

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
TE77/2008

for implementation of the recommendation of the Rights Commissioner
in the case of:

Employee
-v-
Employer

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Mr C McHugh
Mr G Whyte

heard this appeal at Dublin on 29th September 2008

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:

Both the appellant and respondent appeared before the Tribunal in person. The respondent accepted that the name used in the proceedings before the Rights Commissioner was merely a registered business name and not the name of a company or other legal person. The respondent told the Tribunal that he was a sole trader and that he used the registered business name in the course of his business. The respondent admitted that he had employed the appellant. The respondent and the appellant both consented to the amendment of the name of the respondent to that which appears above. Furthermore, both parties consented to the amendment of the address of the respondent to that which also appears above. The Tribunal notes that the respondent had filed a form RBN2 with the Companies Registration Office on 6th June 2008 stating the change of address to that given above.

The respondent claimed that the first time that he had any notification of the making of a recommendation by the Rights Commissioner was when he received a notice seeking implementation of the recommendation on 3rd July 2008. The Tribunal is satisfied to hear the appeal of the respondent as being within time.

Initially the respondent contended that he had furnished to the appellant a statement of the terms of employment of the appellant as required by the Terms of Employment (Information) Act, 1994 and

2001. The respondent further claimed that the appellant had signed the statement and that the respondent had retained a copy in his office in Lusk, but that the statement was not with him at the hearing this morning. The Tribunal afforded to the respondent the opportunity to return that afternoon with the copy of the signed statement. The Tribunal advised the respondent that the Tribunal had to power to increase to amount awarded by the Rights Commissioner and that if the respondent failed to return with the document as described then that power would be exercised. The respondent then admitted that he had not so furnished the statement and that no copy signed by the appellant was available. Later the respondent sought to advance the entirely speculative theory that the appellant, who had access to the office, might have taken the document himself. The Tribunal was satisfied to find on the basis of the unsworn evidence of the parties that the appellant had not been furnished with a statement of his terms of employment as is required by statute.

The Tribunal upholds the recommendation of the Rights Commissioner in relation to compensation and awards to the appellant a sum of €300.00 to be paid by the respondent. The Tribunal varies the recommendation of the Rights Commissioner by requiring that the respondent give or cause to be given to the appellant a written statement of the terms of employment to comply with subsection 3(1) of the Terms of Employment (Information) Act, 1994 as amended. The Tribunal directs that the statement shall give the names and addresses of the employer and employee as given for the respondent and appellant above respectively; the name of the usual place of work shall be given as Athlone Institute of Technology, Dublin Road, County Westmeath; the job title shall be given as static guard; the date of commencement of employment shall be given as 20th April 2006 and the date of expected duration to be until November 2006. The Tribunal also directs that the statement shall give the method of calculation of remuneration to be €8.30 per hour and that remuneration is to be paid monthly.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)