

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE - *appellant*

CASE NO.
PW36/2009

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 M. Gilvarry

Members: Mr. D. Morrison
Mr. M. McGarry

heard this appeal at Castlebar on 8th September 2009

Representation:

Appellant: Ms. Martina Weir, SIPTU, Mayo No. 2 Branch, Moneen Road, Castlebar, Co. Mayo

Respondent: Purdy Fitzgerald Solicitors, Kiltartan House, Foster Street, Galway.

The decision of the Tribunal was as follows: -

Preliminary Issue

An application to decline jurisdiction was made by the respondent under S. 7(2) of the Payment of Wages Act, 1991, which provides that:

“An appeal under this section shall be initiated by a party by his giving, within 6 weeks of the date on which the decision to which it relates was communicated to him-

- (a) 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 decision, and
- (b) a copy of the notice to the other party concerned.”

Having heard the evidence from the claimant’s representative the Tribunal is satisfied that s.7 (2)(b) above has been complied with and find that it does have jurisdiction to hear the appeal under the Payment of Wages Act, 1991, against Rights Commissioner Recommendation **r-055218-pw-07/EOS.**

Appellants Case

The claimant commenced work with the respondent on the 13th of March 2001. The claimant was employed to install dry wall and suspended ceilings at a rate of €14.00 per hour, mainly working across the west and midlands of the country. The claimant did not receive subsistence payments. The claimant clocked in and out every day, starting at 7.00am and finishing at 6.00pm Monday to Friday and occasionally 7.00am to 3pm on a Saturday returning at 5.00pm after travelling back. The claimant is unsure if he received all his overtime payments, as he did not know how his wages were calculated. The claimant was paid at the rate of a Grade D general operative, but believes he should have been paid at Grade B because he was responsible for the other employees on his team. The claimant's Contract of Employment states that he was employed for a 39-hour week as a 'General Operative' without specifying his rate of remuneration.

Cross Examination

The claimant was employed in the metal construction of suspended ceilings and also the removal of old ceilings and walls. The claimant maintains he was at the respondent's disposal after his finishing time of 5.00pm; several times during the course of his employment the claimant was asked to do something by phone after 5.00pm or to load the van for the next days work. The claimant clocked in and out sporadically and stopped when the key to the storeroom where the clocking machine was located was removed from him. The claimant did not 'attend' a tradesman.

Respondents Case

The claimant was a labourer for ceiling fixers; he never worked to a tradesman but reported to the foreman. The claimant was not required to clock in or out. The respondent pays staff in the morning for going to work but they are not paid for going home in the evening. The respondent does not know how the claimant got the key for the storeroom but had to ask for it back as he had left it out for other people to take. The vans were normally loaded in the morning for the days work very rarely in the evening.

Cross Examination

There are no plasterers for the ceilings only 'tape and joint' fixings, the claimant might have fitted the plasterboard. The respondent was given the contracts for the employees from the Construction Industry Federation. If any of the other staff finished after 5.00pm they would highlight this and would be paid for it.

Determination

Having carefully considered the evidence adduced by both parties the Tribunal have decided to uphold the decision of the Right Commissioner. The Tribunal make a determination to the like effect as Rights Commissioner Recommendation r-055218-pw-07/EOS that the respondent pay the appellant the sum of €4,036.06.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)