

EMPLOYMENT APPEALS TRIBUNAL

Appeal Of:
Employer –

Case No.
PW147/2008
appellant

against the recommendation of the Rights Commissioner in the case of:
Employee – respondent

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr. D. Moore
Ms. K. Garvey

heard this appeal at Carlow on 9th February 2009

Representation:

Appellant: XXXX.

Respondent: Ms. Michelle Treacy, O'Flaherty & Brown, Solicitors, Greenville, Athy Road,
Carlow

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an employer appealing against the recommendation of a Rights Commissioner under the Payment Of Wages Act, 1991, reference r-060025-pw-07/JT.

The employer's T1B form to the Tribunal detailed the grounds for appeal and included the fact that a Division of the Tribunal had previously heard the claim of the employee under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 on the 29th April 2008. Both parties were present at the Tribunal hearing on the 29th April 2008. Subsequently, a written determination issued with reference MN884/2007. The Tribunal determined, on that occasion, that the employee did not have an entitlement to minimum notice, as he was incapable of working during his notice period.

Subsequently, a Rights Commissioner heard the employee's complaint under the Payment of Wages Act, 1991 on the 9th July 2008. Neither the employer nor a representative on its behalf were present at the Rights Commissioner. The Rights Commissioner issued a decision in favour of the employee for outstanding minimum notice entitlement and holiday pay owing and awarded the employee €1,437.50. The employee admitted that the previous determination of the Tribunal regarding minimum notice was not brought to the attention of the Rights

Commissioner on the 9th July 2008.

The employee commenced employment with the employer on the 19th June 2007 and his employment terminated on the 27th November 2007. It was agreed between the parties that he had not taken annual leave during the period of his employment. Mr. C stated that the employee was paid all holiday pay owing. Copies of three different cheques were submitted to the Tribunal. It was the employer's contention that a cheque dated the 20th January 2008 related to holiday pay in the sum of €750.00. The employee signed the cheque on the 6th February 2008 when a bank processed it for payment. The employee's representative stated that the cheque did not pertain to holiday pay but to payment for expenses.

Determination:

The Tribunal finds that the Rights Commissioner was not aware on the 9th July 2008 that a determination of the Tribunal had issued in relation to the employee's claim for minimum notice. A determination of the Tribunal having issued, this Division finds that it cannot re-hear the issue of minimum notice.

The Tribunal finds that the cheque dated the 20th January 2008 relates to five days holiday pay. The Tribunal finds that the employee is entitled to an award under the Payment of Wages Act, 1991, of €600.00 (being the equivalent of four days holidays). The Tribunal therefore varies the Rights Commissioner's Decision reference r-060025-pw-07/JT.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)