

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

PW155/2008  
TE117/2008

- *appellant*

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

Employee

- *respondent*

under

### **PAYMENT OF WAGES ACT, 1991 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr P. Pierce  
Ms. N. Greene

heard this appeal at Dublin on 17th February 2009

#### **Representation:**

Appellant: Mr. Gary O'Mahony, IBEC, IR/HR Executive, 84/86 Lower Baggot Street, Dublin 2

Respondent: Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of appeals against a Rights Commissioner recommendations r-061499-pw-08/EH, and r-061500-te-08/EH.

**The appeal under the Terms of Employment (Information) Act, 1994 and 2001 was withdrawn during the hearing.**

#### **Respondent's case:**

The respondent was not put on notice of the appeal by the employer. On 1 September 2008 the

claim was lodged, but not communicated to the respondent. It is mandatory under the Act to be put on notice of an appeal against a Rights Commissioner decision within 6 weeks of receipt of the decision.

Cases quoted in written submission:

PW81/2006

PW56/2006

PW75/2007

UD247/1993

UD248/1993

The State (IBM Ireland Ltd.) v. Employment Appeals Tribunal (1982)

### **Appellant's case:**

The appeal by the employer was lodged in time. Notice was sent to the employee, but not in the allowed time. Section 7 (1) of the Act states that the Tribunal should afford the parties the opportunity to be heard. It is the appellant's constitutional right to be heard. There was a breach of the Act, but it is overcome by the Halal decision of the Supreme Court.

Cases quoted in written submission:

Halal Meat Packers v. Employment Appeals Tribunal (1990)

Gallagher v. Revenue Commissioners (1990)

The State (Irish Pharmaceutical Union) v. Employment Appeals Tribunal (1987)

### **Determination:**

The written submissions sent in by both parties were considered by the Tribunal.

The submissions raised on behalf of the appellant referred to the obligations upon the Tribunal to hear both sides. However the matter must be properly before the Tribunal before it can proceed to hearing any side, and in this case the Tribunal finds that it does not have jurisdiction, and that the substance of the case is not properly before the Tribunal for consideration.

Section 7(2) of the Payment of Wages Act, 1991, provides:

*“ An appeal under this section shall be initiated by a party by his giving, within 6 weeks of the date on which the decision to which it relates was communicated to him-*

*(a) a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under subsection (3) and stating the intention of the party concerned to appeal against the decision, and*

*(b) a copy of the notice to the other party concerned”*

As the section is mandatory in wording, no discretion can be applied.

The Tribunal is not satisfied that Section 7(2) (b) above has been complied with, and therefore has no alternative but to find that it does not have jurisdiction to hear the appeal under the Payment of

Wages Act, 1991, against the Rights Commissioner recommendation r-061499-pw-08/EH.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

