

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

*appellant*

PW184/2011

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

EMPLOYEE *appellant*

and

EMPLOYER

*respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr W. Power  
Mr T. Brady

heard this appeal at Dublin on 12th October 2012

Representation:

\_\_\_\_\_

Appellant(s):

Respondent(s):

The decision of the Tribunal was as follows:-

This case came before the Employment Appeals Tribunal by way of an employee appealing the decision of the Rights Commissioner dated 6<sup>th</sup> April 2011 reference number r-098031-wt-10/TB.

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

The appellant told the Tribunal that he commenced employment on the 3<sup>rd</sup> June 2008 as a plasterboard fixer with the respondent. He was laid off on the 30<sup>th</sup> October 2009. He served an RP9 on his employer on the 27<sup>th</sup> October 2010 seeking his statutory redundancy. He received a contract of employment in Polish and it did not mention lay off. He obtained job seekers benefit when he was laid off. He sought work elsewhere.

## **Respondent's Case**

CR told the Tribunal that he was a quantity surveyor and he oversaw construction in the respondent. The respondent fitted out offices and ceiling and provided temporary accommodation for contractors and its employees on site. He was very optimistic about the respondent obtaining further work and it had secured two major projects. In October 2009 it had a workforce of fifty. A major project was put on hold and he was optimistic that a contract would commence in January 2010. He hoped that the appellant would be brought back to work straight away but the appellant was not brought back to work with the respondent.

## **Determination**

Based on the evidence and having regard to the submissions and the circumstances of the case and in particular the fact that it was a construction contract governed by the Registered Employment Agreement and that there was no reference to such contract and lay off in his contract of employment and based on the custom and practice which has been adopted over the years in this industry the Tribunal are of the view that the appellant has not established that he should be paid for the period of time he spent on lay off. The appeal under the Payment of Wages Act, 1991 fails and the Tribunal affirms the decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

