

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

PW209/2009

- appellant

TE215/2009

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly BL

Members: Mr. G. McAuliffe
Mr. N. Dowling

heard this appeal at Dublin on 1st December 2010

Representation:

Appellant: Aoife Marrinan, Richard Grogan & Associates, Solicitors,
16 & 17 College Green, Dublin 2

Respondent: Not Present or Represented

This case came before the Tribunal by way of an employee appealing against the recommendations of the Rights Commissioner in cases r-073530-pw-08/DI and r-073528-te-08/DI.

The decision of the Tribunal was as follows:-

Background:

The appellant was employed by the respondent company from September 15th 2004. On October 15th 2007 he was transferred to their Belfast operation. His employment ended on September 5th 2008.

The appellant made a claim before the Rights Commissioners under the Payment of Wages Act, 1991 and the Terms of Employment Acts, 1994 and 2001. Under the Payments of wages Act, 1991 he claimed he had not been paid the correct wages and was deducted money for rent. Under the Terms of Employment Acts, 1994 and 2001 the appellant claims the respondent was in breach of Section 4 of the 1994 Act in that he did not receive the required notification that he had been transferred out of the State prior to his move to Belfast on October 15th 2007.

Appellant's Case:

The appellant stated that while working in the Republic of Ireland he paid all his PRSI contributions and was paid in euros. While working in Belfast he was paid in the sterling equivalent but stated the respondent paid all its monetary obligations in the Republic. He carried out the same work under the same Supervisor during his 11 months working period in Belfast.

Determination:

Having heard the uncontested evidence from the appellant in this case the Tribunal upsets the recommendations of the Rights Commissioner.

In respect of the appeal under the Terms of Employment (Information) Act, 1994 and 2001 the Tribunal are satisfied that the respondent company was in breach of Section 4 of the Act and awards the sum of € 2,400.

In respect of the appeal under the Payment of Wages Act, 1991 the Tribunal find the respondent company was in breach of Section 5 of the Act. Section 5 states:

“(1) An employer shall not make a deduction from the wages of an employee (or receive any payment from an employee) unless –

(a) the deduction (or payment) is required or authorised to be made by virtue of any statute or any authorised to be made by virtue of any statute or any instrument made under statute.

(b) The deduction (or payment) is required or authorised to be made by virtue of a term of the employee’s contract of employment included in the contract before, and in force at the time of, the deduction or payment, or

(c) In the case of a deduction, the employee has given his prior consent in writing to it.”

In this case the appellant had not been given a contract of employment nor had he given his consent to any deduction of his wages in writing. The Tribunal awards the sum of € 3,848, this being 26 week deduction of €148 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)