

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE *-employee*

CASE NO.
PW146/2009

EMPLOYER
- employer
EMPLOYER

PW135/2009

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

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BI

Members: Mr. D. Winston
Mr J. Jordan

heard this appeal at Dublin on 16th March 2010

Representation:

Employee: No appearance by or on behalf of the employee

Employer: Mullany Walsh, Solicitors, 74 Pembroke Road, Dublin 4

This case came before the Tribunal by way of both the employer and employee appealing against the Decision of the Rights Commissioner ref (r-068862-pw-08/TB) dated 24th April 2009

The decision of the Tribunal was as follows: -

Employee's Case

There was no appearance by the employee on the day of the hearing, however the Tribunal were satisfied that the employee was notified of the hearing. The employee had made previous contact with the Tribunal secretariat explaining that he would be unable to attend.

Employer's Case

A director of the company gave evidence on behalf of the Employer. He produced in to evidence the job description of the employee and the employee's contract of employment. The employee

was employed as an assistant site supervisor. When the employee commenced with the company he had negotiated the employee's salary with him. This salary was based on the earnings of a tradesman within the construction industry and was inclusive of all overtime. He also gave petrol costs to the employee. The employer specialises in fitting out premises where time deadlines have to be met, towards the end of the contracts employees would have to work overtime to achieve these deadlines. He had explained to the employee on his commencement that the fit outs could last 8 – 12 weeks but otherwise he could be sitting in the office or as a helper on another site.

The employee had commenced work with the employer on the 5th November 2007 so by the end of the year he had accrued three days holidays plus public holidays. During this period they were working on a shop that traded through the fit out, so they had to work odd hours. In January 2008 the employee approached him and said that he should be paying him overtime, the employer gave him four days off as time in lieu for overtime. From January to February 2008 they worked on a shop fit out and the normal working hours for this was 8.00 am to 4.00pm. From mid February to March 2008 the employee's hours were normally 4.00pm to 1.00am or 2.00am. This was on an office fit out that required the employee to work about two weekends. May to June the employee's normal working hours were 7.30am to 4.30pm and he was working on a fit out of a restaurant. On the 30th June 2008 the employer was forced to let the employee and another go, as he had not enough work to retain them. The employee told him that he owed him overtime, notice and ten days holidays.

In reply to questions from the Tribunal, he had not kept a record of the hours worked by the employee; he had paid the employee for the month of July. He accepted that he owed the employee ten days holidays. He was aware that he should have given the employee a months notice based on his contract with him.

Determination

During the course of the hearing the employer admitted he had only given the employee one week's notice and he should have given him four weeks based on his contractual obligations. The employer also admitted he owed the employee outstanding holidays.

Having carefully considered the above and all the evidence adduced the Tribunal affirms the Decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)