

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE – *appellant*

PW332/2010  
TE280/2010

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. M. Levey B.L.

Members: Mr F. Moloney  
Mr. P. Woods

heard this appeal in Dublin on 9<sup>th</sup> March 2012

Representation:

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Appellant: Ms Julianne Paye, Richard Grogan & Associates,  
Solicitors, 16 & 17 College Green, Dublin 2

Respondent(s): Francis Brophy & Co, Chartered Accountants, 1st Floor, 8-9  
Marino Mart, Fairview, Dublin 3

This case came before the Tribunal by way of an employee (the appellant) appealing a decision reference: r-075953-pw-09/DI and a recommendation reference: r-075954-te-09/DI of a Rights Commissioner.

### **Appellants Case**

The appellant worked for the respondent in Clontarf as a general operative. In spring 2008, he was transferred to a site in Templemore, and stayed in a house rented by the respondent while

working in the location. He went on holidays and when he got back in September he refused to stay in the house again. He agreed with the respondent that he would drive from Dublin to and from Templemore every day and claim petrol expenses. He also brought two colleagues with him each day.

He started work each day at 8am which meant he had to leave home at 5:45am. He finished at 6pm and would be home at 8pm. He worked Monday to Friday and did not work overtime on Saturday.

He kept the petrol receipts and gave them to the respondent. He received a telephone call from JD the Managing Director who asked him why his expense sheet was so high. He did not understand why MD was asking about his expenses.

He did not get a copy of a contract of employment; however he signed a number of forms.

During cross-examination the appellant said he made the agreement with JD. He said he gave all of the receipts to JD when the job was finished. He did not have copies of the receipts.

His last payment was for €1000. He was confused because he thought his expenses claim was for €1000.

He lived in the house in Templemore for three months before his holidays.

### **Respondent's Case**

JD said he gave the appellant contracts of employment in English and Lithuanian. The house in Templemore was a six bedroom home and there was no arrangement with the appellant for him to travel from Dublin each day and claim expenses.

The Registered Employment Agreement is quite clear. The appellant stayed in the house and this was the first time he heard this claim. The respondent has an excellent health and safety record and he could not conceive a situation where a person was driving to and from Limerick and also working a full day. The respondent had a nine month contract and it did not make sense for staff to be travelling from Dublin.

The appellant did not submit expenses and he does not recall speaking to the appellant about this. During cross-examination JD said six people had lived in the house on an on-going basis.

### **Determination**

The Tribunal heard conflicting evidence from both parties in respect of the expenses claimed and whether the respondent had agreed to allow the appellant drive each day from Dublin to Limerick.

The respondent produced two contracts of employment. The appellant agreed that one of the contracts appeared to have a signature that looked like his.

The Tribunal prefers the evidence of the respondent and dismisses both appeals under the Payment of Wages Act 1991 and under the Terms of Employment (Information) Acts, 1994 and 2001. Therefore the decision and recommendation respectively of the Rights Commissioner are upheld.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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