

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER – *appellant*

CASE NO.
PW234/2009
TE253/2009

v
EMPLOYEE – *respondent*

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

EMPLOYEE

v
EMPLOYER

under

PAYMENT OF WAGES ACT, 1991 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms V Gates BL

Members: Mr R Prole
Mr S O'Donnell

heard this appeal at Dublin on 28th January 2011

Representation:

Appellant(s): Company Director

Respondent(s): Ms Sandra Masterson-Power
Byrne Wallace, Solicitors
2 Grand Canal Square, Dublin 2

This case came before the Tribunal by way of an employer appealing Rights Commissioner decision r-076138-pw-09/MMcG under the Payment of Wages Act, 1991, and recommendation r-076141-te-09/MMcG under the Terms of Employment (Information) Act, 1994 and 2001.

The decision of the Tribunal was as follows:-

The respondent's representative submitted that the appeal under the Payment of Wages Act, 1991, had not been properly served as per section 7(2)b of that Act, as the employee was not served with a copy of the appeal. The company director present conceded that he had not served the appeal as per the Act. The Tribunal determined that as the respondent failed to serve notice on the employee

in accordance with the Act the appeal under the Payment of Wages Act, 1991, failed. The appeal under the Terms Of Employment (Information) Act, 1994 and 2001, was then commenced.

Appellant's Case:

The company director gave evidence that he left a job to set up his company in 1994. The respondent, a colleague at the time, asked if he could come with him. The respondent worked with him for 13 years. The witness did not issue the respondent with his terms of employment and the respondent never requested it.

Respondent's Case:

The respondent gave evidence that he was not provided with his terms of employment during his employment. Two years into the employment he suggested to the director that he should have a contract of employment as he was using his own car for work. He was not a director of the company and he did not hold any shares.

Determination:

The Tribunal finds that no evidence was adduced that compelled it to vary the recommendation of the Rights Commissioner under the Terms of Employment (Information) Act, 1994 and 2001, ref: r-076141-te-09/MMcG. Accordingly, the Tribunal finds to the like effect of the Rights Commissioner and awards the respondent (employee) €2,500.00 (two thousand five hundred euro) under the Terms of Employment (Information) Act, 1994 and 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)