

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

PW23/2007

against the decision of the Rights Commissioner **PW42318/06/MR** in the case of:

Employee

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. G. Phelan
Mr. T. Kennelly

heard this appeal at Limerick on 12 February 2008

Representation:

Appellant:

In person

Respondent:

Mr. Pawel Janeczek, I.W.U., 55 North Main Street, Cork.

This case came before the Tribunal as a result of an appeal by an employer (the appellant) against a decision of the Rights Commissioner under the Payment of Wages Act, 1991, PW42318/06/MR, in the case of the employee, Janusz Reder (the respondent).

Employer's Case:

The employer appealed the decision of the Rights Commissioner on two grounds: (i) the employee terminated his contract without giving the employer two weeks prior notice as required by his contract of employment; and (ii) the employee took with him some proof of delivery documents, tachographs, and a mobile phone.

The employer did not accept that the employee met the operations manager on the evening of 3 March 2006. When Director A arrived to work at 07.00 on Saturday 4 March he saw the loaded truck parked in the yard and the keys in the ignition. At this stage he realised that the truck would not make the ferry that day. This resulted in two airlines imposing financial penalties on the employer. If the employer had received any notice of the employee's leaving he would have made arrangements to have an alternative driver for the truck at the appropriate time on 4 March 2006 and would not have incurred these penalties. The employee had taken the employer's proof of delivery documents, tachographs and mobile phone with him on 3 March 2006. He had returned the

proof of delivery documents and tachographs to the employer at the hearing before the Rights Commissioner; he did not return the mobile phone but the employer was not too concerned about that. For these reasons the employer had not paid the employee. The employer had been given a contract of employment and given several days to have it translated. He then signed it.

Employee's Case:

The employee worked as a truck driver with the employer for ten days from 21 February 2006 to 3 March 2006. He was paid €80 per day. The first time he had seen his contract of employment was at the Rights Commissioner's hearing on 13 November 2006; he had never signed a contract of employment.

On 2 March 2006 the employee brought the loaded truck back on the ferry from England, arriving in Dublin at around 21.00 that evening. He drove to Cork where the truck was unloaded the next morning. There was some delay in Cork while he had to await instructions on where to go next. He was instructed to collect a load in Galway and because the truck was not full he had to collect a further load in Limerick/Shannon and from there he returned to the respondent's premises in Co Tipperary. When he returned to the respondent's premises late that evening the transport manager was still there. He had asked the transport manager earlier in the day to have his wages ready that evening as he was leaving. On his return to the employer's premises the transport manager was still there and told the employee that his pay was in his bank account. However, the employee decided to hold on to the proof of delivery documents, the tachographs and the mobile until he could check if his pay was in his bank account. The money had not been lodged in his account. He returned the proof of delivery documents and the tachographs to the employer at the hearing before the Rights Commissioner.

Determination

It was common case that the employee was to work two weeks in hand. However, the employee requested his wages on 3 March 2006 because he was terminating his working relationship with the employer. The employer did not pay the wages.

The non-payment of wages to an employee constitutes a deduction under section 5(6)(b) of the Payment of Wages Act, 1991. Section 5(2) of the Act provides:

An employer shall not make a deduction from the wages of an employee in respect of –

- (a) any act or omission of the employee, or*
- (b) any goods or services supplied to or provided for the employee by the employer the supply or provision of which is necessary to the employment,*

unless –

- (i) the deduction is required or authorised to be made by virtue of a term (whether express or implied and if express, whether oral or in writing) of the contract of employment made between the employer and the employee, and*

(ii) the deduction is of an amount that is fair and reasonable having regard to all the circumstances (including the amount of the wages of the employee), and

(iii) before the time of the act or omission or the provision of the goods or services, the employee has been furnished with –

(I) in case the term referred to in subparagraph (i) is in writing, a copy thereof,

(II) in any other case, notice in writing of the existence and effect of the term,

and

(iv) in case the deduction is in respect of an act or omission of the employee, the employee has been furnished, at least one week before the making of the deduction, with particulars in writing of the act or omission and the amount of the deduction, and

There was a conflict of evidence as to whether the employee received and signed a contract of employment. The Tribunal does not have to resolve this conflict in order to make a determination in this case. The Tribunal is satisfied that the purported contract of employment produced in evidence by the employer did not provide for a deduction from wages for the reasons for which the employer made the deductions. The Tribunal, applying the rule *expressio unius est exclusio alterius* (if something is expressed, it must be taken to exclude something else), is satisfied that, while the purported contract of employment provided for a deduction in clause 4(3) for *damage caused to vehicles and trailers due to driver's negligence*, there was no authorisation for the deductions made by the employer.

In any event, the Tribunal is satisfied that the employer failed to comply with the statutory requirements as set out above.

The Tribunal finds that the employer's failure to pay the employee wages that were properly due to him was an unlawful deduction from the employee's wages. Accordingly, the Tribunal affirms the decision of the Rights Commissioner, awarding the employee the sum of €800 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)