

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYER -**Appellant**

PW162/2008
TE121/2008

against the decision of the Rights Commissioner **R-060868-PW-08/SR and R-060872-TE-08/SR** In the case of

EMPLOYEE -**Respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. McAveety

Members: Mr. P. Pierson
Mr. J. LeCumbre

heard this appeal at Longford on 30 March,
9 June and 19 October 2009

Representation:

Appellant:

Mr. Mark Connellan, Connellan Solicitors,
3 Church Street, Longford

Respondent:

Mr. Pat McCabe, SIPTU, Unity Hall, Church Street,
Tullamore, Co. Offaly

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of appeals by an employer (the appellant) against two decisions of the Rights Commissioner under the Payment of Wages Act, 1991 **R-060868-PW-08/SR** and the Terms of Employment Information Acts, 1994 to 2001 **R-060872-TE-08/SR**, in the case of an employee (the respondent).

The employee worked for the employer from June 2001 in the construction industry. It was conceded by the employer that the employee had not received a written statement of his terms and conditions as provided in the Terms of Employment Information Acts, 1994 to 2001.

A complaint under the in respect of the Payment of Wages Act, 1991 was received by the Rights Commissioner service on 28 January 2008. On a preliminary point the Tribunal had to consider if

this was a case where under section 6(4) of the Act that provides

“A rights commissioner shall not entertain a complaint under this section unless it is presented to him within the period of 6 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period not exceeding 6 months as the rights commissioner considers reasonable”.

It was reasonable for the Tribunal to consider if exceptional circumstances existed did prevent the earlier presentation of the complaint.

The substantive issue before Tribunal centred on the rate of pay for the employee, which falls to be determined by his skill level in conjunction with the rates of pay set out in the first schedule to the Construction Industry Registered Employment Agreement (REA) and the alleged non-payment of overtime and travelling time in accordance with the REA. Substantial evidence in this regard was put before the Tribunal on behalf of both the employer and the employee.

Determination

On the preliminary issue the Tribunal is satisfied that the employee’s poor level of understanding of the English language did prevent the earlier presentation of the complaint and on that basis considered the period of twelve months before 28 January 2008 as the relevant time for consideration in the complaint.

The Tribunal is satisfied that, at all relevant times, the employee was entitled to be considered as a grade A construction operative with a pay rate at 97% of that of a construction craftsman. That entitled the employee to be paid a rate of €17-61 per hour. The Tribunal has come to this conclusion after being satisfied that the employee was certified to drive and did drive a heavy-duty teleporter. The Tribunal is further satisfied that the records of time kept by the employer were not in accordance with SI 473 of 2001 the Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001 and could not readily be correlated to the payslips provided to the employee. The Tribunal is satisfied that the employee was entitled to payments for both overtime and travelling time. The Tribunal upholds the decisions of the Rights Commissioner and awards €23,824-00 under the Payment of Wages Act, 1991 and further awards €2,500-00 under the Terms of Employment Information Acts, 1994 to 2001

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)