

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

- appellant

TE64/2007

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

Employer

- respondent

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr F Cunneen
Mr S O'Donnell

heard this appeal at Dublin on 31st March 2008.

Representation:

Appellant: In person

Respondent: In person

This case came before the Tribunal by way of an appeal by the employee against the Decision of a Rights Commissioner Ref: r-050899-te-07/TB.

The decision of the Tribunal was as follows:-

Determination:

The appellant has set forth the reasons for his appeal in the Form T1B. He claimed that:

"I was in no other position other than to do the work of a building operative while being paid as general operative. The hospital did not tell me of the difference of a building operative and a general operative. I was told of no job description other than a building operative as outlined by my builder's operative contract. This left me short of 1 hour per day travel money."

The Tribunal has carefully considered the evidence and submissions of both parties. It was accepted by both parties that the appellant had been employed by the respondent since September 1982 and that in May 1983 the respondent employed the appellant as a builders operative. In or about July 1986 the appellant had applied for and was granted employment as a general operative with duties

as a relief boilerman. The Tribunal is satisfied that the appellant was furnished with, and accepted his terms and conditions of employment for the post of General Operative/Relief Boilerman effective from 21st July 1986. The Tribunal has had sight of this statement of terms and conditions of employment.

The appellant had been expected to perform duties in relation to the steam, electrical and water supply plant of the hospital. This plant was known as the 'Energy Centre' of the hospital. An incident occurred in February 1987. The appellant had absented himself from the Energy Centre for a period of an hour and a half, returning at 11pm, and during which time the facility had been left entirely unmanned. Disciplinary proceedings ensued and the appellant was stripped of his duties as a relief boilerman. The Tribunal is satisfied that as a result of a disciplinary meeting on 12th February 1987 the appellant's relief boilerman duties were removed. The appellant resumed duty as a General Operative on 23rd February 1987 and received a written statement of the variation to his contract of employment in the form of a letter dated 14th February 1987 and stating that he was to return to duty as a General Operative in the Technical Services Department.

In September 1996 the grade of Building Operative was absorbed into the grade of General Operative. Building Operatives had been entitled to a travel allowance and this was retained on a red circle basis. It appears that the appellant was aggrieved that he was not being granted the travel allowance despite having been a Building Operative in the past.

The Tribunal finds that the appellant was furnished with a written statement of the variation of his contract dated 14th February 1987 and the Tribunal finds that the appellant had not been a Building Operative at the time of the merger of the grades and so had not been included in the red circling such that the statement dated 14th February 1987 remained a true and accurate statement of the terms of his employment such that the appellant's case fails.

Accordingly, the Tribunal upholds the decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)