

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employer

CASE NO.

TE174/2008

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

Employee

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr R. Murphy
Ms. E. Brezina

heard this appeal at Portlaoise on 7th May 2009

Representation:

Appellant(s) : Ms Fiona O'Keeffe, Midland Legal, Solicitors, Fitzmaurice House, Bank Place,
Portlaoise, Co. Laois

Respondent(s) : In Person

This case came before the Tribunal as a result of an appeal by the employer (the appellant) against a recommendation of the Rights Commissioner (R-0567129-te-08 and R-067130-wt-08) under the Terms Of Employment (Information) Acts, 1994 To 2001 and the Organisation of Working Time Act, 1997 in the case of an employee (the respondent).

The appellant only appealed the recommendation of the Rights Commissioner R-0567129-te-08 under the Terms Of Employment (Information) Acts, 1994 To 2001

The decision of the Tribunal was as follows:-

Appellant's Case:

One of the partners in the appellant business gave evidence. He stated that he had not received the notice of hearing from the Rights Commissioner. He stated that the respondent had received a copy of his written terms and conditions of his employment on the Friday after he had commenced employment. The witness had written it out himself but it was not signed or dated by the respondent. All staff received their written terms and conditions when commencing employment with the appellant.

Respondent's Case:

The respondent gave evidence. He worked for the respondent for eleven months. He stated that the first time he had seen was at the start of this hearing. He handed in his notice on June 11th 2008 having returned early from sick leave. He had some days previously had an accident on site and had to attend the Eye and Ear hospital in Dublin. He was told he was not needed and told he could go. He was not paid any holiday pay in 2008.

When asked he said that he knew what his working hours were because he asked. He already knew his rights concerning sick leave. He never asked for a copy of his written terms and conditions of employment. He did not know if they gave one to their staff.

Determination:

This respondent's evidence in essence is that he had never seen a copy of the terms and conditions of his employment. This evidence is to be weighed against the evidence of the appellant that the respondent had received a copy of his written terms and conditions of his employment on the Friday after he had commenced employment. The tribunal heard evidence that the respondent had not at any time over the course of his employment sought a copy of the terms and conditions of employment from the respondent over the 11 months of his employment with the respondent.

Section 7(2) (d) of the Terms Of Employment (Information) Acts, 1994 to 2001 empowers the Rights Commissioner to order the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 4 weeks remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act, 1977 ,

Pursuant to Section 8 of the Act the tribunal shall make a determination in writing in relation to the appeal affirming, varying or setting aside the recommendation and shall communicate the determination to the parties.

In the circumstances and having heard the evidence of the parties the tribunal varies the award of the commissioner awards the respondent the sum of €800

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)