

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
Employee

CASE NO.  
UD970/2007  
PW87/2007

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

Employee

V

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr J Browne  
Ms E Brezina

heard this appeal at Wexford on 7th October 2008

Representation:

Appellants: Cllr Michael Furlong,  
Harbour View, Co Wexford

Respondent: Ms Julie Breen,  
Garaghy Breen & Co., Castle Street, Enniscorthy, Co. Wexford

This case came before the Tribunal by way of an appeal of a Rights Commissioner decision refs: r-050978-pw-07/TB and r-050979-ud-07/TB. The employee was seeking to have the decision of the Rights Commissioner varied.

The determination of the Tribunal was as follows:

Respondent's Case:

A Company Director (CD) gave evidence for the respondent company. CD refuted that a 10% deduction was made to the appellant's wages. The company, which fits and supplies windows, originally contracted the fitters, but they were made employees in 1995. There had been an arrangement in place whereby the company held 10% of the contractor's fees and gave it to them at Christmas, as they were not entitled to holiday pay. When they were made employees some of them wished for the arrangement to continue, which the company facilitated. However, the appellant had never been a contractor, and was always an employee, and no deduction was taken

from his wages.

CD was not involved in the dismissal of the appellant and was unable to give evidence on it.

Appellant's Case:

The appellant was unable to show a deduction of 10% from his wages within the time limit defined by the Payment of Wages Act 1991. The appellant gave evidence that he received no notice of dismissal and gave evidence of his loss.

Determination:

The claim under the Payment of Wages, 1991, was not brought within the time allowed, and therefore, the Tribunal finds that this appeal fails. The Tribunal finds that the respondent failed to discharge the onus of proof required under the legislation to show that the dismissal was fair. Therefore, the appeal under the Unfair Dismissals Acts, 1977 to 2001, is allowed and the Tribunal awards the appellant €18,000.00 (eighteen thousand euro).

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)