

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant*

CASE NO.
PW252/2009
TE267/2009

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

EMPLOYER *-respondent*

under

PAYMENT OF WAGES ACT, 1991 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr. W. O'Carroll
 Mr T. Kelly

heard this appeal at Limerick on 12th May 2010

Representation:

Appellant: Mr. Noel Murphy, Independent Workers Union, 55 North Main
 Street, Cork

Respondent: No appearance or representation on behalf of

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employee against the recommendation of a Rights Commissioner r-077643-pw-09/MH, r-077644-wt-09/MH and r-077645-te-09/MH. The Rights Commissioner complaints failed for lack of prosecution.

Claimant's Case

The claimant was employed from the 7th of November 2006 until the 31st of October 2008 to do general gardening tasks and general operative work for the respondent; a construction company. The claimant was involved in attic insulation and helping with scaffolding on occasion.

The last 2 months of his employment the claimant worked as a night watchman. The claimant did not receive a contract of employment or any terms and conditions of employment. The claimant did not receive notice that his employment was being terminated.

The claimant was paid the National Minimum Wage of €8.65 per hour, although he considers

himself a construction worker and therefore governed by the Construction Industry Registered Employment Agreement. For the final 10 weeks of employment the claimant was short €72.60 per week in comparison to the Construction Industry R.E.A. general operative rate. For the sixteen weeks prior to that, the claimant was paid €318.39 short of the Construction Industry R.E.A. general operative rate. In the 26-week period prior to the claimant's termination the difference in actual pay and the Construction Industry R.E.A. general operative rate equates to €5,820.24.

Determination

The Tribunal are of the unanimous view that the claimant worked with a construction company.

On the uncontested evidence of the claimant the Tribunal award the claimant compensation of €5820.24 under the Payment of Wages Act, 1991 and upsets the recommendation of the Rights Commissioner.

The Tribunal finds that the claimant did not receive Terms and Conditions of Employment and award him €250.00 under the Terms of Employment (Information Act,) 1994 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)