

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL OF:**

**CASE NO.**

EMPLOYER  
- appellant

TE275/11

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

EMPLOYEE  
- 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 D. Moore  
Mr. J. Dorney

heard this appeal at Dublin on 13th June 2012.

#### **Representation:**

Appellant: Ms Judy McNamara, Peninsula Business Services (Ireland) Limited, Unit 3,  
Ground Floor, Block S, East Point Business Park, Dublin 3

Respondent: Mr. Brian Conroy BL, instructed by Mr Marc Fitzgibbon, Lavelle Coleman,  
Solicitors, 20 On Hatch, Lower Hatch Street, Dublin 2

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of the employer (appellant) appealing against the decision of the Rights Commissioner (ref. r-102953-et-11/MMG).

#### **Appellant's Case:**

The appellant is a family run business in the hotel sector and IMcG is Managing Director.

IMcG interviewed the respondent for the position of General Manager. The respondent was a very impressive individual and very affable. Following the respondent's interview he was offered the position of General Manager and commenced employment on 20<sup>th</sup> August 2008. The respondent completed and signed a Starter Form which included Full Names of Employer and Employee, employer's address, place of business, title of job, date of commencement and employee's remuneration. It was necessary to get the respondent on the

payroll right away.

It came to IMcG's attention that the respondent had not signed his contract of employment. IMcG signed the contract on 20<sup>th</sup> November 2008 some three months after the respondent had commenced employment. IMcG could not recall if he actually gave the respondent the contract of employment together with the employee handbook or placed it in his pigeon hole. He subsequently put a signed copy on the respondent's personnel file. IMcG contended that he did not know there was requirement to furnish an employee with a contract of employment within two months of commencement of employment and acknowledged that he furnished the respondent with his contract outside this time limit. IMcG contended that he did not ask the respondent to return his contract of employment during his tenure.

The respondent was given a month's notice of the termination of his employment.

### **Respondent's Case:**

During the respondent's interview for the position of General Manager, IMcG discussed relevant details of his contract with him. It was a general package to which a General Manager was entitled. The respondent signed a Starter Form on commencement of employment. He was never given a contract of employment nor was such a contract left in his pigeon hole. He spoke to IMcG numerous times requesting a copy of his contract. While it was important to him, he never requested his contract in writing. He was familiar with disciplinary procedures from his previous employment but did not know the specifics in the company's handbook.

He had never had any reason to check his personnel file. IMcG kept saying that copies of the employee handbook were located in various places in the hotel.

After some time he disregarded the issue of the contract and decided to take the hit. He contended he was lucky to have a job at the time.

### **Determination:**

The Tribunal finds that the appellant is not certain as to how it provided the respondent with the terms of his employment, and in circumstances where the respondent is adamant that he was not provided with them, the Tribunal concludes that he was not given them until he was given his contract of employment in November 2008. The respondent's starter form cannot in any way be said to contain the requisite information.

However, in circumstances where the respondent was the General Manager of the hotel in which he was working, and gave evidence that he interviewed and hired staff, the Tribunal finds that he was clearly in a position to take steps to satisfy himself as to what his specific terms of employment were from the commencement of his employment or very soon thereafter. Therefore the level of compensation required for the breach by the Appellant is not as great as it

might otherwise be. In the circumstances, the Tribunal therefore finds that the Recommendation of the Rights Commissioner is appropriate in the circumstances, and dismisses the appeal under the Terms of Employment (Information) Act, 1994 and 2001.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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