

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL(S) OF:

2 Employees

- *appellant*

### CASE NO.

PW163/2008

- *appellant*

PW164/2008

against the recommendation of the Rights Commissioner in the case of XXXX and XXXX

against

Employer

- *respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr E. Handley  
Mr. J. Dorney

heard this appeal at Dublin on 24th February 2009

Representation:

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Appellant(s): Ben O'Floinn BL instructed by Patricia McNamara & Co., Solicitors, 60  
Upper Grand Canal Street, Dublin 4

Respondent(s) : Tony Kerr BL instructed by Chief State Solicitors Office, Osmond House,  
Little Ship Street, Dublin 8

This case came before the Tribunal by way of two employees appealing against the Decision of the Rights Commissioners ref; R-060075-PW-07/RG dated the 1<sup>st</sup> August 2008

The decision of the Tribunal was as follows:-

### Determination

The Tribunal have reviewed all submissions made by the appellants' and respondent on the day, and the case law and submissions that were handed in on the 4<sup>th</sup> and 5<sup>th</sup> March 2009. The parties disagree whether or not evidence was adduced before the Rights Commissioner in relation to the complaint. The Tribunal must, due to the lack of agreement between the parties refer

to the decision of the Rights Commissioner dated 1<sup>st</sup> August 2008, to determine whether or not evidence relevant to the complaint was adduced and also to determine whether a decision in relation to the complaint was given.

The Tribunal are satisfied that no evidence relevant to the complaint was adduced before the Rights Commissioner; the only evidence was in relation to the jurisdictional preliminary point. The decision of the Rights Commissioner is limited to the preliminary point.

The parties are now in agreement and confirmed to the Tribunal that in fact the claims were submitted to the Rights Commissioners' within the time and therefore the Rights Commissioner did in fact have jurisdiction to hear the matter. Either party may appeal to the Tribunal a decision of the Rights Commissioners, which said decision must arise from evidence adduced before him/her relevant to the complaint in issue. As no evidence was adduced at the Rights Commissioners in relation to the complaint there can be no appeal of that issue to the Tribunal under Section 7(1) of the Payment of Wages Act 1991.

Accordingly the Tribunal remit the matter back to the Rights Commissioner for hearing.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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