

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

PW189/2008

- *appellant*

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: Mr D. Mahon BL

Members: Mr. R. Prole
Ms. P. Ni Sheaghda

heard this appeal at Naas on 23rd June 2009

Representation:

Appellant: Ms Emma Coffey, Smyth & Son, Solicitors, Rope Walk, Drogheda, Co Louth

Respondent: Richard Grogan & Associates, Solicitors, 16 &17 College Green, Dublin 2

The decision of the Tribunal was as follows:

Appellant's case:

The Managing Director (KH) gave evidence that he employed the respondent for four years as a labourer. He could not find suitable accommodation for his Lithuanian employees in 2003, so he bought a house for them. The respondent also lived in this house and he helped him set up a bank account. The rent for the house was €900 a month, so he charged each employee €45 per week regardless of how many were in the house. The only other deductions made were in respect of gas and electricity.

He said that the employee knew what the deductions were for and never complained about them.

He had asked another employee (TS) to explain the deductions to the respondent. He admitted that he had not given the respondent a written contract or written terms and conditions, nor was he aware that he should get written consent from the respondent for the deductions made. It was all verbal. He said that his word was his bond.

The book-keeper/secretary (IC) gave evidence that she dealt with the employees wages, and assisted in the setting up of bank accounts for them. She assumed that TS would have explained the deductions to the respondent, as he had done with other employees. She said that all the employees received a payslip every week which showed any deductions made, and that all of them were aware of these deductions.

Respondent's case:

The respondent gave evidence that his employer did not explain the deductions to him, but TS did. He asked how much rent he should pay and TS said €45 per week. It was his first job in Ireland, so he accepted the deductions. He did get information related to this on his payslip, and knew that his accommodation was deducted. TS got him the job, and he was happy working with the company.

Appellant's closing submission:

KH admitted that he had no written consent from the employees for the deductions made. He relied on TS to explain this to them. KH's word was his bond. He purchased accommodation for the employees and deductions were clearly set out in their payslips. The deductions were fair and reasonable under the act. If errors were made the money was refunded.

Respondent's closing submission:

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As per section 5 (2) of the Act, the employer should not have made deductions from his wages. The employer must give the employee notice in writing, it is not good enough to assume the employee was aware of his rights. There was no evidence that he got a rent book or bills. The Rights Commissioner was correct in his findings.

Determination:

The Tribunal carefully considered all the evidence adduced and documents presented during the hearing. It is the finding of the Tribunal that the mutual arrangement entered into was reasonable, fair and transparent. Moreover, the members of the Tribunal are satisfied that the details of the arrangement were clearly communicated to the respondent in a fashion that was not ambiguous.

Having regard to all the circumstances and acknowledging a technical breach of the legislation it is the determination of the Tribunal that the appeal against the recommendation of the Rights Commissioner succeeds.

Therefore, the decision of the Rights Commissioner is set aside.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)