August 2006, after agreeing to hire the employee, he had shown her a contract of employment and had asked her to sign it. The employee refused to sign the contract as it was in English and she wanted to have a contract in Polish so that she could understand it. The employer said he explained the terms of the contract verbally to the employee.

Respondent's case:

In evidence the employee refuted that she had been shown a contract of employment on the 13th August or that she had refused to sign a contract as it was in English. Since ceasing employment with the employer her requests for the contract of employment had been refused.

Determination:

The failure of the applicant to notify the employee in accordance with its requirement under section 7(2)(b) of the Payment of Wages Act, 1991 means that the Tribunal is disbarred from hearing the appeal of the Rights Commissioner in relation to Payment of Wages Act, 1991.

In relation to the appeal under the Terms of Employment (Information) Act, 1994 And 2001 the Tribunal, conscious of section 3(2) of the Act, believes that the appellant was obliged to provide written terms of employment to the employee. The Tribunal heard contradictory evidence in relation to whether this recommendation was fulfilled. The Tribunal prefers the appellant's evidence and accordingly sets aside the recommendation of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)