

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employer

PW23/2009

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

Employee

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr J. Horan
Mr C. Ryan

heard this appeal at Dublin on 2nd July 2009

Representation:

Appellant :

Mr. Breffni O'Neill, Construction Industry Federation,
Construction House, Canal Road, Dublin 6

Respondent :

Mr David Heffernan, B.L., instructed by Lawlor, O'Reilly & Co.,
Solicitors, 43 Upper Gardiner Street, Dublin 1

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employer against the decision of the Rights Commissioner Ref:r-058769-pw-07/TB dated 15th January 2009

The employer is hereinafter referred to as the appellant and the employee as the respondent.

Preliminary issue:

At the outset the employer's representative stated that the claim was lodged by the employee with the Rights Commissioner on 13th November 2007 and his employment ended on 11th May 2007 which is outside the six month time limit as stipulated under Section 6 (4) of the Payment of Wages

Act, 1991. His date of cessation of employment and his date employment commenced was verified through letter from the Revenue Commissioners which dates were submitted by the employer through form P.35L. The last day the employee worked was 20th April 2007 and he was finished on the system on 11th May 2007 which was the official record. There was no record of him receiving a P.45. The employee's hours were erratic and some weeks he was paid by cheque and others by direct debit. When the final cheque was received by the employee on 11th June 2007 he was no longer in the employment of the employer. This payment which was made on 11th June 2007 should have been made on 20th April 2007. It was submitted that the date of contravention was the date the employment ended, i.e. 20th April 2007 therefore the claim is out of time.

Counsel on behalf of the employee stated that the employee worked a back week and this money only became due a week later. Therefore, he was owed the last weeks wages in addition to the last two weeks worked. He commenced his employment on 15th January 2007 and the first payment he received was on 9th February 2007. The final payment was made on 11th June 2007 and this was the first date the employee knew of the contravention. It was submitted on behalf of the employee that his claim was lodged within the required six month time limit

Documentation in respect of payments was submitted to the Tribunal however the employer did not have cheque books when requested by the Tribunal.

Employee's case:

It was the employee's case that he did daily work sheets and sent them to the office either by mail, fax or by hand therefore the employer should have all the records. He was not paid for the week ending the 13th April, a breakdown of which was outlined to the Tribunal, and the following week, i.e. 16th April. It was always an issue getting paid and he felt guilty looking for his wages. The employer's representative stated that while a payment was made for week ending 13th April it related to the previous week i.e. week ending 6th April 2007

The Tribunal was told that the finance person was on holidays when paper work was sought.

The Tribunal then adjourned for an hour to allow the employer time to secure the necessary documentation.

The hearing resumed however the respondent's representative told the Tribunal he was unable to secure the documentation.

Employer's case:

The managing director stated that the employee was paid what he was due and he did not carry out any work in June/July 2007. The last payment was made in June for work carried out in April. There was no mention of April payments at the Rights Commissioners hearing.

In cross-examination witness stated that employees get time sheets and they have to hand them in or fax them and they are not always sent in immediately. Witness understood this claim was out of time therefore he did not bring work sheets up to 11th May 2007. There was confusion in relation to the P.45 in that there was a change of secretary and the employer could not locate which Revenue office it had been filed with. Holiday pay was incorporated into the final payment and emergency tax was applied. He did not recall the claimant contacting him in relation to the non-payment of monies. The payment made in June 2007 was without his knowledge. He only became

aware of the June payment on the morning of this hearing.

Determination:

The Tribunal members have carefully considered the evidence adduced in the course of this hearing. By way of dealing with the preliminary point of whether the claim was brought within the period of six months from the contravention to which the complaint relates the Tribunal found that the correct date to take was the date of 11th June 2007. As the complaint was made to the Rights Commissioner on 13th November 2007 the complaint was correctly brought with the six month time limit.

In dealing with the employer's case before the Tribunal the members of the Tribunal found it difficult to follow this case in circumstances where neither party came prepared to demonstrate hours worked and remuneration due. The entire process was somewhat frustrating as a result.

However it does seem to be accepted that the claimant was paid weekly (or thereabouts) from 12th/15th of January to the 6th April 2007. Over the eleven weeks the employee received some €10,702 nett into his account, the last payment being made on the 13th of April.

It seems therefore there remained another five week period unaccounted for up to the 11th of May 2007. Again neither party was able to declare evidence of what if any hours were worked. The employer's evidence was that the employee's last day was 20th of April 2007 (some two weeks after the week ending the 6th April). The employee said there were other days worked but was notable to say which days he had worked.

On this basis, the Tribunal based on revenue document finds that no evidence was adduced which made it proper and appropriate to set aside the Rights Commissioners decision with respect to payments which would be made.

The Tribunal therefore affirms the decision of the Rights Commissioner that the employee be paid €2,2250 in wages and €750 in holiday pay, a total of €3000.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

