

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer
- *appellant*

TE118/2008

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

Employee
- *respondent*

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr W. Power
Mr P. Mcaleer

heard this appeal at Cavan on 24th February 2009

Representation:

Appellant: in person

Respondent: Mr. Gerard Nevin, Keaney Nevin, Solicitors,
6 Tower Hamlet, Farnham St., Cavan, Co. Cavan

The decision of the Tribunal was as follows:

Appellant's case:

The appellant (TT) gave evidence that the respondent didn't work with the company for more than 2 months. He started working for them in May 2007, but he requested not to be put on the books, i.e. not pay tax until he got his work permit. He said that he eventually went on the books in July 2007. In August 2007 he went to his mother's funeral in South Africa and did not return to work until mid October. He left again in mid December, and he ended the respondent's employment by text after Christmas 2007 for his failure to turn up for work. He said that he understood by the Rights Commissioner order that the work permit wasn't valid because the respondent didn't work for 2 full months.

Section 3 of the Act specifically requires the employer to give terms of employment to the

employee no later than 2 months after his commencement of work. He said that he was lead to believe he didn't need to do this, but he accepted after reading section 3 that he should have done so.

The appellant (GT) gave evidence that they loaned money to the respondent for his mother's funeral and for his house, and that no interest was charged on this. He had since paid back this loan.

Respondent's case:

The respondent gave evidence that he started working for the respondent on 16 May 2007. He said that he never got any terms of employment from the respondent.

Determination:

Based on evidence adduced, the Tribunal finds that there was a breach of the Terms of Employment (Information) Act, 1994 and 2001.

Section 3 states:

3.—(1) An employer shall, not later than 2 months after the commencement of an employee's employment with the employer, give or cause to be given to the employee a statement in writing containing the following particulars of the terms of the employee's employment, that is to say—

(a) the full names of the employer and the employee,

(b) the address of the employer in the State or, where appropriate, the address of the principal place of the relevant business of the employer in the State or the registered office (within the meaning of the Companies Act, 1963),

(c) the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places,

(d) the title of the job or nature of the work for which the employee is employed,

(e) the date of commencement of the employee's contract of employment,

(f) in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires,

(g) the rate or method of calculation of the employee's remuneration,

(h) the length of the intervals between the times at which remuneration is paid, whether a week, a month or any other interval,

(i) any terms or conditions relating to hours of work (including overtime),

(j) any terms or conditions relating to paid leave (other than paid sick leave),

(k) any terms or conditions relating to—

(i) incapacity for work due to sickness or injury and paid sick leave, and

(ii) pensions and pension schemes,

(l) the period of notice which the employee is required to give and entitled to receive (whether by or under statute or under the terms of the employee's contract of employment) to determine the employee's contract of employment or, where this cannot be indicated when the information is given, the method for determining such periods of notice,

(m) a reference to any collective agreements which directly affect the terms and conditions of the employee's employment including, where the employer is not a party to such agreements, particulars of the bodies or institutions by whom they were made.

(2) A statement shall be given to an employee under *subsection (1)* notwithstanding that the employee's employment ends before the end of the period within which the statement is required to be given.

(3) The particulars specified in *paragraphs (g), (h), (i), (j), (k)* and *(l)* of the said *subsection (1)*, may be given to the employee in the form of a reference to provisions of statutes or instruments made under statute or of any other laws or of any administrative provisions or collective agreements, governing those particulars which the employee has reasonable opportunities of reading during the course of the employee's employment or which are reasonably accessible to the employee in some other way.

(4) A statement furnished by an employer under *subsection (1)* shall be signed and dated by or on behalf of the employer.

(5) A copy of the said statement shall be retained by the employer during the period of the employee's employment and for a period of 1 year thereafter.

(6) (a) The Minister may by order require employers to give or cause to be given to employees within a specified time a statement in writing containing such particulars of the terms of their employment (other than those referred to in *subsection (1)*) as may be specified in the order and employers shall comply with the provisions of such an order.

(b) The Minister may by order amend or revoke an order under this subsection, including an order under this paragraph.

(7) This section (other than *subsection (6)*) shall not apply or have effect as respects contracts of employment entered into before the commencement of this Act.

The employer and the employee agree that the respondent began working for the company in May 2007, and that his employment terminated in December 2007.

Therefore, the Tribunal upholds the decision of the Rights Commissioner awarding him €1100.00

under the Terms of Employment (Information) Act, 1994 and 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

