

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
TE6/2010

- *appellant*

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

EMPLOYER

- *respondent*

under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr. W. O'Carroll
Ms H. Murphy

heard this appeal at Loughrea on 16th June 2010

Representation:

Appellant: D.M. O'Connor & Co., Solicitors, Cross Street, Galway

Respondent: Ms Angela Grimshaw, Peninsula Business Services (Ireland) Limited, Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

This case came before the Tribunal by way of an employee appealing a recommendation of a Rights Commissioner ref: r-080031-te-09/GC

The decision of the Tribunal was as follows:-

Appellants Case

The appellant gave evidence that she commenced work with the respondent in September 2008.

During her first week of employment with the respondent, the appellant requested a contract of employment from her manager, FM. FM told the appellant that the contracts for staff were not ready. In November the appellant asked the respondent, CC for a contract of employment. CC told the appellant that it would not be ready for a few weeks. In January 2009 the appellant enquired about the contract of employment and FM again told her that it was not ready.

The appellant told the Tribunal that because she had requested her contract a few times she was distressed about not receiving it. The respondent did not explain, to the appellant, the reason for the delay in providing her with a contract.

The appellant confirmed that she had received an employee handbook from the respondent but this did not contain information about her hours of work or her wages. The handbook provided was generic and did not name the appellant specifically.

The appellant agreed that she had received a number of documents from the respondent, none of which were a contract. The appellant received a post it with information of hours and rate of pay

Respondent's Case

The respondent told the Tribunal that the appellant commenced working in the crèche on 8th September 2008. The respondent interviewed the appellant for the position to assess suitability prior to her appointment. During the interview the respondent told the appellant that she would receive an hourly rate of pay of €9.10. The appellant was informed of her hours of work on a weekly basis.

The respondent told the Tribunal that the appellant did not receive her contract when she commenced employment. The respondent had hired a third party firm to put a package together, contracts of employment, employee handbooks, and health and safety statements. The respondent received the package from the firm in September and intended to distribute the documents to staff but noticed typographical errors in the contracts and could not distribute them. However, the respondent did distribute the handbooks to employees.

The respondent told the Tribunal that the contracts were not distributed to employees until April 2009 because every time she received them she noticed another error and they would have to be returned to the firm.

The respondent confirmed that the contracts were ready to distribute in April 2009 but when the appellant's employment ended on 20th May 2009 she had not provided her with her contract.

Determination

Section 3 of the Terms of Employment (Information) Act, 1994 and 2001 provides that there is a mandatory obligation on an employer to provide a written statement of terms of employment to an employee, not later than 2 months after the commencement of an employee's employment with the employer. Albeit that the respondent intended to issue contracts from in or around October 2008 and was delayed due to typographical errors, when the contracts were finalised in April 2009 the respondent failed to give the claimant her contract.

Therefore, the Tribunal varies the recommendation of the Rights Commissioner, ref: r-080031-te-09/GC and awards the claimant €1400, being the equivalent to four weeks pay, under

the Terms of Employment (Information) Act, 1994 and 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

