

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -*Appellant*

CASE NO.
TE161/2010

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 R. Maguire B.L.

Members: Mr C. McHugh
 Mr F. Keoghan

heard this appeal at Dublin on 17th November 2011

Representation:

Appellant: Mr. Richard Grogan, Richard Grogan & Associates,
Solicitors, 16 & 17 College Green, Dublin 2

Respondent: No appearance or representation on behalf of the respondent

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of an employee (the appellant) appealing against a Rights Commissioner's Decision (reference: r-073631-te-08/JT).

It was the appellant's case that the provisions of Section 3 of the Acts provide that an employer "shall" not later than two months after the commencement of an employee's employment give to the employee a statement in writing. Representation for the appellant submitted that the use of the word "shall" is mandatory and that the Rights Commissioner had erred in law by finding that an employee was advised of his rights by a document being placed on a notice board. Representation for the appellant submitted that this was contrary to public policy and contrary to the law and requested that the Tribunal upset the decision of the Rights Commissioner, as it was a serious matter warranting compensation.

Determination:

The Tribunal accepts that there was a clear breach of Section 3 but in particular circumstances, the Tribunal notes that, there are other mechanisms extant for the enforcement of public policy objectives in the employment sphere, for example the National Employment Rights Authority (NERA). This action is an action by an individual for the protection of his position and that is the primary concern of the Tribunal in this case.

The Tribunal is of the view that Section 7(2) (d) only envisages that an appellant would be awarded money where they have suffered an identifiable loss that flows from the failure to provide them with the terms and conditions of employment. It is expressed that such payment is to be by way of compensation and the section clearly envisages situations where no such compensation would be paid through use of the words “if any.”

In all of the circumstances therefore, as the claimant has failed to point to any loss requiring compensation which flows from this failure on behalf of the employer, the Tribunal deems it just and equitable not to award any such compensation. The Tribunal upholds the Rights Commissioner’s decision (reference: r-073631-te-08/JT) under the Terms of Employment (Information) Acts, 1994 and 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)