

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

PW198/2008

- *appellant*

TE185/2008

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

Employer

- *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. K.T. O'Mahony B.L.

Members: Mr. D. Hegarty  
Ms. H. Kelleher

heard this appeal at Cork on 3rd July 2009

#### **Representation:**

Appellant: Mr Noel Murphy, IWU, 55 North Main Street, Cork

Respondent: In person

The decision of the Tribunal was as follows:-

**This case came before the Tribunal by way of an appeal against a Rights Commissioner's recommendations: r-063695-pw-08/MMG and r-063696-te-08/MMG dated 14 November**

#### **Appeal under the Payment of Wages Act**

XXXX is identified as the respondent in the title of proceedings here-in at the request of XXXX for whom the employee was working. The appellant's case was that he was employed as a tiler and that his rate of pay should have been that of a grade D construction worker, which would have entitled him to a weekly rate of €566.28 from 1 July 2007 and €580.32 from 1 January 2008. The respondent requested its workers to do overtime at short notice.

It was the respondent's case that it is a manufacturing business, making bathroom pods on

its premises. The appellant was employed as a production operator working in the factory fitting tiles to the floor of the pod. He worked in an assembly line process. While he worked as a tiler he had no specific qualifications but he had to be good with his hands. He was paid €12 an hour, which was one of the highest rates in the country for this type of work. The respondent only employed one qualified person, who was an electrician, to sign off on the legal requirements. The employees are not paid a construction rate because it is a manufacturing company and the claimant was aware of this.

**Determination**

The Tribunal is satisfied that the appellant worked as a production operator in a manufacturing plant and not in the construction industry. As such, he was not entitled to the rate of pay for construction workers. He received the rate of pay as agreed with the respondent. Therefore, the Tribunal upholds, albeit for a different reason, the recommendation of the Rights Commissioner under the Payment of Wages Act, 1991,

**Appeal under the Terms of Employment (Information) Act**

It was the appellant's case that although he had asked for the terms of his employment he had not received them. He did not think that he had been given the company handbook.

The respondent's evidence was that the appellant was given the company handbook which contained the terms and conditions of his employment. The claimant signed for the handbook on 11 September 2007. While the appellant's rate of pay was not included in the handbook it was set out on a separate document, which was also signed by the claimant. There was a grievance procedure in place but the claimant never made a complaint against anyone. The handbook was translated into the Polish. Both of these documents signed by the claimant were produced in evidence.

**Determination:**

The Tribunal is satisfied that the appellant was given his terms of employment. Therefore, the Tribunal upholds, albeit for a different reason, the recommendation of the Rights Commissioner under the Terms of Employment (Information) Act, 1994 and 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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