

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER
appellant

PW307/2010

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

EMPLOYEE
respondent
and

EMPLOYER
appellant
under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. Lucey
Mr M. O'Reilly

heard this appeal at Dublin on 13th March 2012

Representation:

Appellant(s): Company Representative

Respondent(s): The respondent in person

The decision of the Tribunal was as follows:-

This appeal came before the Tribunal by of an employer appeal the decision of a rights commissioner reference r-091964-pw-10 JOC dated 19th August 2010.

For clarification purposes the appellant will be referred to as the employer and the respondent the employee.

Employer's Case

CS for the employer told the Tribunal that after the employee left his company he went to work for a competitor. The employer was a small company. The employee had worked a three day

week prior to taking up employment with the employer. He worked a five day week with the employer. The employer anticipated that the employee would never reach his target and had intended giving the employee 5% commission on reaching a certain target.

The employee was paid his salary and expenses while he was working for the employer. The employee approached him in January 2010 and told him that he would organise his own telephone. He told the employee to go ahead and the employer paid for his telephone calls. The employer had a suspicion regarding the employee's figures. He asked the employee if he was in contact with a competitor and he denied it. The employee had not reached 10 percent of his target of €1.2 million and the employer told the employee that this figure was too high. The target was then set at €850,000.00 for the year and the employer anticipated the employee would reach his target. The employee was asked to keep in contact with the employer regarding his whereabouts.

By e mail dated the 23rd March 2010 the employee tendered his resignation. The employee was requested to attend a meeting with the employer on the 30th March 2010 but he declined. If the employee had attended this meeting he would have been paid his wages.

Employees Case

The employee told the Tribunal that he commenced employment with the respondent on the 4th January 2010. On the 29th March 2010 he resigned from the company and took up alternative employment on the first week of April in 2010. The employer informed him that under no circumstances would he pay him his wages for March 2010. He denied that he sold paint for another contractor while he was employed with the employer.

Determination

While the Tribunal has sympathy for the employer's position in this case it finds that the employee is entitled under the law to the payment of his wages. The Tribunal affirms the decision of the Rights Commissioner and awards the employee payment of €2,933.22 under the Payment of Wages Act, 1991 and the appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

