EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	CASE NO.
EMPLOYER - appellant	PW200-PW201/2008

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

EMPLOYEE - respondent

and

EMPLOYEE - respondent

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. P. Casey
Ms. P. Doyle

heard this appeal in Mallow on 1 October 2009

Representation:

_____

Appellant(s):
Mr. Conor O'Connell, Construction Industry Federation,
Construction House, 4 Eastgate Avenue, Little Island, Cork

Respondent(s):
Mr. Daniel Snihur, Independent Workers Union,
55 North Main Street, Cork

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an appeal against Rights Commissioner Recommendations r-065284-pw-08 and r-064427-pw-08.

Opening the case, the appellant's representative said that the appellant made windows and frames for the construction industry and that, though it did some fitting of windows, much of its business was manufacturing-based and it was not subject to a REA (registered employment agreement) according to NERA (National Employment Rights Authority).

The respondents' representative contended that the appellant was in breach of section 7 (2)(b) of the Payment of Wages Act, 1991, in that the respondents had not been served with a copy of the appeal notice by the appellant. The appellant's representative replied that the appellant had documentation showing that correspondence had been returned with the designation "gone away".

Giving sworn testimony, MOS (a director of the appellant) stated that the appellant had an office and factory and that the appellant had had a visit from a NERA inspector who had taken away information. This inspector, when asked, had said that the appellant was not bound by a REA and had furnished an e-mail after which the appellant heard no more from NERA.

Asked how NERA's finding could be binding, MOS replied that NERA had the legal right to compel the appellant to pay backdated money to an employee such as had been specified by a rights commissioner.

MOS stated that about forty per cent of the appellant's employees installed windows. When it was put to her that a respondent (ST) would say that nearly ninety per cent of the appellant's employees installed windows she replied that this was not correct.

Asked if it was true that an employee had written seeking a payrise, MOS replied:

"I said it was being reviewed but I did not give it."

Giving sworn testimony, ST (one of the respondents) said that he had come to Ireland in 2005 and had worked for two-and-a-half years fitting doors and windows. He confirmed that he had sought a payrise from the appellant and had sent two letters to MOS who had told him that he could go if he did not want to work for the appellant. ST also explained his skills and experience to KM (a member of the appellant's management) who had said that he would speak to ST's managers.

ST stated that he had worked in this profession in Poland for six years but that he only had proof with him in respect of two of those years. He said that the appellant's system was to have two-man teams. No-one worked alone. ST spent about a year-and-a-half on a building site in Ballincollig. He worked with Poles who had come to Ireland after him. They were not more experienced than him. About fifteen people arrived after him. His skills were good. He was not a helper. He was a professional doing a job fitting windows and doors.

ST told the Tribunal that men who had worked with him had got a payrise after some time. After about a year he had thought that he should be paid a higher hourly rate and disputed his pay.

When it was put to ST that neither he nor any union had ever raised a formal complaint he replied that he had simply asked for a pay increase. He disputed that the only people who had got more than him had been more experienced than him.

Asked if he had thought that he had been a fitter or an assistant fitter, ST replied that he had not known the payrates but that he had found out from others.

Giving sworn testimony, DW (a former trainee contracts manager with the appellant) said that he had been employed when ST had worked there and that he had overseen ST and others as their boss on sites. ST had just worked on building sites fitting windows and doors.

Asked if ST had worked as a helper to another man, DW replied that he "always went to him (ST) to get things going". Again asked if ST had been a helper, DW replied: "No, he was fitting." Asked if there had been any employees with more experience than ST, DW replied: "They were all equal: all fitters."

DW confirmed that the appellant had a manufacturing facility which formed part of its business and that, as a fitter, a man would be expected to do everything.

HK (the second respondent) did not attend the Tribunal hearing to contest the appellant's appeal in respect of him.

In his closing submission the appellant's representative stated that an employee was obliged to follow an employer's formal procedures and that on-site work represented less than fifty per cent of the appellant's business. The appellant was not, therefore, subject to a registered employment agreement and the only body to rule on pay disputes was the Labour Court.

The respondents' representative argued that the Employment Appeals Tribunal could hear every case without being obliged to rule in a particular way. ST was a fully skilled worker. Many of the appellant's workers worked on sites installing windows and doors. This was skilled work which could not be done by an unskilled man.

Determination:

Having carefully considered the evidence presented, the Tribunal accepted the evidence of the appellant.

Accordingly, the Tribunal allows the appeals against Rights Commissioner Decisions r-065284-pw-08 and r-064427-pw-08 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)