

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER 1

CASE NO.
PW32-33/2006
TE54-55/2006

and

EMPLOYER 2

and

EMPLOYER 3

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

EMPLOYEE (Respondent 1)

and

EMPLOYEE (Respondent 2)

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 BL

Members: Mr. J. O'Neill
Mr. A. Butler

heard this case in Dublin on 27 March 2012

Representation:

Appellant(s):

Mr. John O'Toole, John C. O'Toole & Co., Solicitors,
121 Old County Road, Crumlin, Dublin 12

Respondent(s):

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

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an employer appeal against Rights Commissioner Decision R-035682-MA-05/TB under the Payment of Wages Act, 1991, (whereby each of the two employees in question were each awarded the sum of €1,000.00) and under the Terms of Employment (Information) Acts, 1994 and 2001, (whereby each of the two employees in question were awarded the sum of €5,400.00).

Background to the Appeal

The appellant company's position was that the respondents had been employed as sub-contractors and had entered into an arrangement to carry out work for a gross figure. The respondents said that they were employees who had concomitant legal entitlements.

Testimony of PR

PR was the project manager for the company and met respondent 2 on a building site in Dublin 24. PR asked respondent 2 (who had four or five people working with him) if he would be interested in working on a house in Dublin 10.

During cross-examination PR said that he was not a director of the company but that he knew that a lump sum payment would be agreed based on a price for work lasting a certain number of weeks. If extra work was ultimately required a price would be agreed for that also.

Testimony of TR

TR was a director of the appellant company. At the material time the company had only had a couple of employees. Tax was paid to the Revenue Commissioners for sub-contractors but the time at issue in the case was almost seven years in the past.

In cross-examination TR said that the appellant company had accountants and had received a tax clearance certificate in 2005. At that time the company would have had four to five sub-contractors and they were all paid on account. A C45 certificate was issued at the end of each contract.

The respondents did not give direct evidence.

Determination:

Having heard the appellant testimony, the Tribunal was not satisfied that the respondents had actually been employees of the company within the meaning of the Payment of Wages Act, 1991, or of the Terms of Employment (Information) Acts, 1994 and 2001. Accordingly, the appeals under the said legislation are allowed and Rights Commissioner Decision R-035682-MA-05/TB under the Payment of Wages Act, 1991, (whereby each of the two employees in question were each awarded the sum of €1,000.00) and under the Terms of Employment (Information) Acts, 1994 and 2001, (whereby each of the two employees in question were awarded the sum of €5,400.00) are set aside.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)