

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYER

PW104/2009

PW105/2009

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

EMPLOYEE

and

EMPLOYEE

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy, S. C.

Members: Mr. B. Kealy
Ms. N. Greene

heard this appeal at Dublin on 24th February 2010

Representation:

Appellant: In person

Respondents: In person

This case came before the Tribunal as a result of an appeal by an employer (“the company”) against the decisions of the Rights Commissioner under the Payment of Wages Act, 1991 r-071800-pw-08 JOC, LS, and r-071799-pw-08 JOC, BS, in the case of two employees (“the employees”).

The decision of the Tribunal was as follows:-

Company’s Case:

The company gave evidence to the Tribunal that the employees were in receipt of the correct rate of pay at the time of employment. The company told the Tribunal that the agreed rate of pay with BS was €850 nett per week, which was grossed up by the payroll system and amounted to over €1000 gross per week. He told the Tribunal that he did not meet LS, he was hired as a labourer by BS, but agreed his rate of pay as €350nett per week with BS.

The company told the Tribunal that the employees did not work a week in hand, wages were paid on a Friday for work carried out up to and including the Friday. The company paid €1000, without deductions, to BS for a period of three weeks at the start of his employment because at this stage the payroll system was not operating.

The company showed payslips to the Tribunal and explained that the company accountant grossed up the figures from the nett payments.

The company told the Tribunal that there was an incident with a deduction from pay that had occurred when the employees were paid one weeks pay in advance because the company accountant was going on holidays. The following Monday the employees did not arrive for work. The company received a phonecall from an employee saying that the site was locked. He sent another employee to the site to open up and he called and cancelled the cheque that had issued the previous Friday.

The employees arrived for work the next day and the company had a cheque drawn up on the Thursday to cover for the week less one day. The company told the Tribunal that payment in respect of one day was deducted from the employees for non attendance at work.

Employees' Case:

LS told the Tribunal that he was hired as a labourer for €600 per week. He said he received €350nett per week and that he should have received €250 more. He told the Tribunal that this continued for 6 weeks. He told the Tribunal that he contacted the company and was told that he was on emergency tax. He also told the Tribunal that he had been hired by BS and agreed his rate of pay directly with him.

LS told the Tribunal that the reason he missed work on the Monday was because BS could not go to work and they travelled together in BS's van. He tried to contact the company office but could not get through.

BS told the Tribunal that he worked for the company for three weeks before he received payment. He then received payment by cheque which he lodged to his bank account. BS told the Tribunal that he had no recollection of receiving three cheques for €1000 each. He got one cheque for €1700 for two weeks. BS did not have a copy of a bank statement to show to the Tribunal. BS contacted the company to complain because the cheque was for the wrong amount of pay. BS was told that it was because of his tax situation.

Determination:

The company was not in attendance at the Rights Commissioner hearing. The employees received a decision from the Rights Commissioner awarding them alleged unpaid wages and alleged unpaid holiday pay.

Despite the conflicting evidence heard, on the balance of probability, the Tribunal prefers the evidence of the company. Accordingly, in allowing the appeal, the Tribunal upsets the decisions of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

