

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

EMPLOYEE

TE129/2011  
PW181/2011

*appellant*

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

EMPLOYEE

*appellant*

and

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: Mr M. O'Connell B.L.

Members: Mr. R. Prole  
Mr P. Trehy

heard this appeal at Dublin on 8th March 2012

Representation:

\_\_\_\_\_

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

Respondent(s): Mr Warren Parkes, Warren Parkes, Solicitors, Unit 1, The  
Capel Building, Mary's Abbey, Dublin 7

The decision of the Tribunal was as follows:-

These appeals came before the Tribunal by way of an employee appealing the decision and recommendation of the Rights Commissioner reference nos. r-098176-pw-10/RG and r-098175-te-10/RG.

**Appellant's Case**

The appellant gave evidence in relation to the Terms of Employment (Information) Act 1994 and 2001. He commenced employment on the 12<sup>th</sup> July 2006. He stated that he looked for a contract of employment the day before he commenced employment with the respondent.

The next day he got the contract and he did not remember KM signing it. While he was in the respondent's office he signed some documents. He did not remember signing the contract of employment but it was possible it might be his signature on the contract of employment. He could not recall what problem he had with the document he received.

The appellant gave evidence in relation to the Payment of Wages Act. When he commenced employment with the respondent he earned €14.71 per hour. On some sites he earned €13.48 and he did not ask his employer if that was the rate, he did not know how it worked.

If he worked for an Agency he had to accept whatever rate he got. He tried to complain when his rate was reduced to €10.00 per hour. He earned €17.56 per hour for one company when he worked on night shift. The first time that he became aware his rate was €13.48 was at the Tribunal when he was presented with a contract of employment. This document was never given to him previously and he did not remember seeing the document. He was not informed that his rate could decrease and that it was possible it would be increased. He did not sign anything to have his wages reduced.

In cross examination he stated he could not recall if he was shown the contract at the Rights Commissioner hearing. He could not remember seeing the contract before. He agreed that when he worked in different companies that the rate would fluctuate. When asked if his representative gave him the documents at the Rights Commissioner hearing he responded only the page where he signed.

### **Determination**

The Tribunal was persuaded by the provisions in the Conditions of Employment dated the 10<sup>th</sup> July 2007 which dealt with remuneration under this section. Provision is made for fluctuation in pay rates subject to the National Minimum wage. Accordingly the details complained of were of the kind contemplated by Section 5 (1) (a) of the Payment of Wages Act, 1991 and did not require prior written consent referred to in Section 5(1) (c).

The appellant did not appeal the amount of €197.78 which the Rights Commissioner awarded him in respect of a period of 22 weeks from the 18<sup>th</sup> March 2010 to 27<sup>th</sup> August 2010. Therefore the appeal under the Payment of Wages Act, 1991 fails and the Tribunal affirms the decision of the Rights Commissioner.

In relation to the Terms of Employment (Information) Act 1994 and 2001 the Tribunal having carefully considered all the written and oral evidence notes that the respondent was in compliance with its obligation under Section 3. Accordingly the Tribunal affirms the recommendation of the Rights Commissioner and the appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

