

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

Appellant 1

CASE NO.
TE202/2011
PW333/2011

EMPLOYEE

Appellant 2

TE203/2011
PW334/2011

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: Mr R. Maguire, B.L.

Members: Mr R. Murphy
Mr G. Whyte

heard this appeal at Dublin on 20th June 2012
and 30th August 2012

Representation:

Appellant(s) : Ms. Cathy Hamilton BL instructed by:
Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens Street, Dublin 1

Respondent(s) : Warren Parkes, Warren Parkes Solicitors, Suite 317, The Capel Building,
Mary's Abbey, Dublin 7

These appeals came before the Tribunal by way of employees (the appellants) appealing against the decisions of a Rights Commissioner under the Payment of Wages Act, 1991 -references: r-096401-pw-10/GC, and r-0-pw-10/TB and under the Terms of Employment (Information) Act, 1994 and 2001-references: r096402-te-10-GC and r-0-te-08/TB.

This case was heard in conjunction with UD 1452/2011 and MN 250/2011

The decision of the Tribunal was as follows:-

On the first day of the hearing Appellant 1's appeals under the Payment of Payments Act, 1991 and the Terms of Employment (Act) 1994 and 2001 were withdrawn.

Background:

Appellant 2 was employed from July 29th 2009 as a Security Guard mainly working on a building site. In 2008 the respondent company had a staff of over 300. However with the recession affecting the construction industry, work began to dry up. The claimant, and other staff, were put on lay off on October 11th 2009. The claimant was going on holidays in early October 2010 and was told by the Security Manager to contact him on his return to see if there was any work, but did not promise there would be. On his return from holidays, he says, he was let go. He was chosen on a last in first out basis (LIFO). He received his P45 in December 2010.

Payment of Wages Appeal

Appellant 2 claims that each week illegal deductions were made from his wages. These being:

€ 8.99 – Personal Accident Insurance * 12 weeks = € 107.88

€ 4.96 – Starter Pack * 12 weeks = € 59.52

Total Claim = € 167.40

He also claims that his wages were lowered without consent from € 9.65 per hour to € 8.65 per hour. This being a total reduction in wages of € 160.00.

A third claim under the Act is for wages unpaid while on lay-off. This is to the value of 10 weeks * € 298.00 totalling € 3,307.40.

The Rights Commissioner found the respondent was not in breach of the Act and the claim failed.

Terms of Employment (Information) Act, 1994 and 2001 Appeal

Appellant 2 claimed that he had not been furnished with a written statement of terms of employment as required by Section 3 of the Terms of Employment (Information) Act 1994.

The Rights Commissioner found that on examination of the document submitted and comparing the signature on the complaint form he accepted Appellant 2 was issued with his terms of employment and accordingly the claim failed.

Determination:

The Tribunal has carefully considered the sworn evidence and submission adduced over the two days of this hearing.

In respect of the claims under the Payment of Wages Act, 1991 the Tribunal upholds the appeal against the Rights Commissioner's decision and awards Appellant 2 the sum of € 167.40 for the deduction made over a 12 week period for the Starter Pack and the Personal Accident Insurance. The decision of the Rights Commissioner in respect of the other claims under the Act of € 160.00 and € 3,307.40 are upheld. Therefore these parts of the appeal under the Payment of Wages Act, 1991 fail.

In respect of the appeal under the Terms of Employment Act, 1994 and 2001 the Tribunal,

having inspected various signed documentation by Appellant 2, agrees with the Rights Commissioner recommendation and accept Appellant 2 was furnished with terms of employment. Evidence was also submitted by a witness for the respondent (Appellant 2's Supervisor) that he and Appellant 2 had signed the contract of employment and Appellant 2 was given a copy of it and the Tribunal finds that he was provided with this contract.

Accordingly the Tribunal upholds the Rights Commissioners recommendation under the Terms of Employment Act, 1994 and 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)