

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
PW736/2012
TE256/2012

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

EMPLOYER
Under

PAYMENT OF WAGES ACT, 1991
TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Mr G. Andrews
Ms H. Kelleher

heard this appeal at Tralee on 6th February 2013

Representation:

Appellant :

Respondent :

This case came before the Tribunal by way of an appeal by the former employer against recommendations made by a Rights' Commissioner references r-108562-pw-11 and r-108558-te-11

The decision of the Tribunal was as follows:

Having heard and considered an issue over the serving of this appeal under paragraph 7 2 (b) of the Payments of Wages Act, 1991 the Tribunal is satisfied, on the balance of probability, that the appellant properly communicated their appeal to the respondent.

Appellant's Case

Within two weeks of the respondent's commencement of employment the appellant posted him a copy of his contract of employment. That document contained in the main many of the details as required under the Terms of Employment (Information) Act, 1994 and 2001. That document was not signed by the respondent as he objected to some of those details particularly relating to his rate of pay. According to the appellant the respondent's rate of pay while lower than other employees was still in excess of the minimum rate prevailing at the time.

Since the respondent was employed as a static retail security guard the appellant disregarded his previous experience in security elsewhere. That experience was not in the retail sector. In accordance with the relevant joint labour committee the appellant increased the

respondent's hourly rate when he had three years' experience with him. Following a meeting with the respondent on 17 August 2010 the appellant conditionally increased the respondent's hourly rate again. That increase was not backdated as requested by the respondent. A copy of the respondent's contract of employment was again presented to him around that time albeit with an altered rate of pay. Such a document was also sent by registered post to the respondents' residence later that year.

Respondent's Case

The respondent accepted that the appellant sent him a contract of employment following his commencement of employment with him. However, due to certain shortcomings and disputed information in that document he declined to sign it. He told the Tribunal that his position at a local airport was that of a static security and as such he had more experience than the appellant gave him credit for. His application to rectify and have his remuneration backed from August 2010 was not fully accepted by the appellant.

The respondent's spouse presented the Tribunal with a detailed breakdown of her husband's earnings and income with the appellant from 31 December 2008 up to February 2011 when his employment ceased.

Determination

Having heard and considered the evidence and circumstances surrounding this case the Tribunal upholds the Rights' Commissioner's recommendation under the Payment of Wages Act, 1991 and varies the recommendation under the Terms of Employment (Information) Act, 1994 and 2001. Accordingly, the Tribunal reaffirms the award made to the respondent (former employee) of €2000.00 under the first named Act and varies the award under the second named Act to €1000.00

In making this determination the Tribunal finds that the respondent was not adequately credited by the appellant for his previous experience in the security industry.

It is the responsibility of an employer to issue a new employee with a full written statement of their terms and conditions of employment within two months of commencement of employment. That statutory obligation was not fully adhered to in this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

