

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant*

CASE NO.
PW82/2010
TE86/2010

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. K. T. O'Mahony B.L.

Members: Mr. P. Casey
Ms H. Kelleher

heard this appeal at Cork on 10 May 2011

Representation:

Appellant: In Person

Respondent: Mr. Conor O'Connell, Construction Industry Federation, Construction House,
4 Eastgate Avenue, Little Island, Cork

This case came before the Tribunal by way of an employee's appeal of Rights Commissioner's Decisions ref: r-077494-pw-09 JOC and r-077491-te-09 JOC.

The Appeal under the Payment of Wages Act

Preliminary Application

The respondent contended that the Tribunal did not have jurisdiction to hear the appeal under the Payment of Wages Act 1991, as the appellant had not complied with the terms of section 7 (2)(b) of the Act. The appellant agreed that he did not notify the respondent of the appeal.

Determination

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 date

on which 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.”

Determination on Preliminary Issue

As the respondent failed to comply with the terms of section 7 (2) (b) above the Tribunal does not have jurisdiction to hear the appeal under the Payment of Wages Act, 1991, against Rights Commissioner Decision r-077494-pw-09 JOC.

The Appeal under the Terms of Employment (Information) Acts

Summary of Evidence

The appellant is appealing the Rights Commissioner’s Decision ref: r-077491-te-09 JOC in quantum only.

The appellant worked with the respondent as a crane operator from March 2008 to November 2008. The claimant was issued with a written contract of employment and he signed it on 21 July 2007. Clause 2 of the contract stated: “Your rate of pay shall be as per the Registered Employment Agreement (plus any local /union agreement) and is calculated up to and including Sunday.” Initially the appellant worked normal hours as per the contract but on the conclusion of his probationary period he commenced night work. The contract did not provide for the fact that he was a night worker nor did it provide a breakdown of his wages or wage rate as a night worker. Rest and meal breaks were not referred to in the contract.

The respondent verbally agreed with the appellant on a rate of time plus one third as his pay rate for night work. This rate was in excess of the rate specified in the Registered Employment Agreement for the construction industry. The appellant’s contract states that his rates and rest breaks will be in accordance with the Registered Employment Agreement for the construction industry. At all times the appellant was a member of a trade union and accordingly had access to the Registered Employment Agreement.

Determination

The respondent issued the employee with an extensive contract of employment.

The appellant’s contract provided that the appellant would be paid in accordance with the Construction Industry Registered Employment Agreement (for the construction industry) plus any local /union agreement) and in accordance with local custom and practice. The appellant received a comprehensive statement of his terms and conditions of employment. While the respondent did not give the appellant written notification of the agreed change of hours he had verbally informed him of them.

The Tribunal finds that a nil award is just and equitable having regard to all the circumstances. The Tribunal therefore varies the Rights Commissioner’s Decision, ref: r-077491-te-09 JOC, to this

effect.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)