

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

TE248/2009

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

EMPLOYEE
under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Mr D Peakin
Mr J Dorney

heard this appeal at Naas on 20th December 2010

Representation:

Appellant:
Ms Michelle Harding

Respondent:
Mr Brian MacMahon, Arthur E MacMahon, Solicitors,
Poplar Square, Naas, County Kildare

The decision of the Tribunal was as follows: -

This case came to the Tribunal by way of an appeal by the employer against a recommendation of the Rights Commissioner r-076693-te-09/EH.

Appellant's case (the employer)

The appellant stated that when he started out in business he was not aware of the requirement to provide each employee with written terms and conditions of employment. The appellant became aware of this requirement when inspectors from NERA called to the premises. Consequently, the appellant issued terms and conditions of employment to each current employee but as the respondent had already left employment with the appellant the appellant did not think to furnish a statement to the respondent.

The Rights Commissioner awarded the respondent €1,250.00 but the appellant stated that he is unable to pay this amount due to financial constraints. The appellant signed and dated a statement of the terms and conditions of employment applicable to the respondent's employment

and handed it to the respondent during the hearing.

Respondent's case (the employee)

The respondent contended that the appellant ought to have been aware of his obligation to provide written terms and conditions of employment to the employees as the respondent had been in business for 10 years. Furthermore, the respondent felt that he ought to be awarded the maximum amount allowable and that if anything the award made by the Rights Commissioner favoured the appellant.

Determination

The Tribunal notes the admission by the appellant that the respondent was not provided with written terms and conditions of employment within the time scale laid down in the Act. It was agreed between the parties that the remuneration of the respondent was €400 per week gross.

The Tribunal is of the view that the legislation is to be approached on a basis to ensure compliance and not as an opportunity to extract an award. The Tribunal notes that the remedies include directing the employer to provide a statement of terms and that the award of compensation is an option, which may not be appropriate to grant in all cases. In awarding compensation it is relevant to consider whether there was any loss. There may be many reasons why an employee suffers loss as a result of a failure to receive a statement of terms, including the trouble and expense to which an employee is put to obtain the statement.

In assessing the level of compensation the Tribunal must have regard to the evidence of loss. The Tribunal notes that the respondent did not ask the appellant for the statement of terms at any stage during the course of the employment but simply filed a claim before the Rights Commissioner after the date of termination of employment. On the other hand the Tribunal has had regard to the fact that once the appellant received notice of the claim before the Rights Commissioner the appellant did not provide a statement of terms and conditions to the respondent until the appeal hearing before the Tribunal itself.

The Tribunal varies the recommendation of the Rights Commissioner r-076693-te-09/EH and reduces the award to the respondent to €1,000.00

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)