

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employer

CASE NO.
-appellant PW49/2008

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: Ms K. T. O'Mahony B.L.

Members: Mr M. Forde
Mr J. McDonnell

heard this appeal at Cork on 25th February 2009

Representation:

Appellant : Mr Conor O'Connell, C I F, Construction House, 4 Eastgate Avenue, Little Island, Cork

Respondent : Mr Noel Murphy, Independent Workers Union, 55 North Main Street, Cork

This case came before the Tribunal by way of an appeal against the decision of a Rights' Commissioner reference number R-053643-pw-07- JOC

The decision of the Tribunal was as follows:

In this determination the employer is referred to as the appellant and the employee is referred to as the respondent.

Appellant's Case

With the aid of documentation and direct evidence the managing director outlined its staff grading system. The appellant primarily undertakes sub-contracting work, mainly pouring concrete. The

vast majority of the appellant's workforce are general operatives at various grades and about 25% are carpenters who have to be of a very high calibre because of the nature of the work undertaken by the appellant. At the time the managing director employed the respondent he was looking for general operatives and the respondent was taken on as a general operative. The respondent neither produced nor was he asked to produce a carpenter's certificate to the respondent. All the employees are either members of UCATT or SIPTU and any issues arising at work are dealt with through negotiations with the relevant trade union. The claimant never raised an issue while he worked with the respondent but within weeks of his employment being terminated IWU initiated the claim herein on his behalf. However, due to some failure in the appellant's system the managing director was unable to locate provide a copy of the respondent's contract of employment for the Tribunal. The respondent had been correctly paid for all the hours he worked. At the height of its business the appellant had 250 employees and it now has 100 employees. The appellant company strives to apply all the right procedures and structures both in its business dealings and in the treatment of its workforce.

Respondent's Case

The respondent commenced employment with the appellant in early January 2006. He and some others got the job while in Poland through a recruitment company, which had no direct input into the respondent's working conditions. Someone from the recruitment company collected them at the airport and next day took them to the appellant's site. He had not entered any formal agreement with the appellant. He did not present his carpenter's certificate to the respondent because he was not asked for it but he worked as a carpenter from the commencement of his employment. Before he left Poland the recruitment company had offered him €16.80 per hour but he never received that rate of pay. He never knew his rate of pay and did not approach the company for information or clarification on it. He had never asked the appellant for the carpenters' rate of pay because there was no one to ask and he could not speak English. His weekly wages differed according to the number of hours worked. Around the end of 2006 the respondent signed two forms for the appellant: in the first form it was stated that he was a carpenter and in the second, which he signed three days later, it was stated that he was a general operative. The respondent maintained he was coerced into signing the latter form. The respondent was provided with pay slips.

Two witnesses on behalf of the respondent stated they had worked as carpenters with the appellant and also had difficulty getting recognition and payment for their work in that capacity. One of the witnesses agreed that his claim before the Rights Commissioner in that respect was unsuccessful against the appellant. The other witness also agreed that that he got nothing from the Rights Commissioner.

Determination

There was a conflict of evidence between the parties as to whether the respondent was employed as a general operative or carpenter. The Tribunal notes that the respondent, while employed by the appellant, was a member of a trade union although there was a dispute between the parties as to which trade union he joined. There was no evidence before the Tribunal that he had sought his trade union's assistance as regards his employment status while in the appellant's employment. Having carefully considered the evidence the Tribunal on the balance of probability finds that the respondent commenced employment as a general operative and continued in that capacity up to the termination of his employment. The Tribunal is satisfied that the appellant has fully discharged its

obligations to the respondent under the Payment of Wages Act, 1991. Accordingly, the appeal under the above Act succeeds and the decision of the Right's Commissioner is overturned.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sad.) _____
(CHAIRMAN)

