

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

-appellant

CASE NO.
PW25/2010

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

EMPLOYER

-respondent

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr M. Murphy
Mr O. Nulty

heard this appeal at Navan on 10th June 2010
and 20th October 2010

Representation:

Appellant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent: Ms Muireann McEnery, 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 appeal by the employee against the recommendation of a Rights Commissioner Ref: r-078738-pw-09/JT. The employee is seeking to have the recommendation upset.

Appellant's Case

The appellant commenced employment in the 1st of September 2006 as a stonemason. The appellant worked a 40-hour week, generally reduced to 32 hours due to weather conditions, he was paid hourly or by metre; the payment method varied between cash and cheque.

The appellant returned home with permission from the respondent on the 28th of November 2008 as his wife was having a baby. The respondent was aware that the appellant would be away for between 1-3 months and had authorised the leave in accordance with that time frame. The appellant does not recall the amount on the cheque he received when he left to go home but knows it was for 24 hours work plus some additional hours that had been previously worked. Additional hours worked were not necessarily paid with the following weeks pay. The appellant was not paid any

annual leave.

The appellant received the payslip dated the 1st December 2008 just before Christmas but did not receive the amount of €3000.00 as stated on the payslip. The €3000.00 would equate to extra hours the appellant worked since August, but had not gotten paid for. On receipt of this payslip the appellant contacted the respondent but his calls were un-answered and un-responded to. The appellant used an alternative phone to contact the respondent. The respondent answered and asked for an account number to put the €3000.00 into as per the payslip, the appellant text him a Polish account number. The appellant had closed his Irish account when going on annual leave. The appellant attempted to contact the respondent again after two weeks as he still had not put the money in the account, again the respondent answered when the appellant rang from a different phone number. The respondent said he had lost the appellant's account details and requested here-send them. The appellant sent the account number again, but still did not receive any money from the respondent.

The respondent said he would pay the appellant €100.00-200.00 a week to make up the €3,000.00 payable to him. The appellant collected €100.00 on one occasion. The appellant called to the respondent office for his P45 on the 24th March 2009.

The appellant did not call to the respondent's house before he returned home for Christmas. The appellant disputes that he left employment of his own accord. The appellant cannot confirm that he received the cashed cheque in his name for €1,400.00 issued around the 28th of November. As the appellant's Irish account is closed he cannot verify whether he lodged that cheque into his account. The appellant did not receive the €1,000.00 given to him in cash.

Respondent's Case

In November or December 2008 the appellant came to the respondent's house to collect his wages and informed the respondent that he would be going on holidays the following week; this was the first time the appellant mentioned going on holidays. The respondent was upset at the short notice as he had a lot of work to do at that time. The appellant did not contact the respondent again until March 2009 when he requested his P45; he informed the respondent that he had secured alternative employment.

The respondent met with the appellant before his departure on holidays and paid him €1,000.00 in cash and €1,400.00 by cheque (bank statement and cheque stub submitted to the Tribunal.) This amount was to cover all outstanding monies owed.

Determination

This determination should be taken in conjunction with the determination of case no. UD956/2009, RP1086/2009, MN974/2009 and WT420/2009.

A payslip was produced to the Tribunal dated the 1st of December 2008, which reflected the sum of €3,000.00 being paid to the appellant. This sum, net of statutory deductions, came to €2370.94. The respondent stated that this sum was paid to the appellant in two ways, the first was €1,000.00 in cash and the second was €1,400.00 by cheque. The respondent established to the satisfaction of the Tribunal by the production of his bank statement and the cheque stub that the sum of €1,400.00 was paid. The appellant denied this, however the appellant failed to produce to the Tribunal a bank statement for his brother, into who's account this sum was paid on behalf of the appellant,

as the appellant had closed his own bank account. The Tribunal determines that the appellant was paid the total sum of €2,370.94 in satisfaction of the sum owed by the respondent. The Tribunal upholds the recommendation of the Rights Commissioner r-078738-pw-09/JT.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)