

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER – *appellant*

PW85/2011
TE46/2011

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

EMPLOYEE – *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. F. Moloney
Mr. P. Woods

heard this appeal in Dublin on 16th November 2011

Representation:

Appellant: Mr Gerry Mescal, Management & Financial Accountant, Suite 3,
2nd Floor, Tesco Building, Ashbourne Town Centre, Co Meath

Respondent: Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens
Street, Dublin 1

The decision of the Tribunal was as follows:-

These appeals came before the Tribunal by way of an employer (the appellant) appealing against a Rights Commissioner recommendations reference: r-093610-pw-10/RG and r-093608-te-10/RG

This first appeal before the Tribunal was under the Payment of Wages Act, 1991. This was the employer's appeal against Rights Commissioner Decision r-093610-pw-10/RG, that the

respondent employee be paid the sum of €394.00 in compensation under the said legislation. At the Tribunal hearing of this appeal the respondents representative stated that the appellant had not given a copy of the notice of appeal of Rights Commissioner Decision r-093610-pw-10/RG, 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 second appeal before the Tribunal was under the Terms of Employment (Information) Acts 1994 and 2001 reference: r-093608-te-10/RG.

The Rights Commissioner had concluded that the appellant had not given the respondent (employee) a contract of employment within two months from the time she had commenced employment with the company.

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.”*

The appellant’s representative did not provide evidence that the appellant had complied with S.7 (2) (b) of the Payment of Wages Act, 1991. 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-093610-pw-10/RG fails.

Having carefully considered the evidence adduced at appeal under the Terms of Employment (Information) Acts 1994 and 2001 the Tribunal is satisfied the appellant was in breach of the Act. Therefore this appeal fails and the Tribunal upholds the recommendation of the Rights Commissioner awarding the respondent (employee) €500.00 in this case r-093608-te-10/RG.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)