

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

UD1187/2009

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

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden B.L.

Members: Mr. F. Cunneen

Ms. E. Brezina

heard this appeal at Dublin on 21st April 2010

Representation:

Appellant:

Mr. Peter McInness, McDowell Purcell Solicitors, The Capel Building,
Mary's Abbey, Dublin 7

Respondent:

Ms Una Cassidy, Denis I Finn Solicitors, 5 Lower Hatch Street, Dublin 2

The determination of the Tribunal was as follows:-

This case came to the Tribunal by way of an appeal by the employee against the recommendation of the Rights Commissioner r-071525-ud-08-TB.

As the appellant claimed that he was constructively dismissed it was proper that he go into evidence first.

Appellant's case

The appellant served an apprenticeship with the respondent and after qualifying in 2006 he continued to work for the respondent. During the entire period of his employment the appellant never received pay slips nor was he furnished with a contract of employment. The appellant was also being paid at a rate less than that laid down in the Registered Employment Agreement for the construction industry.

The appellant was on temporary lay off and sought to have the above issues addressed before he would return to work. The respondent failed to address these issues to the satisfaction of the

appellant and therefore the appellant felt he had no alternative but to resign his position with the respondent.

After his employment was terminated the appellant complained to NERA and they were successful in obtaining arrears of wages and pay slips for the appellant.

Respondent's case

The respondent had placed the appellant on temporary lay off but had contacted him with an offer to return to work. The respondent was aware that the appellant had employment related issues that needed to be resolved but he was not in a position to deal with them immediately and expected the appellant to return to work.

When the appellant refused the offer to return to work the respondent took it that he had resigned of his own volition. The respondent was later contacted by NERA who carried out an inspection of his employment records and found that the appellant was due arrears of wages. The respondent duly paid these arrears to the appellant.

Determination

The evidence before the Tribunal did not persuade it that the appellant had no alternative but to resign his position. The Tribunal does not accept that the appellant's request for information and clarification and other discrepancies in his employment by the respondent warranted resignation.

Therefore the Tribunal upholds the recommendation of the Rights Commissioner r-071525-ud-08-TB.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

