

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER
-appellant

CASE NO.
PW230/2009

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

EMPLOYEE *-respondent*

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms K. T. O'Mahony

Members: Mr. D. Hegarty
Ms P. Doyle

heard this appeal at Cork on 08 October 2010

Representation:

Appellant: Ms M. Boyce, Diarmaid Ó Catháin Solicitors, 30 South Terrace, Cork

Respondent: In Person

This case came before the Tribunal by way of an employer's appeal against the recommendation of a Rights Commissioner r-069869-pw-08/DI.

The appellant is referred to as the employer and the respondent as the employee herein.

Summary of Evidence

The employer has a recruitment agency. The employee contacted the respondent seeking a permanent position on 14 April 2008 and agreed to take up temporary work while waiting for a permanent position. It was his first time working as a temporary worker.

On 15 April a recruitment agent (RA) telephoned the employee and offered him a temporary position as a basic warehouse operative with an immediate start. They discussed the terms and the employee accepted the offer. RA agreed to send the employee an email confirming the details. There was a dispute as to the agreed rate of pay. The employer's position was that it was €11.00 per hour while the employee's position was that it was €17.12 per hour.

In the email dated 15 April to the employee RA stated: *As discussed the rate of pay for this role is €17.12 per hour which will be paid directly into your bank account ... The role is initially for an eight week period. If you have any queries please do not hesitate to contact me.*

The employee commenced work with the third party on 16 April 2008 and received payslips on a weekly basis showing a rate of €11.00 per hour. It was the employer's position that the employee had not raised any issue about his rate of pay or payslips. The employee while accepting that the payslips showed an hourly rate of € 11.00 his position was that he had not noticed this; he had thrown the payslips into a drawer. In April 2008 he had been out of work for four months and was glad to have secured work. He had been made redundant in his previous employment and had received a large redundancy lump sum payment that he kept in the bank account into which the employer transferred his pay; he had not noticed any shortfall in his account. It was his wife who eventually noticed the rate of pay on the payslip was €11.00.

The employee, who had continued searching for a permanent position, found one in early July. By way of email he brought the disparity in his rate of pay to the attention of the respondent on 4 July 2008 and when he later telephoned the respondent he was told he was behaving dishonestly, that there was nothing the respondent could do and that he should take whatever action he felt necessary. He made two further contacts with the respondent to no avail on 18 August and 8 September 2008. He received a letter dated 15 December from the employer's solicitor stating that his rate of pay was €11.00.

The employer's evidence to the Tribunal was that it had never verbally informed the employee that his rate of pay was €17.12. On 15 April RA had sent an email to the client indicating the cost to the client, inclusive of the recruitment agency's fees, would be €17.12 per hour for the employee's services. RA then sent an email to the employee, as she had promised, and in error informed him that his rate of pay would be €17.12 per hour. The employee did not reply to this e-mail. The stated rate was a typographical error. The employee was not issued with a contract of employment other than the e-mail which, for temporary workers, constitutes their contract of employment. Another e-mail with the correct pay rate of €11.00 was never sent to the employee.

Determination

The Tribunal finds that on the balance of probability the employee was informed over the phone that his rate of pay was €17.12 as well as in the e-mail of 15 April. Accordingly, this was the rate of pay to which he is entitled. The Tribunal upholds the decision as well as the award of the Rights Commissioner r-069869-pw-08/DI awarding the employee €1,908.89 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)