EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:		**CASE NO.**
EMPLOYEE	*- appellant*	TE141/2009

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

EMPLOYER *- respondent*
under

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Ms M. Sweeney
Mr O. Wills

heard this appeal at Clonakilty on 19th July 2010
and 21st March 2011

Representation:

Appellant : Wolfe & Co, Market Street, Skibbeeeen, Co Cork

Respondent : Mr Eoin Clifford B L instructed by
Michael Powell, Solicitors, No. 5 Lapps Quay, Cork

The decision of the Tribunal was as follows:

This appeal came before the Tribunal by way of an appeal against a recommendation of a Rights commissioner reference number r-070083-te-08/GC

The respondent's T2B stated that it fully accepted the decision of the Rights Commissioner in this case. The Rights Commissioner had awarded €1000.00 in compensation to the appellant for their breach in not complying with section 3 (a) (b) (c) (j) (k) and (l) of the Terms of Employment Act, 1994. His application for redress under section 5 of that Act did not succeed.

Appellant's Case
The appellant contended that the value of his compensation under section 3 of the Act was not compatible with and failed to take cognisance of a European Court of Justice ruling. That Court stated in the case of Colson & Kanmann-vs-Land Nordrhein-Wesfalen (1984) ECR 1891 that the remedies proposed by National law and implemented by National courts when enforcing domestic legislation enacting the terms of a Directive should be "effective, proportionate and dissuasive". Since the Terms of Employment (Information) Act, 1994 is a direct result of such a directive it follows that the remedy should reflect that directive. The appellant also maintained that the toil and toll he put into his case under section 3 deserved a higher level of compensation. He also cited a previous determination from the EAT (TE60/2007) in support of this appeal.

The appellant originally commenced employment with "entity one". The appellant received a letter, dated 11 August 2008 from entity one. The director of that establishment listed, among other things, that the employment category and terms of contract thereof were defined only by the appellant's contract as received from the respondent's human resource section. In a subsequent email to the appellant that director wrote: *Just to be clear yet again. The "respondent" is your employer, not "entity one". It is the "respondent", through its HR Section, who deal with allmatters related to the issue of contracts to its staff.* The appellant in turn wrote to his employer therespondent on 25 August 2008 seeking notification in writing and detailing the nature of the proposed changes to his contract. The appellant had just concluded one year's agreed leave of absence and had spent much of that time overseas. During that period certain changes had occurredto his terms and conditions of employment that required written notification under section 5 of theAct. Since he did not receive written notification of those changes as required by that section theappellant felt that the respondent had breached that section of the Act.

On the second day of the hearing it was raised that the appellant had initiated a judicial review in respect of the enforcement of a Labour Court Determination. This in part dealt with the appellant's contract. The Tribunal deliberated this matter and decided that this case continue and instructed the parties that the evidence be confined to Section 3 and 5 of the Terms of Employment (Information) Act, 1994 and 2001.

Respondent's Case

The HR manager gave evidence on behalf the respondent. One complaint that the appellant had raised was that he was not informed of the new address of their head office. She could not accept this as they had written to the appellant from the new address in January 2008 and they also had received correspondence from him at this address. In regard to his rate of pay, these rates are notified to the respondent by the Department of Education and Skills and these rates would be updated on the payslips. These rates of pay are also available on the Departments website and they do not write out to individual employees to inform them of rate changes. The appellant has no entitlement to travel expenses. In 2008 a number of letters issued from the Department setting out the policy change in relation to these expenses and it has changed for every employee since then. The appellant has been issued with contracts of employment which he has not signed this states that his working week is five days but the appellant will only work four. His contract is the same as a comparable permanent employee and he cannot cherry pick the terms and conditions of this.

She explained that the Rights Commissioner Recommendation made a finding against the respondent under section 3 of the Act in respect of the delay in finalising his contract in respect of the Labour Court ruling. She further explained that the appellant had received statements of his employment terms each year since 2004. She accepted they had none on record from 2001 the year he commenced employment to 2004.

The CEO gave evidence on behalf of the respondent. The claimant first contacted him in 2006 he was seeking to become a permanent teacher in the school of music. He had tried to assist the appellant and highlighted to him that he was not qualified as a music teacher but in art. As he was seeking to be a comparable permanent teacher and he had deliberately misled the respondent initially about his qualifications he could not approve this with this knowledge. He had replied to the appellant stating that he could only be awarded a contract of indefinite duration in the area he was employed on the basis of being qualified in same are.

On the appellant's return from a career break in 2008 he wrote to HR on 25th August seeking notification in writing of all changes to his contract. Witness explained that on the 11th August the claimant had received a letter detailing the school year, this was the same letter that issued to him in previous years. The appellant had refused to return contracts signed that he had received in 2008 and in 2009. He had received a contract previously to 2009 and had refused to sign it.

Closing submissions

The appellant's representative outlined that they were appealing the level of compensation in respect of Section 3 and referred the Tribunal to cases of Colson & Kanmann-vs-LandNordrhein-Wesfalen (1984) ECR 1891, HSE and Muhammed Ghulam (FTD089) and theEmployment Appeals Tribunal determination TE 60/07. Under the Terms of Employment(Information) Act, 1994 and 2001 the employer is obliged to notify the employee of any changesmade to his contract within one month.

The respondent's representative outlined to the Tribunal that if they accepted the breach of Section 3 of Terms of Employment (information) Act, 1994 and 2001 it was a technical breach. There has been voluminous correspondence between both parties in relation to this matter, the appellant wants to be treated differently from his comparable employees and that the award made by the Rights Commissioner could be reduced. There was no breach of Section 5 of the Terms of Employment (information) Act, 1994 and 2001.

Determination

The Tribunal having carefully considered the evidence adduced in this case affirm the Rights Commissioner Recommendation in respect of section 5 of the Terms of Employment *(*Information*)* Act 1994 and 2001, dismiss this appeal.

Similarly, the Tribunal affirm the Rights Commissioner Recommendation in respect of section 3 of the Terms of Employment *(*Information*)* Act 1994 and award the appellant €1,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)