

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

CASE NO.

UD653/2007, PW63/2007

TE32/2007

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

Employer

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

**PAYMENT OF WAGES ACT, 1991**

**TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001**

I certify that the Tribunal

(Division of Tribunal)

Chairman: Mr J. Fahy

Members: Mr D. Morrison

Mr P. Clarke

heard this appeal at Sligo on 2nd July and 16th October 2008

### **Representation:**

Appellant : In person

Respondent : Mr Loughlin Deegan, IBEC, Regional Director, 11-12 Millcourt,  
The Diamond, Donegal Town, Co. Donegal

This case came before the Tribunal by way of appeals against a Rights Commissioner's recommendations and decisions references numbers r-047159-ud-06/TB, r-047149-pw-06/TB, and r-047150-te-06/TB.

The determination of the Tribunal was as follows:

### **Appellant's Case**

From August 2003 to April 2006 the appellant performed duties and tasks at the respondent's premises in return for a weekly cash payment and accommodation. From spring 2006 when this Lithuanian citizen completed his studies locally he undertook a fulltime role as housekeeper in this hostel. His income for that position brought him within the scope of the income tax net. It also brought him closer to conflict with the respondent. From that time onwards to November 2006 the owner and the appellant clashed over payments both due to him and the statutory authorities. The appellant was never given pay slips and did not have a bank account or contract of employment. He not only calculated his own wages but also collected them from the respondent's cash register and left a signed note to that effect.

Despite his income being subject to taxation and social welfare deductions the working

arrangement carried on from April 2006 with no apparent regard to those statutory obligations. An attempt to regularise this situation in July contributed to the ongoing dispute between the owner of this hostel and the witness. Further efforts to bring compliance to this situation resulted in the respondent withdrawing payments to the appellant in late summer. However, the respondent gave him a four-figure sum in cash in October when the appellant was going off on holiday. Around that time more movements took place on the financial front between the parties. The witness denied receiving a cheque from the respondent made payable to him and to the value of over fifteen hundred euro.

The witness accepted he had to pay tax and social welfare on his income and in that respect went to the local relevant offices in early November 2006 to bring order to his affairs. He told the owner of the hostel of this development and also asked him for outstanding payments, and an apology on the way the owner was treating him, and an increase in his income. In response he was given notice that his employment with the respondent was to cease.

### **Respondent's Case**

The owner of this hostel stated that at times he came to an arrangement with some of its residents that they could perform some work there in return for their accommodation costs. He initially entered into such an arrangement with the appellant extending it to include a modest weekly payment. That payment for part-time work fell below an amount that attracted an income tax liability. No written terms and conditions or contract of employment issued to the claimant nor was he provided with pay slips. That arrangement continued from August 2003 to the spring of 2006 when the witness consented to the appellant's request to run the hostel on a fulltime basis. While both parties agreed that the prevailing minimum hourly rate would apply this arrangement was never committed to writing. The completion of time sheets for the hours worked was the responsibility of the appellant.

The number of hours worked together with Sunday and overtime brought the appellant's income into the pay as you earn taxation category. According to the witness the appellant did not want to discharge his tax obligations. That resulted in no tax being deducted from his income and this situation continued into that summer. This issue was at the source of a disagreement between both men in July and the appellant announced his intention to resign then withdrew it and invited the owner to dismiss him that he did not accept. However the issue of statutory deductions for social welfare and income tax remained unresolved when the witness instructed a bookkeeper in September 2006 to calculate the appellant's statutory deductions based on his time sheets.

Based on those calculations certain monetary transactions emerged between the parties. The appellant continued to protest and question those calculations to such an extent that he informed the owner in early November that instead of working he had to go and seek further information and advice on his taxation and social welfare situation. This scene repeated itself for a couple of days and the appellant presented a note to the witness looking for a specified payment, an apology and an increase in his hourly rate of pay to twenty euro. In response the witness wrote to the appellant giving him notice of the termination of his employment. A payment to the appellant was enclosed with that letter. The witness told the Tribunal he dismissed the appellant for his refusal to work and his application for an increase in his hourly rate. He also accepted he cashed a cheque in the amount of around fifteen hundred euro which was made payable to the appellant in November 2006.

### **Determination**

The respondent in this case failed to comply with even the most basic elements of employment legislation in dealing with the appellant. No terms and conditions or contract of employment was furnished to him. That deprived the appellant of a reference point in his working relationship with the company. No pay slips issued which again disadvantaged the appellant in relation to his gross and net pay. No written agreement was presented to show that the employer could deduct or take account of providing accommodation to the appellant. The respondent also allowed and tolerated a situation where an employee continued to work while not being tax compliant. While there is some doubt whether an employer/employee relationship actually existed between the parties the Tribunal finds on balance that such a relationship, imperfect as it was, did exist.

The appeal under the Terms of Employment (Information) Act, 1994 and 2001 is allowed and the Rights Commissioner's decision is varied to award the appellant €2,000.00 under those Acts.

The appeal under the Payment of Wages Act, 1991 is also allowed and the rights Commissioner's decision is varied. The respondent is ordered to pay the appellant €2,502.08 under that Act.

The Tribunal finds that the appellant was unfairly dismissed. Natural justice and fair procedures were denied to the appellant in this termination process. Accordingly the Tribunal varies the recommendation of the Rights Commissioner and awards the appellant €10,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

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Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

