

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
PW154/2010
UD1138/2010
TE145/2010

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 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr M. Noone
Mr A. Butler

heard this appeal at Wicklow on 27th January 2011

Representation:

Appellant(s) : In Person

Respondent(s) Mr. John Barry, Management Support Services (Ireland)
Limited, The Courtyard, Hill Street, Dublin 1

This case came before the Tribunal by way of an employee appealing against the recommendations/decision of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 ref:r-084983-ud-09/EH, the Payment of Wages Act 1991 ref: r-084973-pw-09/EH, the Terms of Employment (Information) Act 1994 and 2001.

Preliminary Point

At the commencement of the hearing the respondent's representative raised an objection to the appeal under the Payment of Wages Act 1991. He stated that the appellant had not given to the respondent a notice in writing stating his intention to appeal the decision of the Rights Commissioner as required by section 7 (2) (b) of the Payment of Wages Act 1991. The appellant accepted that he had not complied with this provision of the Act. Accordingly the Tribunal finds

that as the appellant did not satisfy his obligations under section 7 (2) (b) of the Payment of Wages Act 1991 it does not have jurisdiction to hear this claim.

The respondent did not contest the appeal under the Terms of Employment (Information) Act 1994 and 2001.

Respondent's Case

(BC) for the respondent gave evidence that he operated a landscaping business. He employed the appellant as a labourer doing general purpose duties from January 2006. The appellant was his only employee and consequently they worked together on a daily basis. He enjoyed a good working relationship with the appellant. He gave evidence that by 2009 his business was struggling and he was finding it difficult to make ends meet. He was finding it difficult to pay the appellant's wages and was late paying his wages on occasions. The appellant was understanding of the difficulties and he, (BC) always managed to pay the appellant his wages despite being late in doing so. He persisted with his business in the hope that business would keep coming in and the economic situation would improve. However by July 2009 the business was really struggling. The appellant was due to go on holidays on a Friday in early July 2009. On the Wednesday prior going on holidays the appellant enquired about his holiday pay and (BC) told him that he hoped to have this money by Friday. The appellant became angry when he heard this response and told (BC) that he needed his money and this was not good enough. He said he was finishing work and walked off. (BC) continued working on his own throughout the day and reflected on his position and the position of his business. He decided that he could no longer afford to keep the appellant in employment as he did not have sufficient work for him.

The appellant returned to work on the following day and apologised for walking off the previous day. He asked if he could carry on working. (BC) informed him that he had reflected on the position of his business and had come to a decision that he could no longer afford to keep him on as an employee. He paid him his wages and his holiday entitlements. He has not employed anyone since the termination of the appellant's employment and now carries on his business on his own.

Appellant's Case

The appellant gave evidence that he had a discussion with (BC) on 1 July 2009 regarding his wages and holiday pay. He had previously encountered difficulties being paid on time and on occasions his pay cheques had not been honoured by the bank when he attempted to cash them. Following the discussion on 1 July 2009 he was unhappy and told (BC) that he was going home but he did not tell him that he was quitting his job. He accepted that he walked off the job and did not tell him that he was sick. He returned to work the following day and then informed (BC) that he had been sick on the previous day (1 July 2009). On his return to work he was informed by (BC) that there was no more work available for him. He has attempted to secure alternative employment since the termination of his employment but has been unsuccessful to date.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal is not satisfied that the appellant was unfairly dismissed and the Tribunal accepts the evidence of both parties that the appellant walked off the job. In such instances it was reasonable for the respondent to come to the conclusion that the appellant had terminated his own employment. The issue in relation to the

future potential redundancy situation does not arise as the appellant terminated his own employment prior to the issue arising. The appeal under the Unfair Dismissals Acts 1977 to 2007 fails.

As the respondent did not contest the appeal under the Terms of Employment (Information) Acts 1994 and 2001 the Tribunal finds that this appeal succeeds and makes an award of €1147.40 under the said Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

