

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER
(*appellant*)

CASE NO.

TE91/2010

PW87/2010

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: Mr N. Russell

Members: Mr J. Browne
Ms S. Kelly

heard this appeal at Wexford on 17th November 2011

Representation:

Appellant(s) :

John A. Sinnott & Co., Solicitors, Market Square,
Enniscorthy, Co Wexford

Respondent(s) :

Ms. Barbara Mebtouche, Triana, Independent Advice &
Information Bureau, 13 Store Street, Dublin 1

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an employer appeal of a Rights Commissioner recommendation dated 19th January 2010 (Ref: r-076024-pw-09/MMG and r-076025-te-09/MMG).

Summary of Evidence

The owner of the business stated that he employed the claimant as an apprentice as he had no previous experience as a painter. The claimant's duties involved painting, sanding and cleaning. There was no written contract provided. A weekly wage of €370 was agreed

verbally. The claimant was classed as a general employee. With regard to the rate of €14.88 per hour, the owner stated that as none of the other employees were receiving that rate, he could not justify paying the claimant that amount.

In relation to the cheques due to the claimant which were rejected by the bank, the owner stated that money due to be paid to the business did not materialise. The owner did not dispute the €1,900 due to the claimant. The owner had at one stage, seven to eight employees but currently has no employees as business completely dried up.

In reply to the Tribunal, the owner confirmed that no contract had been given to the claimant. He was not aware of the Registered Employment Agreement for the Industry and did not know when he became aware of its existence.

Giving evidence, the claimant stated that €8.50 per hour had not been mentioned at the start of his employment with the respondent. After 6 months the employees asked for an increase in salary and received an extra €20 per week. The claimant stated that he arrived as a professional painter. He said he kept asking for the relevant rate of pay but never received it. With regard to holiday pay, the claimant did not think he received the amount due of €1,190.40.

In reply to the Tribunal, the claimant stated that he had 5 years experience painting in Poland and was carrying out the same work as the other employees in the respondent's company. The claimant confirmed that he did not receive his holidays in 2008. He did not have any evidence to prove he was a qualified painter.

Determination

Having heard the evidence of both parties, the Tribunal affirms the Rights Commissioner decision of 19th January 2010 and awards the claimant the sum of €653.82 under the Terms of Employment (Information) Act, €4,560.58 in unpaid wages, €1,190.40 in unpaid annual leave, €595.20 in unpaid holiday pay under the Payment of Wages Act, giving a total award of €7,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)