

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

PW92/2007

TE59/2007

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

Employee

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard this appeal at Cork on 25th June 2008

Representation:

Appellant: Mr. Jim Dorney, Murphy MacNamara & Co, Solicitors, 26/27 South Mall, Cork

Respondent: Mr. Daniel Snihur, Independent Workers Union, 55 North Main Street, Cork

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by the employer against the decisions of a Rights Commissioner, ref: PW50120/07/MR, TE50121/07/MR dated 31 October 2007.

The Appeal regarding the Terms of Employment (Information) Acts, 1994 and 2001, was withdrawn at the outset of the hearing.

Appellant's case:

There was no explanation by the Rights Commissioner as to the exceptional circumstances applied by him to extend the time limit for this claim. Neither the Rights Commissioner nor the EAT have the jurisdiction to impose rates of pay provided for in Registered Employment Agreements on an employer, and that Payment of Wages Act does confer any such power.

It was further submitted that time limits cannot be extended simply because the employee may not have been aware of his rights.

The employer gave evidence that he was unable to attend the first Rights Commissioner hearing due to a family funeral, and was out of the country for the second hearing. He was not represented. He said that his history with the respondent was that he got a call from the respondent's wife (or girlfriend) looking for a job for him. His English was not good and she had to interpret for him.

He was happy to take him on as an unskilled worker because he lived near the site upon which he was working on at the time. He said that he didn't apply Trade Union rates. The respondent was injured in a road traffic accident in October 2005, and came back to work in February 2006. When he left he asked for a reference, but never raised the issue of being underpaid. He said that he paid his men rates of pay based on their skills, and that most of them aspired to be pavers rather than hodders. His rate of pay for pavers was better than the union rate. After his accident, the Respondent was physically unable to do the work through fault of his own and as a result he left the employment.

Respondent's case:

The respondent's case is that the employer should have applied the rates provided for in the Registered Employment Agreement for the Construction Industry. The respondent's representatives submitted that they could have opted to proceed before the Labour Court but this procedure would have taken longer. The respondent gave evidence that he was a general worker with the company and worked approximately 40 hours a week. The work involved helping with the laying of paving slabs. He did not realise until some time after he had left his employment that he had been paid a rate of pay lower than the "Union Rate". He sought the extension of time to bring the application to the Tribunal on the basis as he was not aware of his rights and was not given any Contract of Employment.

Determination:

The Tribunal cannot find any basis for the proposition that the Payment of Wages Act confers jurisdiction on it or the Rights Commissioner to enforce the terms of a Registered Employment Agreement upon an employer. The Tribunal accepts the appellant's submission in this regard and finds that neither the Rights Commissioner nor the Tribunal have the jurisdiction to make an award such as the award made by the Rights Commissioner in this case. There is no provision in the Act that would permit the Tribunal to impose or insinuate a rate of pay into the Contract existing between parties such as the parties in this case. There is a distinct statutory mechanism for the enforcement of R.E.A.s and the Payment of Wages Act is not the correct vehicle for doing so.

Therefore, the Tribunal allows the appeal and overturns the decision of the Rights Commissioner under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)