

**EMPLOYMENT APPEALS TRIBUNAL**

APPEALS OF:  
Employer

CASE NO.  
PW69/2007  
UD714/2007

TE36/2007

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

Employer

under

**PAYMENT OF WAGES ACT, 1991  
TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr R. Murphy  
Ms M. Mulcahy

heard this appeal at Dublin on 13th December 2007 and 22nd February 2008

Representation:

Appellant:  
In person

Respondent:  
Mr Pat O'Donoghue instructed by Ms Giovanna Tejjido Vasquez, Migrant  
Rights Centre Ireland, 55 Parnell Square West, Dublin 1

The determination of the Tribunal was as follows:

The appellant employed the respondent as a chef from 1999 to April 2003 and again from July 2003 to 4<sup>th</sup> August 2006.

The respondent gave evidence that he was not given a contract of employment within the time period specified by the Terms of Employment (Information) Act, 1994 and 2001. The appellant did not provide the Tribunal with a copy of a contract of employment signed by the respondent.

The respondent gave evidence that the appellant presented him with a contract of

employment for signature on 4<sup>th</sup> August 2006. The respondent would not sign this contract as it reduced his hourly rate of pay from €11.90 to €10.00 and also put him on a probationary period of six months although he had been working for the appellant for seven years. The respondent gave evidence that the appellant summarily dismissed him without notice at this time, saying 'Sign or get out'. The appellant denies that he dismissed the respondent. The respondent did not return to work after this date.

The respondent gave evidence that he was not given payment in lieu of notice. The appellant gave evidence that the respondent was paid in lieu of notice. The appellant did not provide the Tribunal with clear written evidence of this payment, nor did he detail the amount that he paid the respondent in lieu of notice.

The respondent began alternative employment on the 28<sup>th</sup> August 2006 and has been in employment since. His new salary is higher than that which he was receiving from the appellant.

### **Determination**

The Tribunal calculated the weekly pay of the respondent from the details given on the respondent's P45, dated 3<sup>rd</sup> August 2006, as provided to the Tribunal by the appellant.

The Tribunal varies the decision of the Rights Commissioner r-047182-ud-06/MH and awards the respondent €2948.00, being the sum of four week's pay, under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal varies the decision of the Rights Commissioner r-047184-te-06/MH and awards the respondent €2948.00, being the sum of four week's pay, under the Terms of Employment (Information) Act, 1994 and 2001.

The Tribunal varies the decision of the Rights Commissioner r-047183-pw-06/MH and awards the respondent €1474.00, being the sum of two week's pay, under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)