

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYER

CASE NO.  
PW70/2010

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

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Ms. M. Sweeney  
Mr. O. Wills

heard this appeal in Cork on 10 February 2011

Representation:  
\_\_\_\_\_

Appellant(s):  
No legal representation

Respondent(s):  
No legal or trade union representation

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an employer's appeal against Rights Commissioner Decision r-080454-pw-09/GC under the Payment of Wages Act, 1991, by which an employee was awarded the sum of €2,400.00.

#### Background

There was a claim in respect of unpaid wages that, the employee contended, should have been paid on cessation of employment.

#### Employee's Case

The employee (EC) was employed as a foreman by the employer (EM) at a site in Limerick. He had

a contract of employment which stated: that he would be paid twenty-five euro per hour; that he would receive a five per cent bonus based on the profit made at the end of the project on which he was employed; and that five per cent would be paid if the project was completed earlier than the scheduled completion date.

EC's employment commenced in January 2009 and ended on 26 June 2009. His final pay included three days' pay, holiday pay and a deduction for €600.00.

It was claimed on behalf of EC that he had been owed petrol money and holiday pay and a week-in-hand but that EM (the employer) had refused to pay him this money.

EC contended that the €600.00 was wrongfully deducted as EM had owed much more than this in petrol money for journeys from Cork to Limerick. It was also stated that EC's hours of work were from 8.00 a.m. to 4.30 p.m. each day but that on many occasions he had worked overtime but had not been paid for it.

### Employer's Case

EM (the employer) was not present at the 7 January 2010 Rights Commissioner hearing. The Rights Commissioner found that the deduction made from EC's final wage to be an unlawful deduction under Section 5 (1)(c) of the Payment of Wages Act, 1991, and required EM to pay EC the sum of €2,400.00 under the said legislation.

On an appeal form AF (from EM) stated that, due to the weather conditions at the time, he had informed the Rights Commissioner service that EM would not be able to attend and had proposed a date in March to be set. However, to his "amazement" he received a letter dated 7 January 2010 (posted on 8 January 2010) refusing an adjournment. The hearing had already taken place without any representation on behalf of EM.

In its appeal of the Rights Commissioner Decision EM asserted that copy documentation evidence could be provided showing that the week-by week employment of EC had been paid in full. It was contended that EM had no outstanding liabilities to EC whether for holidays or any other matter and that EM had been told that he was not entitled to earn petrol money. A meeting involving a trade union and a construction monitoring agency had been held.

### The Tribunal Hearing

At the Tribunal hearing of this appeal the respondent's representative stated that the appellant employer had not given a copy of the notice of appeal of Rights Commissioner Decision r-080454-pw-09/GC to the respondent within six weeks of the said decision being given as required by S.7 (2)(b) of the Payment of Wages Act, 1991.

The appellant employer's representative did not argue that the company had complied with S.7 (2)(b) of the Payment of Wages Act, 1991.

### **Determination:**

Regarding appeals from decisions of rights commissioners, Section 7 (2) of the Payment of Wages Act, 1991, provides:

“An appeal under this section shall be initiated by a party by his giving, within 6 weeks of the decision to which it relates was communicated to him-

- (a) a notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under subsection (3) and stating the intention of the party concerned to appeal against the decision, and
- (b) a copy of the notice to the other party concerned.”

Given that Section 7 (2) (b) is a mandatory legislative provision, the Employment Appeals Tribunal has no discretion to disregard it. The appeal under the Payment of Wages Act, 1991, against Rights Commissioner Decision r-080454-pw-09/GC (that the respondent employee be paid the sum of €2,400.00 in compensation under the said legislation) fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

