

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL OF:**

**CASE NO.**

Employer

PW7/2009

*appellant/employer*

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

Employee – *respondent/employee*

under

**PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr D. Hegarty  
Mr J. McDonnell

heard this appeal at Cork on 3rd September 2009

**Representation:**

Appellant: In person

Respondent: In person

*This case came before the Tribunal by way of an appeal by the employer against the decision of a Rights Commissioner Ref: r-062254-pw-08 JOC dated 2<sup>nd</sup> October 2008.*

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

**Preliminary issue**

**The Evidence**

The decision of the Rights Commissioner was dated 2 October 2008 and was communicated to the parties on 3 October 2008. The legal representative for the employer sent a fax to the Tribunal on 13 November indicating that he wished to appeal the Rights Commissioner's decision herein. Form T1B was then lodged with the Tribunal on 17<sup>th</sup> December 2008. The Tribunal sent a copy of form T1B to the employee on even date. The employee received this copy notice of appeal some day thereafter. The employee confirmed that this was the first and only notice he received of the appeal.

**Determination**

Section 7 of the Payment of Wages Act, 1991 provides:

- (1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner under *Section 6* and, if he does so, the Tribunal shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.
  
- (2) 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.

The use of the word shall in subs. (2) imposes a mandatory duty on the appellant/employer to serve his notice of appeal on the respondent/employee within the six-week period from the date of the communication of the Rights Commissioner’s decision to him. The employer failed to comply with this mandatory requirement. Accordingly, the Tribunal does not have jurisdiction to hear this appeal. Therefore, the decision of the Rights Commissioners dated 2<sup>nd</sup> October 2008 stands.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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