

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

PW97/2007

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

Employee

and

Employer

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr M. Noone
Mr. P. Woods

heard this appeal at Dublin on 27th February 2008
and 12th May 2008

Representation:

Appellant(s): Mr. Peter Bolger, 28 Cromcastle Avenue, Coolock, Dublin 5

Respondent(s) Ms. Sue Mulhall, People Matters, 30 Delbrook Park, Dundrum,
Dublin 16
Ms. Angela Grimshaw, Peninsula business Services Limited, Unit 3
Block S, East Point Business Park, Dublin 3

This came before the Tribunal by way of an Appeal against the Recommendation of a Rights Commissioner reference r-050124-pw-07/TB.

Evidence was heard from the appellant's representative that the employer had not paid the correct rate of pay in accordance with the Joint Labour Committee (JLC) rates for employees working in the security industry. No overtime rate was paid to the claimant when he worked in excess of 39 hours per week.

The respondent gave evidence that employees were paid a composite rate of pay that is inclusive of work carried out in excess of 39 hours per week. This composite rate was greater than the minimum

rate stipulated in the JLC rates and the claimant had been overpaid during his tenure of employment as a result of this composite rate being applied. This composite rate was the norm in the security industry.

The Tribunal then requested both parties to carry out an exercise to cover the 6 month period from the 1st August 2005 to the 31st January 2006. The exercise carried out by the claimant should indicate the amount the claimant should have received had the respondent applied the JLC rates for the 6 month period. The exercise carried out by the respondent should indicate the actual amount received by the claimant for the 6 month period. This exercise should reflect payments on a weekly basis.

These calculations should be forwarded to the Tribunal by the 14th April 2008. The tribunal directed that copies of payslips should be given to the appellant by the 7th March 2008.

Determination

After careful consideration of the figures and the two methods of payment presented the Tribunal find that the method of payment using the composite rate gives rise to an inherent unfairness in the method of calculation. The respondent accepted this was the case. The difficulty arises where an employee does more than forty-eight hours in a given week.

The parties returned to the Tribunal for a second day's hearing having been invited to calculate earnings for the appropriate six-month period. The respondent accepted that the appellant was at a loss of about €313.03 but the appellant quotes a loss of €1065.60 using the figure €8.80 as the basic rate of pay.

The Tribunal notes that the last calculation was carried out on the direction of the Tribunal at the rate of €8.80 being a reasonable rate to be expected having commenced in 2004 at a basic rate of €8.40.

In the circumstances the Tribunal finds in favour of the appellant overturning the recommendation of the Rights Commissioner and awards the appellant compensation of €1,065.60 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

