

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER -*Appellant*

CASE NO.
PW175/2009
PW176/2009

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

EMPLOYEE -*Respondent A*

EMPLOYEE -*Respondent B*

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B. L.

Members: Mr M. Carr
Mr F. Barry

heard this appeal at Dublin on 31st August 2010

Representation:

Appellant: Mr. Martin Hayden B.L. instructed by O'Rourke Reid & Co., Solicitors,
Pepper Canister House, Mount Street Crescent, Dublin 2

Respondents: Mr Michael Landers, Impact, Assistant General Secretary,
Nerneys Court, Dublin 1

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal by an employer (the appellant) against the decisions of the Rights Commissioner references: r-054262-pw-07/JT and r-049593-pw-06/JT.

Preliminary Issue:

The decisions of the Rights Commissioner were dated 24th June 2009. The employer received the decision on 26th June 2009 and subsequently filed form T1B to the Tribunal, within the stipulated time limit for such an appeal.

Representation for the employer (the appellant) submitted that while the employer had not served a notice of appeal to the other side within the appropriate period, the Tribunal had copied the notice of appeal and this was sufficient to satisfy S.7(2)(b). It was also submitted that the Tribunal had jurisdiction to extend the time period by virtue of the regulations set out in S.I.351/1991.

Representation for the employees (the respondents) submitted that as the employer had not served the employees with a notice of appeal, as required by S.7(2)(b), the Tribunal did not have jurisdiction to hear the appeals.

Determination on Preliminary Issue:

The Tribunal carefully considered the submissions of both parties. Section 7.(2) of the Payment of Wages Act, 1991 provides:

An appeal under this section shall be initiated by a party by his giving, within 6 weeks of the date on which the decision to which it relates was communicated to him-

(a) a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under subsection (3) and stating the intention of the party concerned to appeal against the decision, and

(b) a copy of the notice to the other party concerned.

The Tribunal finds that the word “*shall*” imposes an obligation on the appealing party to serve the other side with a notice of the appeal. The appellant in this case failed to comply with S.7 (2)(B) of the Act. Consequently, the Tribunal finds that it does not have jurisdiction and dismisses the appeals against the decisions of the Rights Commissioner (references: r-054262-pw-07/JT and r-049593-pw-06/JT).

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)