

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

TE71/2008
PW97/2008

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

EMPLOYEE

-v-

EMPLOYER

under

**PAYMENT OF WAGES ACT, 1991
TERMS OF EMPLOYMENT (INFORMATION) ACTS, 1994 AND 2001**

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. P. Casey
Mr K. O'Connor

heard this appeal at Cork on 20th November 2008

Representation:

Appellant :

Mr John Cronin, 6 Ashbrook, Carrigtohill, Co. Cork

Respondent :

Not present or represented

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employer against the decisions of a Rights Commissioner Ref: r-055708-pw-07 JOC and r-055704-te-07 JOC dated 14th March 2008

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

Appellant's case:

The employer is a sub-contractor in the business of demolition. He is currently in serious financial difficulty partly due to non-payment for work that he has carried out.

The employee is a Polish national and as he is no longer at his original address and the employer did not succeed in contacting him.

The Evidence Preliminary issue:

The employer wished to appeal both the Rights Commissioner's decision and recommendation, both of which are dated 14th March 2008, under the abovementioned Acts. It was the employer's evidence that he received the decision and recommendation on 24th April 2008 by registered post dated 22nd April 2008 but he did not have the original envelope with him. On 14th May 2008 the Tribunal received a letter from the employer stating that he wished to appeal the Rights Commissioner's decision and quoted twice the reference number of the recommendation under the Terms of Employment (Information) Act 1994. The reference number for the Payment of Wages Act 1991 decision was not quoted. The Tribunal secretariat wrote to the employer on even date, 14th May 2008, enclosing Form T1B, requesting him to complete the said form and return it to the Tribunal. In this letter it was indicated that the appeals should be lodged with the Tribunal within six weeks of receipt of the Rights Commissioner's decision/recommendation. The appellant/employer's Form T1B was received by the Tribunal on 10th June 2008 indicating appeals under both of the abovementioned Acts.

According to the employer when he telephoned the Rights Commissioners' office he was advised to lodge the appeal and the Tribunal would deal with the matter. The employee had not contacted him seeking payment of the awards. He did not notify the employee of the appeal under the Payment of Wages Act, 1991, as he did not have an up-to-date address for him. The employer stated that the Rights Commissioners office told him they would notify the employee of the appeal.

Determination:**The Appeal under the Payment of Wages Act**

Even if the Tribunal were to accept that the employer received the Rights Commissioner's decision under the Payment of Wages on 24th April 2008 he failed to lodge the appeal within the six-week period from that date as required by section 7 (2) of the Payment of Wages Act 1991. Nor was a copy notice of the appeal sent to the other party viz the employee as required under section 7 (2) (b) of the Act. Accordingly, the Tribunal has no jurisdiction to hear the appeal under the Payment of Wages Act 1991.

The Appeal under the Terms of Employment (Information) Acts

The employer was unable to produce any documentary evidence to support his contention that the recommendation of the Rights Commissioner, dated 14 March 2008, was not received by him until 24 April 2008.

Section 8 (2) (a) of the Terms of Employment (Information) Act 1994 sets out the time limit for lodging an appeal, it provides :

An appeal under this section shall be initiated by the party concerned giving, within 6 weeks of the date on which the recommendation to which it relates was communicated to the party 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 recommendation.

Section 25 of the Interpretation Act, 2005 deals with the service of such documents, it provides:

Where an enactment authorises or requires a document to be served by post, by using the word “serve”, “give”, “deliver”, “send” or any other word or expression, the service of the document may be effected by properly addressing, prepaying (where required) and posting a letter containing the document, and in that case the service of the document is deemed, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Having considered the evidence and the latter provision the Tribunal is not satisfied that the employer has proved the contrary. Accordingly, the Tribunal deems that the recommendation was delivered in the ordinary course of post and communicated to the parties on or around 18th March 2008. It follows that the employer’s letter indicating his intention to appeal which was lodged with the Tribunal on 14th May 2008 is outside the statutory time limit for initiating an appeal under the Act. Accordingly, the Tribunal has no jurisdiction to hear the appeal under the Terms of Employment (Information) Acts 1994 and 2001.

The decision and recommendation of the Rights Commissioner under the respective Acts stand.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

