

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE,

CASE NO.
PW498/2011

against the decision of the Rights Commissioner in the case of:
EMPLOYER
under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Revington SC

Members: Mr. E. Handley
Mr. N. Dowling

heard this case in Dublin on 10 April 2013

Representation:

Appellant(s):
No legal or trade union representation at the hearing

Respondent(s):

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The decision of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal against Rights Commissioner Decision r-109419-pw-11/RG under the Payment of Wages Act, 1991.

At the beginning of the Tribunal hearing it was submitted that the employee (hereafter referred to as the appellant) had not complied with Section 7 (2) (b) of the Act by his giving a copy of the appeal notice to the other party concerned within six weeks of the date on which the rights commissioner decision was communicated to him.

The appellant, who attended the Tribunal hearing to prosecute four separate appeals under the Payment of Wages Act, 1991, stated that he had made a delivery to his employer's premises by hand but admitted that he had not done so in respect of every one of his four appeals. When the question was asked when and to whom the delivery was made the appellant replied that it had been addressed to a specific executive (BW) at the employer's premises.

BW then told the Tribunal that he had no knowledge of getting such papers.

It was then submitted that the presence of the word “shall” in Section 7 (2) of the Act meant that it was a mandatory provision and that the Tribunal could not operate on the basis of a vague assurance. The appellant said that he could not prove compliance with the legislation. It was then sought in an employer pleading that the Tribunal say that it had no jurisdiction unless there was evidence of proper service by the appellant on his employer of an appeal notice. It was submitted that there could be no exercise of a waiver, that the Tribunal could not forgive failure to comply with the legislation and that the Tribunal was duty-bound to apply the statutory provision at issue.

After a recess the Tribunal stated that it was prepared to allow a month for the appellant to make legal submissions. The appellant did not take up this offer but replied that he had a further case yet to come. He could now try to comply with Section 7 (2) (b) of the Payment of Wages Act, 1991, for any future appeal under that Act.

Determination:

This appeal against a Rights Commissioner Decision under the Payment of Wages Act, 1991, fails because the Tribunal has to decline jurisdiction due to Section 7 (2) (b) of the Act not having been established to have been complied with.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)

