

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

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

Employer

under

CASE NO.

PW79/2006

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr P Pierce
Ms M Finnerty

heard this appeal at Dublin on 23rd April 2007 and 20th July 2007

Representation:

Appellant(s): In person

Respondent(s): Lee & Sherlock, Solicitors, Unit 5a, Ground Floor, Block F,
Nutmog Office Park, Rathfarnham, Dublin 14

This case came before the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner reference (r-041374-pw-06/JC r-043413-pw-06) made under the Payment of Wages Act 1991 [No.25/1991].

The decision of the Tribunal was as follows: -

On the first day of the hearing both the appellant and the respondent availed of the opportunity granted to them by statute to make a statement outlining their respective positions.

Appellant's case

The appellant is a Nigerian national who claimed to be an electrician qualified in Nigeria; however he had no documentation with him on either hearing date proving that he was so qualified. Nonetheless the appellant sought a determination of this Tribunal that he was entitled to be paid at an electricians' rate of pay for much of the duration of his former employment with the respondent, rather than at the rate at which he had agreed to be paid and had in fact been paid, being claim for a sum for the underpayment of wages in excess of €45 000.

The appellant claimed that he had commenced employment as an electrician in November 2000. In January 2001 he was given a contract which stated his position to be that of a panel wiring technician with a rate of pay of €8 per hour. The appellant was unhappy with this job title. On 29th June 2001 his contract of employment was changed and in the new contract his position with respondent

as stated to be that of an electrician to be paid an hourly rate of €10 and any overtime at a rate in accordance with industry practice. The appellant explained that he was in receipt of a "Safe Pass" and had attended three different courses with FÁS, the first being a course in information technology, the second in information technology electronics and the third in information technology electronics servicing.

The appellant claimed that he had not been paid the wages properly due to him. The basis of the claim is that he was an electrician covered by the Registered Employment Agreement for the Electrical Contracting Industry and that he had not been paid the applicable rate as an electrician. The appellant admitted that he had never been a member of the TEEU (Technical, Engineering, Electrical Union). The appellant said that he had carried out the same work as that of an electrician for the five years and three months he was employed with the respondent. He told the Tribunal that a previous division of the Tribunal awarded the appellant the amount of €254.84 in respect of holiday pay due to him.

The appellant stated that when he came to Ireland he could not find employment at first and so he did a course while continuing to seek employment. The appellant had told the respondent that he was an electrician qualified in Nigeria and according to the appellant the respondent had said that the respondent would test the appellant for six months and that if the appellant qualified then the respondent would give the appellant a contract. The appellant signed a contract on 29th June 2001. In 2004 he went to the employer and received a 5% increase. In 2005 he received a small increase before being laid off.

In answer to questions from the Tribunal the appellant said that he considered the first six months of his employment to be a probationary period as an electrician. During this period he worked on site and he had often worked there alone. The appellant explained that he had been given a diagram to wire up each panel. When asked whether creating a panel by wiring up a panel took most of his time the appellant answered that panel wiring did indeed take most of his working time and that it could take three to four days to wire a panel. The appellant alleged that when he was connecting a panel he checked it himself and no one else checked it. The appellant stated that the work he did was mainly for customers other than the ESB.

Respondents Case

The sole witness for the respondent stated that the respondent was an electrical engineering firm and that its customers were electrical contractors. The witness for the respondent stated that the respondent was not an electrical contractor as defined in the Electrical Contracting Industry Agreement and therefore the rates of pay in the Registered Employment Agreement did not apply to it. The respondent supplied equipment built in its workshop and then commissioned the equipment on site for its customers.

The witness for the respondent stated that the appellant had been paid at the rate specified in his contract and was never employed as an electrician *per se*. The witness stated that the appellant was employed merely to assemble electrical items and did not work with live circuits.

A payment of €124.65 from the respondent was accepted by the appellant at the hearing on the first day.

In answer to questions from the Tribunal the witness for the respondent said that the respondent supplied and part-installed electrical equipment and also converted equipment as might be required for a particular application. The respondent had four engineers in its employ at the time of the

hearing and one electrician and the electrician now does all the wiring. The witness said that the appellant had worked from connection tables and that the work had to be checked. The role was that of a semi-skilled person and the appellant was never sent to a site on his own but only under supervision. The witness stated that the respondent does not do final installations and denied that the respondent was a contractor. In relation to wiring the panel into the system a contractor would put the cables in position and the respondent would then commission the installation. The respondent provided panels to the ESB and one of the engineers or electricians would sign off on the installation and the appellant was never involved in signing off on an installation.

Two brochures for the respondent were shown to the Tribunal outlining the goods and services which the respondent supplied. According to the first brochure, and under the general title "*Equipment*" the respondent was described as supplying "*Medium Voltage Switchgear; Distribution Transformers; Protection Relays; High Voltage Switchgear & Transformers; Medium Voltage Motor Controls; Emergency Power Supplies Batteries (secondary cells); Power Cables; Power Cable Accessories; Test & Safety Equipment.*" Under the general title "*Services*" the respondent also supplied "*Erection Supervision; Cable Jointing & Terminations; Commissioning; Design; Fault Calculation & Relay Co-ordination; Maintenance & Test; Thermal Imaging & Reporting.*"

Similarly, a second brochure of the respondent under the general title "*Equipment Supply*" listed the respondent as supplying "*Medium voltage switchgear - air and gas insulated; Distribution transformers - fluid and dry type; Protection relays & systems; High voltage switchgear - AIS & GIS; Grid transformers; Medium voltage motor control centres; Auxiliary D.C. systems; Batteries; Power cable; Test & safety equipment.*" The second brochure, under the general title "*Engineering Services*" also listed the respondent as supplying "*Erection supervision; Cable jointing & terminations; Commissioning; Design; Fault calculation & relay coordination; Inspection & test of MV systems; Thermography; Turnkey Installations.*"

The witness stated that respondent was deemed to be a manufacturer by the Revenue Commissioners. The respondent accepted that the brochures described the activities of the respondent. As regards wage increases the respondent operated on the basis that if an employee did not come looking for an increase the respondent did not grant an increase. Other employees had applied to the respondent for pay increases and the respondent had negotiated with each one individually. During the term of employment of the appellant there was always a fully qualified electrician in the employ of the respondent and that has continued to be the case since the employment of the appellant had ceased.

Determination

The appellant had three claims before the Tribunal, the first in respect of the alleged failure of the respondent to pay the appellant at the electricians' rate as per the relevant Registered Employment Agreement, the second in respect of holiday pay and the third in relation to overtime.

The main claim of the appellant is that the Registered Employment Agreement was applicable to his employment and that he ought to have been paid accordingly.

The Tribunal has considered the argument that as neither the appellant nor the respondent were either parties to the Registered Employment Agreement nor were represented by parties to the agreement for the purposes of collective bargaining then privity of contract applies and therefore the Registered Employment Agreement cannot have any application to the contractual relationship between the appellant and the respondent and that therefore the rate of correct rate of remuneration is as set forth in the contract of employment entered into between themselves. The Tribunal explicitly rejects this argument and is satisfied that the Industrial Relations Acts represent a statutory intervention into the ordinary law of contract such that the principle of privity of contract is displaced in respect of parties

to whom the Registered Employment Agreement is expressed to apply and further that employees to whom the Registered Employment Agreement is expressed to apply are entitled to those conditions of employment which are more favourable to them than were agreed in the contract of employment, including in relation to the rate of remuneration. The Tribunal is also satisfied that an employee within the scope of a Registered Employment Agreement may not contract out of the conditions of the Registered Employment Agreement in such a manner as to accept less favourable conditions of employment than available to the employee under the Registered Employment Agreement. The Tribunal sets forth some of the relevant provisions hereunder:

30(1) A registered employment agreement shall, so long as it continues to be registered, apply, for the purposes of this section, to every worker of the class, type or group to which it is expressed to apply, and his employer, notwithstanding that such worker or employer is not a party to the agreement or would not, apart from this subsection, be bound thereby.

(2) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his employer provides for the payment of remuneration at a rate (in this subsection referred to as the contract rate) less than the rate (in this subsection referred to as the agreement rate) provided by such agreement and applicable to such worker, the contract shall, in respect of any period during which the agreement is registered, have effect as if the agreement rate were substituted for the contract rate.

(3) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his employer provides for conditions of employment (in this subsection referred to as the contract conditions) less favourable than the conditions (in this subsection referred to as the agreement conditions) fixed by the agreement and applicable to such worker, the contract shall in respect of any period during which the agreement is registered, have effect as if the agreement conditions were substituted for the contract conditions.

Industrial Relations Act, 1946 [No. 26/1946]

It appears that bodies other than the Employment Appeals Tribunal have a jurisdiction to ascertain whether a particular employee is within the scope of a Registered Employment Agreement and to decide whether that employee is entitled to the greater remuneration granted under the Agreement and to order the payment of a sum for remuneration due to that employee under the Agreement.

The Tribunal has specifically considered the following sections of the Industrial Relations Acts set out below:

S.32 (1) If a trade union representative of workers affected by a registered employment agreement complains to the Court that any employer of any class to which the agreement relates has failed or neglected to comply with the agreement, the following provisions shall have effect

(a) the Court shall consider the complaint, and shall hear all persons appearing to the Court to be interested and desiring to be heard;

(b) if, after such consideration, the Court is satisfied that the complaint is well-founded, the Court may by order direct the said employer to do such things (including the payment of any sum due to a worker for remuneration in accordance with the agreement) as will in the opinion of the Court result in the said agreement being complied with by the said employer.

S.33 (1) The Court may at any time, on the application of any person, give its decision on any question as to the interpretation of a registered employment agreement or its application to a particular person.

(2) A court of law, in determining any question arising in proceedings before it as to the interpretation of a registered employment agreement or its application to a particular person, shall

have regard to any decision of the Court on the said agreement referred to it in the course of the proceedings.

(3) If any question arises in proceedings before a court of law as to the interpretation of a registered employment agreement or its application to a particular person, the court of law may, if it thinks proper, refer the question to the Court for its decision, and the decision of the Court thereon shall be final.

Industrial Relations Act 1946 [No. 26/1946]

S.(10)(1) If an employer or a trade union representative of employers affected by a registered employment agreement complains to the Court that an employer affected by the agreement has failed or neglected to comply with the agreement, the following provisions shall have effect

(a) the Court shall consider the complaint and shall hear all persons appearing to the Court to be interested and desiring to be heard,

(b) if, after such consideration, the Court is satisfied that the complaint is well founded, the Court may by order direct the said employer to do such things as will in the opinion of the Court result in the said agreement being complied with by the said employer.

Industrial Relations Act 1969 [No. 14/1969]

S.54 (1) An inspector may, if it appears to him that a sum is due from an employer to a worker to whom a registered employment agreement applies or that the employer has failed to comply with a condition of any such agreement with respect to the worker, institute on behalf of that worker civil proceedings for the recovery of that sum or the enforcement of that condition and in any such proceedings an order may be made for the payment of costs by the inspector but not by the worker.

Industrial Relations Act 1990 [No. 19/1990]

It appears that the civil courts and the Labour Court have the jurisdiction to order the payment of a sum for remuneration due to an employee under a Registered Employment Agreement.

Both the Rights Commissioner and on appeal from the Rights Commissioner, the Employment Appeals Tribunal, are specifically empowered under the Payment of Wages Acts to deal with an underpayment of wages to an employee. Both the Rights Commissioner and the Employment Appeals Tribunal are explicitly required to ascertain the amount of wages that are properly payable to an employee, in discharge of their statutory functions. Some of the relevant sections are set out below:

S.5 (6) Where-

(a) the total amount of any wages that are paid on any occasion by an employer to an employee is less than the total amount of wages that is properly payable by him to the employee on that occasion (after making any deductions therefrom that fall to be made and are in accordance with this Act), or

(b) none of the wages that are properly payable to an employee by an employer on any occasion (after making any such deductions as aforesaid) are paid to the employee,

then, except in so far as the deficiency or non-payment is attributable to an error of computation, the amount of the deficiency or non-payment shall be treated as a deduction made by the employer from the wages of the employee on the occasion.

S.6 (1) An employee may present a complaint to a rights commissioner that his employer has contravened section 5 in relation to him and, if he does so, the commissioner shall give the parties an opportunity to be heard by him and to present to him any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties.

S.7 (1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner under section 6 and, if he does so, the Tribunal shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination

to the parties.

Payment of Wages Act 1991 [No. 25/1991]

Having carefully considered the relevant legislation the Tribunal is satisfied that the Employment Appeals Tribunal has the necessary statutory authority to ascertain the scope and applicability of a Registered Employment Agreement in consequence of its statutory obligation to assess the total amount of wages that is properly payable to an employee.

The Tribunal notes the decision of the Rights Commissioner to order the respondent to pay to the appellant compensation in the sum of €124.65 (net) in respect of outstanding overtime. This particular element of the Rights Commissioner decision forms part of the matter now on appeal before the Tribunal for hearing *de novo*. The respondent did not dispute this particular claim as made by the appellant either before the Rights Commissioner or the Tribunal. While accepting the correctness of the decision of the Rights Commissioner at the time at which it was made, the Tribunal now dismisses this claim for unpaid overtime in light of the payment made by the respondent to the appellant in the same sum at the first day of the hearing before the Tribunal.

The appellant sought an award of €254.84 in respect of holiday pay under the Organisation of Working Time Act 1997. This claim had been presented before the Rights Commissioner on 22nd March 2006 together with the claim for the non-payment of overtime referred to above. Quite unusually, this claim for €254.84 had also been made by the appellant directly to the Employment Appeals Tribunal together with another claim against this respondent for the payment of redundancy. The Tribunal division chaired by Mr D McCarthy SC heard both claims on 12th

July 2006 and awarded to the appellant the sum of €254.84 in respect of holiday pay only and also awarded redundancy to the appellant on the basis of the date of commencement of employment being 16th January 2001 and the date of termination of employment being 14th

February 2006 and €519.37 being the gross weekly wage. It is remarkable that the appellant would file a claim for the same amount twice, before two different awarding bodies, and no clear explanation for this occurrence was forthcoming from the appellant despite being asked by the Tribunal itself. The Rights Commissioner, in deciding the claim for holiday pay, held that as the matter had already been decided by another division of the Employment Appeals Tribunal then the Rights Commissioner had no jurisdiction in the matter. This division of the Employment Term upholds the decision of the Rights Commissioner to refuse jurisdiction in relation to the claim under the Organisation of Working Time Act 1997 and this division likewise refuses jurisdiction in relation to the claim under the Organisation of Working Time Act 1997 as it too has no jurisdiction in respect of a matter already determined by another division. This division of the Employment Appeals Tribunal makes no award to the appellant under the Organisation of Working Time Act 1997. The claim of the appellant under the Organisation of Working Time Act 1997 fails before this division as being *res judicata* and for want of jurisdiction and without variation to the determination of the division of the Tribunal chaired by Mr D McCarthy SC which heard both claims on 12th July 2006.

The Tribunal notes that in his evidence before this division the appellant claimed that his employment with the respondent commenced in November 2000. The decision of the Rights Commissioner describes the appellant as claiming his date of commencement of employment also to be in November 2000. However, this division of the Tribunal notes that in respect of his claim for redundancy and holiday pay before the division of the Tribunal chaired by Mr D McCarthy SC which heard both claims on 12th July 2006 that division awarded redundancy to the appellant on the basis that his date of commencement of employment with the respondent was 16th January 2001. No explanation for the anomaly in dates was forthcoming to this division. This division cannot act with an appellate jurisdiction in respect of any substantive matter decided by any other division of the

Tribunal. The date of commencement is *res judicata* by a division of equal standing to this division and this division holds that it has no jurisdiction entertain any variation as to this date. This division therefore accepts the date of commencement of employment to be as found by the division chaired by Mr D McCarthy SC, that is 16th January 2001, and accordingly dismisses the claim of the appellant in respect of any sum for the underpayment of wages prior to that date.

The main claim of the appellant before this division is a claim for the underpayment of wages insofar as he claims that he ought to have been paid at the electricians' rate as set forth under the relevant Registered Employment Agreement. Both before this division and before the Rights Commissioner the appellant claims this underpayment for the period commencing in June 2002 to 14th December 2006.

Section 6(4) provides that: "*A rights commissioner shall not entertain a complaint under this section unless it is presented to him within the period of 6 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period not exceeding 6 months as the rights commissioner considers reasonable.*"

Payment of Wages Act 1991 [No. 25/1991]

The Rights Commissioner found that no such exceptional circumstances existed as would justify the extension of time limits. The appellant, despite being specifically asked by the Tribunal, failed to indicate to this division of the Tribunal any reason at all which might possibly justify the extension of time limits. The Tribunal therefore upholds the decision of the Rights Commissioner in this respect also. The Tribunal therefore dismisses the claim of the appellant for the underpayment of wages in respect of the Registered Employment Agreement for the period exceeding six months prior to the presentation of the complaint to the Rights Commissioner on 3rd July 2006 as being statute barred. Bearing in mind the determination of the division of the Tribunal chaired by Mr D McCarthy SC which sat on 12th July 2006 and which found that the appellant was made redundant on 14th February 2006 it then follows that the only period not statute barred for being out of time which this division could possibly consider is from 4th January 2006 to 14th February 2006.

It was the uncontroverted evidence of the appellant that he was paid by the respondent at the rate of €13.85 per hour for a 37.5 hour week. In the determination of the Tribunal chaired by Mr D McCarthy SC which sat on 12th July 2006 it was held that gross weekly remuneration of the appellant was €519.37. The gross weekly wage as found by the division chaired by Mr D McCarthy SC accords to the nearest half cent with the gross weekly wage as calculated by this division on the basis of the uncontroverted figures provided to us. However the appellant now claims that he ought to have been in receipt of a gross weekly wage calculated on the basis of the applicable Registered Employment Agreement rate for an electrician with his years of service. It is unclear to this division how the appellant arrived at the exact figure of €45,913.17 in his claim before the Rights Commissioner.

In support of his claim the appellant furnished to the Tribunal a copy of the Registered Employment Agreement varied for the Thirteenth Time with Effect from 26th May 2006. This particular Registered Employment Agreement sets forth the hourly rates for an electrician from 1st April 2006. As the employment of the appellant ceased prior to the entering into force of this Agreement and as this Agreement does not set forth the rate for any of the periods during which the appellant was employed by the respondent, then this particular Agreement is of no relevance to his claim. It appears that the appellant expected the Tribunal to award him the appropriate electrician's rate without either telling the Tribunal what that rate was or providing the Tribunal with a document from which it could be ascertained. From the Tribunal's own researches it appears that an electrician was entitled to be paid at a rate of €19.49 after 3 years service, €19.61 after 4 years service and

€19.62 after 5 years service as per the previous Registered Employment Agreement. The Tribunal finds that the appellant is not entitled to be paid at any of the slightly higher rates as set forth in the Thirteenth Variant as furnished to the Tribunal by the appellant.

The appropriate level on the scale is determined by the number of years an electrician has worked in the electrical contracting industry. The appellant did not trouble himself to clarify to the Tribunal which rate was the appropriate rate nor did he advise the Tribunal as to the number of years service he had as an electrician prior to working with the respondent. This division is in any event obliged to accept the date of commencement of employment to be as found by the division chaired by Mr D McCarthy SC and that date is 16th January 2001. Had the appellant been a newly qualified electrician at the date of commencement then by the date of termination he would have sufficient service for the applicable electricians' rate to be €19.62 per hour. On this basis the appellant ought to have been paid €735.75 gross per week. However the figure determined by the division chaired by Mr D McCarthy SC is €519.37 gross per week.

The division of the Tribunal chaired by Mr D McCarthy SC which sat on 12th July 2006 determined that the appellant herein was entitled to redundancy and awarded to this appellant a lump sum to be calculated on the basis of its finding as to the gross weekly wage of the appellant. For the purposes of an award under the Redundancy Payments Acts 1967 to 2003 the division making the award determines the employee's normal weekly remuneration for the relevant period.

Schedule 3 paragraph 13 of the Redundancy Payments Acts 1967 provides that: *“For the purposes of this Schedule, in the case of an employee who is paid wholly by an hourly time rate or by a fixed wage or salary, and in the case of any other employee whose remuneration does not vary in relation to the amount of work done by him, his normal weekly remuneration shall be taken to be his earnings (including any regular bonus or allowance which does not vary in relation to the amount of work done) for his normal weekly working hours as at the date on which he was declared redundant, together with, in the case of an employee who is expected to work overtime regularly, his average weekly overtime earnings as determined in accordance with paragraph 14.”*

The appellant is an employee who was paid wholly by an hourly time rate or by a fixed wage or salary and his normal weekly remuneration therefore is taken to be his earnings for his normal weekly working hours as at the date on which he was declared redundant. It is settled that the earnings of employee for the purpose of the Redundancy Payments Acts is that amount which the employee actually earned and not merely received. It was open to the appellant to have brought his claim for the underpayment of wages before the division of the Tribunal chaired by Mr D McCarthy SC but the appellant failed to do so. Once again no explanation was forthcoming from the appellant when one was sought by this Tribunal. The redundancy lump sum is calculated on the basis of the appellant's gross weekly wage and had the appellant been entitled to be paid at the electricians' rate then the redundancy lump sum as determined by the other division would have been incorrect and the appellant would have been entitled to a greater redundancy lump sum than he was awarded. The appellant had his opportunity before the Employment Appeals Tribunal to claim a greater gross weekly wage when he appeared before the other division. This division has no jurisdiction to vary the determination of the other division as to the normal weekly remuneration and is obliged to accept its finding that the correct weekly wage of the appellant was €519.37 gross per week, which is the amount alleged by the respondent to be the correct amount. This division therefore dismisses the appellant's claim for underpayment of wages on the independent ground that the matter is *resjudicata*.

Insofar as it falls to this division to decide the matter on its merits, the Tribunal finds that the appellant is not an electrician in any real sense. The appellant failed to show any documentary

evidence that he was qualified as an electrician in Nigeria, both at the initial hearing date and when he was advised by the Tribunal to bring same to the resumed hearing he failed to do so either. The appellant did provide documentary evidence of qualifications obtained in Ireland; however those qualifications were not qualifications as an electrician. It was accepted by the parties that the appellant was engaged to carry out electrical work, however it was a matter of dispute as to exactly what work was carried out and whether the skill, knowledge and responsibility displayed in the carrying out of this work was consistent with the appellant being an electrician. The Tribunal prefers the evidence of the respondent in relation to this issue.

The Tribunal has considered the issue as to whether an electrician for the purposes of the Registered Employment Agreement has a special meaning. The Registered Employment Agreement provides no explicit definition of an electrician and it would be usual where no special definition is given to assume that the term has its ordinary language meaning. The Tribunal has also given careful consideration to the alternative possibility that the term has a special meaning which can be derived from the context in which it is used. Two matters in particular were given detailed consideration by the Tribunal. Of lesser significance is the requirement in the Agreement that an electrician possess certain equipment. Of greater significance is the requirement that an electrician be a member of the TEEU. From both requirements it could be implied that the Registered Employment Agreement defines an electrician as a member of the TEEU in possession of a certain set of equipment.

The appellant gave evidence that he had many, but not all of the items in question. This evidence goes at least some small way towards advancing the appellant's claim to be an electrician, and it would be manifestly unreasonable to dismiss an individual's claim to be an electrician on the basis of that the individual lacked some of the items of a basic electrician's tool kit. The possession of his own set of tools can show at least some of the independence of role in relation to electrical work that one might expect of an electrician beyond that of merely being employed by another person to carry out assembly work. In any event, the Tribunal gives little weight to this particular implied criterion.

The appellant admitted that he had not been a member of the TEEU. This failure to join the TEEU is given great weight by the Tribunal, for the Tribunal is aware that in order to join the TEEU as a craft worker, such as an electrician, one must satisfy the TEEU of one's qualifications. It appears that although the Registered Employment Agreement does not explicitly refer to any level of qualification being required in order for an individual to be regarded as an electrician, the requirement that persons within the scope of this Registered Employment Agreement join the TEEU imports into the agreement the criteria used by the TEEU to decide which persons are qualified as electricians. Therefore membership of the TEEU at the appropriate grade is the required qualification for being an electrician for the purposes of the Agreement and the appellant has not satisfied that test and therefore the Tribunal finds that the appellant is not an electrician for the purposes of the Registered Employment Agreement insofar as that term has a special meaning in the context of the Agreement itself.

The Tribunal gave much thought to issue as to whether the respondent is an electrical contractor as defined in the Registered Employment Agreement for the Electrical Contracting Industry. The Tribunal accepts that the main activities of the respondent were as agreed by both parties and as set forth in both brochures furnished to the Tribunal. It is at least arguable that the particular definition of the term "*electrical contractor*" as set forth in the scope section of the Registered Employment Agreement is sufficiently wide to capture this respondent within its ambit. However, as the claim of the appellant fails on other grounds it is not absolutely necessary for this division to decide the matter and the Employment Appeals Tribunal prefers to defer to the Labour Court as being the more appropriate arbiter of issues of scope insofar as the Tribunal can having regard to its obligations to decide matters before it and in the interests of the convenience of the parties with whom it is dealing.

For the respondent it was admitted in evidence that the respondent only gave increases to an employee if the employee asked for one and that the respondent dealt with each employee individually. All the other employees asked and were given increases on an annual basis however the appellant was their only employee who did not do so. It became clear to the Tribunal that the respondent had not given to the appellant a cost of living increase for a period of over three years. Although the Tribunal has no jurisdiction to remedy that particular matter, this division of the Employment Appeals Tribunal wishes to express a certain distaste at the behaviour of the respondent in leaving only the appellant, a foreign national, without a cost of living increase for such a period.

The appellant appeared to be well capable of expressing his own carefully constructed argument as to why he ought to be paid the monies claimed and astutely made such further points as advanced that position when asked questions that allowed him to do so. However, when the questioned as to those matters which appeared to cast a doubt on his claim the appellant consistently refused to answer the questions asked but instead substituted long blocking replies consisting of the reiteration of his own best argument.

A particular anomaly in the appellant's position arises in relation to the date from which he claims to have been entitled to be paid as an electrician. On his own account he was employed as an electrician from the very start of his employment with the respondent, albeit on a probationary basis, that is to say from November 2000. The appellant claimed that in January 2001 his trial period came to an unsatisfactory end and that he continued to work as an electrician, no longer on probation, and that he was given a contract which misstated his position as that of a panel wiring technician. The appellant admitted that he was aware at the time of signing of this contract that he was unhappy with this job title and yet did nothing about it. On 29th June 2001 his contract of employment was changed to reflect a higher rate of pay and in the new contract his position with respondent was described to be that of an electrician. It is only from this later date that the appellant claimed to be due compensation for an underpayment. If he had been an electrician all along one might have expected the period of claim to commence with one of the earlier dates. The witness for the respondent stated that the contract of 29th June 2001 which described the appellant as an electrician did so in error and was furnished by a non-native speaker of English who is no longer in the employ of the respondent. The Tribunal accepts the evidence of the respondent as to existence of an error. That the appellant only claimed to be entitled to payment as an electrician from 29th June 2001 is consistent with an attempt by the appellant to exploit an error in the contract of employment.

The Tribunal dismisses all claims of the appellant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)