

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employer

CASE NOS. PW1&PW2/2007

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

2 Employees
V
Employer
under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms E Kearney

Members: Mr J Redmond
Mr T Kennelly

heard this appeal at Galway on 31st March 2008

Representation:

Appellant: Ms. Deirdre O'Connor, D.M. O'Connor & Co., Solicitors,
Cross Street, Galway

Respondents: Ms. Diane Jackson, Branch Organiser, SIPTU, No. 3 Branch,
Forster Court, Galway

The decision of the Tribunal was as follows:

The case came before the Tribunal by way of an appeal by the employer against the recommendation of a Rights Commissioner ref: r-043151-pw-06/JH & r-043152-pw-06/JH. The employer was seeking to have the recommendation upset.

Respondents' Case:

The respondents claim that, as fully qualified carpenters, they were paid less than the Construction Craftsmen rate under the Registered Employment Agreement (REA) (Construction Industry) during their employment from March 2005 until December 2005. The respondents were paid €80 per day until August 2005 when it rose to €90 per day. The REA (Construction Industry) at the time of their employment was €16.85 per hour. The employer had provided a letter for one of the respondents (OL) towards the end of his employment outlining his qualifications. The respondents provided copies of their qualifications from Lithuania. The respondents disputed that they were supervised while carrying out their work.

Appellant's Case:

The employer stated that the respondents were not employed as carpenters but rather as assistant carpenters. The respondents had not provided any certificates proving their qualifications, but said they had experience. The respondents were paid at the 2nd Year apprentice carpenter rate. The respondents had been supervised at all times by the employer or a 3rd Year apprentice carpenter. The employer had provided a letter for one of the respondents so that he could apply for a mortgage in his home country.

Determination:

Having heard evidence from both parties the Tribunal is satisfied the respondents were qualified tradesmen and carried out their work without continuous supervision. The respondents were entitled to payment at the Construction Craftsmen rate under the Registered Employment Agreement (Construction Industry). The Tribunal upholds the decision of the Rights Commissioner awards the respondents €5,600.00 each under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)