

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employer

CASE NO.

PW31/06

TE51/06

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

Employee

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. P. Casey
Ms H. Kelleher

heard this appeal at Cork on 13th July 2007.

Representation:

Appellant : Human Resources Manager

Respondent: Mr. Noel Murphy, Independent Workers Union, 55 North Main Street, Cork

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of appeals by the employer against the recommendations of the Rights Commissioner Ref: 1991 r-037766-pw-05-DI Payment of Wages Act, 1991 and r-037764-te-05-DI Terms of Employment (Information) Act, 1994 both dated 5th April, 2006.

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

Background:

In early 2004 the employer was awarded a contract by XXXX to clean a passenger ferry owned by XXXX that would call to XXXX on a weekly basis. The client XXXX requested that the employer supply cleaning staff and supervision to clean the ferry in a two-hour time frame on a Saturday

night over the summer months.

The employer advertised in Cork local newspapers for cleaning operatives to fill these positions. The advertisement stated that the cleaning contract would be starting on 3rd April 2004; payment for operatives would be €29 per hour for a two-hour shift.

The employee successfully applied for one of the cleaning positions. She commenced employment on 3rd April 2004 on the Pont Aven passenger ferry and was paid €29 per hour for the two-hour shift. Following termination of the contract on 7th November 2004 the employee's employment was ended and she was issued with a P.45. The employer's regional branch manager told the employees when the contract ended that they were happy with them and, if successful in securing another contract, the appellant would give them the opportunity to work with them again. In 2005 the employer was awarded a new contract with XXXX.

Employer's Case:

Under the 2005 contract the stop-over times for the passenger ferry had changed from the previous year and the employer had to provide cleaning operatives and supervision to clean the vessel in a four hour-time frame during the day on Saturdays. Under the 2004 contract the employees had received enhanced rates of pay because they had to work unsociable hours on Saturday evenings. The employer received less money from the client for the 2005 contract.

The employer did not advertise for cleaners in 2005 but the supervisor contacted the employee. Under the 2005 contract the employees were to work four hours at €15 per hour but if they completed the cleaning in less time they would still be paid €60 per day. All the employees were made aware of these facts and the significant change in the rate of pay per hour was explained to them. Employees who were taken on for the contract signed an Engagement Details Card. The employee signed such a card, which clearly stated that she was to work four hours per week at the rate of €15 per hour and that it was signed by both the employee and the supervisor. The supervisor's evidence was that she discussed the changed rate of pay with the employee but she could not recall the employee's comments on the changes. In 2005 the average hours worked were three per shift. The 2005 contract ended in early October 2005. The employee's employment ended at this time and she was sent her P.45 on 28th October 2005.

Employee's Case:

The employee told the Tribunal that when the supervisor telephoned her about the job in 2005 she told her that the money would be the same. She had not been told that she would have to work longer hours or that the pay was €15 per hour. The employee was paid on a two-weekly basis and she had worked one week before she signed the Engagement Details Card in March 2005. She protested when she was filling in the Engagement Details Card and was told to put down €15 per hour. She also questioned the requirement to work four hours per week. When she complained about this to the supervisor she was told the money was good and that she would get the same money whether she worked three or four hours. In 2005 the number of workers was reduced to half as compared to 2004. The employee and her colleagues assumed that they would get additional pay as they were now working longer hours. They were told that they would get the same money but were not told they had to work the extra hours. Lots of her colleagues were not happy about this.

In cross-examination the employee agreed that she had filled in the Engagement Details Card. The

top half of the card was retained by the employer and the employee was given the lower half. When she realised the rate was reduced she protested and she also contacted her union. In 2005 the pay was the same but the hours were different. The employee told the Tribunal that she sometimes worked during the day during her 2004 contract.

Determination:

Payment of Wages Act, 1991

The Tribunal is satisfied that the employee had been employed under two different contracts. On 19th March 2005 the employee signed the Engagement Details Card and was aware that the rate of pay was €15 per hour, that she would have to work a maximum of four hours and if she worked less hours she would none the less be paid €60 per shift. Whilst the employee and her trade union protested about the rate of pay she nevertheless continued in the employment. On these facts the Tribunal unanimously determines that the appeal is successful and sets aside the decision of the Rights Commissioner.

Terms of Employment (Information) Act, 1994

Whilst it was the employees evidence that, at her supervisor's instruction, she filled in the rate of pay and her hours of work per week on the Engagement Details Card the employer retained the upper section of the card which contained these details and gave the employee the lower section which did not contain these details. In so far as the employer was in breach of the Act the Tribunal varies the recommendation of the Rights Commissioner and awards the employee €60, the equivalent of one week's pay, under the Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

