

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL(S) OF:

Employee

– *appellant*

### CASE NO.

PW193/2008

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

Employer- *respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr M Flood  
Ms M Mulcahy

heard this appeal at Dublin on 22<sup>nd</sup> April 2009  
9<sup>th</sup> November 2009

Representation:

Appellant: In person

Respondent: Tom Murray, Friel Stafford Corporate Recovery, 44 Fitzwilliam Place, Dublin 2

This case came before the Tribunal by way of an employee appealing against the Decision of the Rights Commissioner ref : r-059592-pw-07/JT

The decision of the Tribunal was as follows: -

#### **Determination**

The appellant gave evidence that he was owed €2346.00 by the respondent. The liquidator's representative accepted that this amount was outstanding to the appellant and stated that the appellant was currently being categorised as an unsecured creditor of the respondent company by the liquidator. The appellant claimed that he was an employee, which would entitle the appellant to be categorised as a preferred creditor. The liquidator's representative submitted that the appellant was not an employee but a self-employed contractor.

The essential issue, which fell to be decided by the Tribunal, was whether or not the appellant was an employee of the respondent.

The appellant had been engaged in the delivery of the magazines of the respondent. The appellant spent between 50 to 60 hours per month delivering magazines in the Dublin area. The appellant also delivered magazines in County Cork and this task took about one weekend every two months.

The appellant had been required to submit invoices for hours worked in Dublin and pallets delivered in County Cork. The appellant was paid €12 per hour in Dublin and €250 per pallet in Cork. These facts were uncontroverted.

The liquidator's representative submitted that the fact that the appellant was paid on foot of invoices sixty days in arrears was indicative of the appellant being a self-employed contractor.

The Tribunal heard that the appellant delivered the magazines in a small saloon car, which was the property of the respondent; that the petrol for the car was paid for with a fuel card provided by the respondent; that the appellant only delivered the magazines of the respondent and was not engaged in the delivery of magazines for any other firm. The appellant had neither been furnished with a contract of employment nor any other written contract setting out the terms under which he had been engaged. The appellant had received no payslips and had no tax documentation of any kind. In particular, the payments to the appellant had been made without deduction of either PAYE or PRSI, nor had there been any deduction of Relevant Contracts Tax. The Tribunal notes that there was no controversy as to fact in relation to these matters either.

Having carefully considered the uncontroverted facts of this case and the submissions of the parties the Tribunal finds that the appellant was an employee of the respondent at all material times.

The respondent had by letter dated 13<sup>th</sup> September 2007 deducted various sums from the appellant's invoice totalling €1036.68 and a cheque in that amount to the appellant had been stopped. The Tribunal finds that these deductions were unlawful deductions from the appellant's wages and therefore the Tribunal disallows these deductions.

The claim under the Payment of Wages Act, 1991 succeeds and the Tribunal awards to the appellant the sum of €2 346.00 net of tax. The Tribunal sets aside the decision of the Rights Commissioner accordingly.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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