

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employer

CASE NO.

PW55/2008, PW56/2008 & PW57/2008
TE47/2008, TE48/2008 & TE49/2008

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

3 Employees

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. D. Winston
Mr. B. McKenna

heard this appeal at Navan on 16th July 2008

Representation:

Appellant(s): In person

Respondent(s): Mr. Richard Grogan, P.C. Moore & Company, Solicitors, 17 South Great
George's Street, Dublin 2

The decision of the Tribunal was as follows:-

Background:

This case came before the Tribunal by way of the employer (*hereinafter referred to as the appellant*) appealing against the recommendations of the rights commissioner under the Terms of Employment (Information) Act, 1994 and 2001, reference r-055571-te-07/EH, r-055580-te-07/EH and r-055585-te-07/EH.

It was indicated on the T1-B forms that were lodged to the Tribunal that this case was an appeal under the Payment of Wages Act, 1991 and the Terms of Employment (Information) Act, 1994 and 2001. However, the rights commissioner recommendations that accompanied the T1-B forms indicated appeals under the Terms of Employment (Information) Act, 1994 and 2001, the Organisation of Working Time Act 1997 and the Safety, Health & Welfare at Work Act 2005.

Respondent's case:

The respondents' representative told the Tribunal that claims under the Payment of Wages Act, 1991, the Terms of Employment (Information) Act, 1994 and 2001, the Organisation of Working Time Act 1997 and the Safety, Health & Welfare at Work Act 2005 had been made to the rights commissioners service on behalf of his clients.

On the day of the hearing before the rights commissioners, the appeal under the Payment of Wages Act, 1991 had been withdrawn and this matter has now been referred to the Circuit Court. The representative also said that appeals under the Organisation of Working Time Act 1997 and the Safety, Health & Welfare at Work Act 2005 are matters for the Labour Court.

The Tribunal agreed that the only matter for hearing before the Tribunal was the appeal under the Terms of Employment (Information) Acts, 1994 and 2001.

Appellant's case:

The appellant confirmed that he is a sole trader who traded as a scaffolder. He confirmed that the rights commissioner's recommendation could be amended to reflect his name as a sole trader. In reply to the Tribunal, the appellant confirmed that he had given contracts of employment to the respondents. A copy of a contract was opened to the Tribunal.

Determination:

The Tribunal can only hear an appeal under the Payment of Wages Act 1991 when on appeal from a decision of the rights commissioners. Because no hearing in relation to this Act occurred before the rights commissioners and no decision issued from them in relation to the matter, the appeal under this Act is not properly before the Tribunal and therefore the Tribunal has no jurisdiction in this matter.

In relation to the Terms of Employment (Information) Acts, 1994 and 2001, Section 3 (1) provides that "*An employer shall, not later than 2 months after the commencement of an employee's employment with the employer, give or cause to be given to the employee a statement in writing*".

Section 3 of the Act also provides that such a written statement shall contain the following particulars of the terms of the employee's employment –

- “(a) the full names of the employer and the employee*
- (b) the address of the employer in the State or, where appropriate, the address of the principal place of the relevant business of the employer in the State or the registered office (within the meaning of the [Companies Act, 1963](#))*
- (c) the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places*
- (d) the title of the job or nature of the work for which the employee is employed*
- (e) the date of commencement of the employee's contract of employment*
- (f) in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires*
- (g) the rate or method of calculation of the employee's remuneration*
- (h) the length of the intervals between the times at which remuneration is paid, whether a*

week, a month or any other interval

(i) any terms or conditions relating to hours of work (including overtime)

(j) any terms or conditions relating to paid leave (other than paid sick leave)

(i) incapacity for work due to sickness or injury and paid sick leave, and

(ii) pensions and pension schemes

(l) the period of notice which the employee is required to give and entitled to receive (whether by or under statute or under the terms of the employee's contract of employment) to determine the employee's contract of employment or, where this cannot be indicated when the information is given, the method for determining such periods of notice

(m) a reference to any collective agreements which directly affect the terms and conditions of the employee's employment including, where the employer is not a party to such agreements, particulars of the bodies or institutions by whom they were made".

The contract of employment, which the appellant produced to the Tribunal did not indicate that it had been given to the employees. It should be noted that a contract of employment must be signed by or on behalf of an employer. Though a contract of employment does not need to be signed by an employee, however, in accepting a contract and not disputing its contents, an employee may be estopped from denying that the conditions specified in such a contract were in force. An employer must retain a copy of this contract even after the employee ceases employment with that employer, and for a period of one year thereafter. It should also be noted that under Section 5 of the Terms of Employment (Information) Act, 1994, any changes that are effected in an employee's contract of employment shall be notified to the employee by the employer in writing as to their nature and the date of such change, and this must be done not later than one month after the change takes effect. This does not apply to any statutory interference in a contract or collective agreements.

In this case, the Tribunal determines that the employer failed to furnish the respondents with a contract of employment and thus did not fulfil the requirements of the Terms of Employment (Information) Acts, 1994 and 2001. The Tribunal therefore upholds the recommendations of the rights commissioner and awards the respondents the sums as follows, XXXX €1500.00, XXXX €1350.00 and XXXX €1600.00 respectively.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)