

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER

CASE NO.
TE242-TE245/2009

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

EMPLOYEE

EMPLOYEE

EMPLOYEE

EMPLOYEE

under

TERMS OF EMPLOYMENT (INFORMATION) ACTS, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. P. Casey
Ms. P. Doyle

heard this appeal in Cork on 7 October 2010

Representation:

Appellant(s):

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

Respondent(s):

Mr. Daniel Snihur, Independent Workers Union
55 North Main Street, Cork

The decision of the Tribunal was as follows:-

This case came to the Tribunal under the Terms of Employment (Information) Acts, 1994 and 2001, as an appeal against Rights Commissioner Decisions r-073777-te-09 JOC, r-074715-te-09 JOC, r-072471-te-09 JOC and r-073822-te-09 JOC.

The Rights Commissioner had found that each of the four employees should receive the sum of €500.00 from the employer because the employer had not provided them with their terms and conditions of employment within two months of their commencing employment.

At the beginning of the hearing the respondent's representative stated that only two of the respondents had been able to be free to come to the hearing because the other two had had their days off changed.

It was not suggested at the hearing that the employer had in fact provided the employees with their terms and conditions within two months of commencement of employment. Rather, it was submitted that the employees had not suffered any financial loss as a result for which they should be financially compensated. It was suggested that a Rights Commissioner could simply give a direction to an employer that terms and conditions be given within two months in the future. It was not accepted by the employer that an employee had made several requests for his terms and conditions.

Given that it was conceded that the employer had not complied with the timeframe stipulated by the legislation it was submitted that the Rights Commissioner's award had not been excessive.

The employer's representative agreed that €500.00 was not a lot for one employee but argued that there could be a great exposure for an employer with a couple of hundred employees.

Making a submission on behalf of the two respondents who were not present, their representative said that he had had confirmation that they would attend but that their employers had said that they had to work. The representative of the appellant employer said that they had not turned up at the Rights Commissioner hearing and that he did not see why they would turn up in the future. The respondents' representative said that there had been numerous cases in the past when (absent) employees were represented by their representative and that the Rights Commissioner award in this case amounted to just one week's pay.

The appellant company's representative submitted that the Rights Commissioner's award was a serious financial penalty for the employer and that there was no evidence that the respondents had suffered financial loss as a result of not getting their terms and conditions within two months of commencement.

DOB (the principal of the appellant company) stated that he worked in England but that he had

made it his business to be at the Tribunal hearing. He knew to seek a postponement when he could not attend a hearing. Asked why he had not issued the men with their terms and conditions within the required two months, he replied that employees “would walk out the gate” if he broached the subject of a contract and that all such men really wanted to know was what their net pay would be. The respondents’ representative submitted that there was no reason to overturn the Rights Commissioner’s awards and that the appellant company had been in breach of the legislation.

Determination:

The Tribunal is unanimous in setting aside the Rights Commissioner’s decision in respect of the two respondents who had not attended the hearing especially because the said men had not attended the Rights Commissioner’s hearing either. Therefore, the Tribunal sets aside Rights Commissioner Decision r073777-te-09 JOC and r-072471-te-09 JOC (by which each of these two employees had been awarded €500.00 by the Rights Commissioner) under the Terms of Employment (Information) Acts, 1994 and 2001.

In respect of the two respondents who did attend the Tribunal hearing, the Tribunal unanimously affirms the Rights Commissioner’s decision that they should receive compensation for the fact that the appellant employer had been in breach of the legislation by not giving these respondents their terms and conditions within two months of the commencement of their employment. The Tribunal finds by a majority (Ms. Doyle, who favoured making an increased award, dissenting) that it will not vary the award from the €500.00 decided to be appropriate by the Rights Commissioner. Therefore, the Tribunal (by the said majority) affirms Rights Commissioner Decision r074715-te-09 JOC and r-073822-te-09 JOC (by which each of these two employees had been awarded €500.00 by the Rights Commissioner) under the Terms of Employment (Information) Acts, 1994 and 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)