

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

-Appellant (Employer)

PW96/2008

against the decision of the Rights Commissioner **PW54781/07/MR**
In the case of

-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. M. Forde
Mr. J. McDonnell

heard this appeal at Killarney on 14 September 2009

Representation:

Appellant:

Mr. Liam Coghlan, Liam F. Coghlan & Co. Solicitors,
Woodhaven, Ballycasheen Upper, Killarney, Co. Kerry

Respondent:

Mr. Daniel Snihur, Independent Workers Union,
55 North Main Street, Cork

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by an employer (the appellant) against a decision of the Rights Commissioner under the Payment of Wages Act, 1991 **PW54781/07/MR**, in the case of an employee (the respondent).

It was common case that the employee had over two years' service with the employer at the time of his termination of employment, 20 June 2007. On 13 June 2007 the respondent had given the employee one week's notice of the termination of his employment. The employee had been given his contract of employment, describing him as a tiler, in 2005. The employee refused to sign the contract.

The employer's position was that the employee had been a trainee tiler and had been paid in excess of the rate for a trainee tiler. The employee had worked in a shoe factory prior to coming to Ireland and had told the respondent that he had a bit of tiling experience. The employee had been taken on

for assessment by the foreman and while he was a good worker he was slow and had never worked on his own. The employer provided in-house training for trainee tilers and its own system for grading them.

The employee's position was that he had learned to tile from his uncle in Poland who works in construction. On his first day with the respondent he was directed to tile the showers in the spa section of a major hotel project in Killarney and was left to get on with it. He was not shown anything. On several occasions he had been working on his own for the employer.

Determination

Having examined the records produced by the employer the Tribunal unanimously finds that the employee had received his statutory entitlements to annual leave.

During the appeal the employer conceded that, as the employee had only received one week's notice, he was entitled to a further week's pay in lieu of notice in accordance with his statutory notice entitlement. The remaining issue before the Tribunal was whether the employee had been paid at the correct rate. The Tribunal, by majority, with Mr Forde dissenting, finds that the employee, by virtue of his contract of employment, was entitled to be paid as a tiler.

Accordingly, the Tribunal varies the decision of the Rights Commissioner and awards the amount of €3,300 in respect of wages for 22 weeks' underpayment and €690 in respect of notice amounting a total award of €3, 990-00 under the Payment Of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)