

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER
-Appellant (Employer)

CASE NO.

PW162/2009

against the decision of the Rights Commissioner **PW73101/08/MR**
In the case of

-Respondent (Employee)
EMPLOYEE
under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. D. Hegarty
Ms. P. Doyle

heard this appeal at Cork on 22 July 2010

Representation:

Appellant:

Mr. Conor O'Connell, Construction Industry Federation,
Construction House, 4 Eastgate Avenue,
Little Island, Cork

Respondent:

In Person

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by an employer (the appellant) against a decision of the Rights Commissioner under the Payment of Wages Act, **PW73101/08/MR**, in the case of an employee (the respondent).

Determination

In early June 2008 the employer's contracts manager (CM) had a requirement for more operatives to assist in the laying of a waterproof membrane on a particular project in the Cork area. Two existing workers with two years service with the employer recommended the employee and another. As a result the employee and his colleague attended the project on 4 June 2008 and met CM where application forms were given to both of them and the scope of the work was discussed.

At least some part of this discussion centred on the issue of accommodation as the employee and his colleague were in excess of 150 miles from their normal residence in this jurisdiction. It is the employer's position that when accommodation was discussed the employee said he had no accommodation and in those circumstances CM offered to arrange accommodation and told the employee that he would be charged €100-00 per week in this regard. This was the same rate as that paid by the workers who had recommended the employee to the employer. CM noted, in handwriting, on the application form both the rate of pay and the €100-00 per week deduction for accommodation.

The employee's position is that accommodation was not raised as an issue on 4 June 2008 and he merely went along with those who had recommended him and they found his accommodation. His position is further that the note of the deduction for accommodation had not been made by CM when he returned his completed application form. He accepted that he never paid any money for accommodation other than the deduction from his wages.

The employee was seeking the return of €1,000-00 for ten deductions of €100-00 each for accommodation plus another €654-00 deduction on 26 September 2008 at the end of the employment. The Tribunal is satisfied that the deduction of €654-00 was to account for a cheque supplied to the claimant the previous week when, due to an administrative error, the payroll for Cork employees was not run and the €654-00 deduction was to reflect the advance made the previous week.

In regard to the deductions for accommodation the Tribunal is satisfied that the question of accommodation was raised with CM on 4 June 2008 and is further satisfied that CM's notation of the €100-00 per week deduction for accommodation was on the application form before the employee signed. In such circumstances the Tribunal finds that the employee had therefore given written consent to the deduction for accommodation. Accordingly, the decision of the Rights Commissioner under the Payment of Wages Act, 1991 is set aside

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)