

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

- appellant

CASE NO.

PW22/09

TE15/09

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

Employer

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr W Power
Mr N Broughall

heard this appeal at Dublin on 25th June 2009.

Representation:

Appellant: Mr Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent: No appearance by or on behalf of the respondent.

The decision of the Tribunal was as follows: -

These appeals came before the Tribunal by way of the employee (appellant) appealing against the decision and the recommendation of the Rights Commissioner under the Payment of Wages Act, 1991 reference r-060699-pw-08/JC and the Terms of Employment (Information) Acts 1994 and 2001 reference r-060701-te-07/JC.

Determination:

Neither the respondent nor a representative on its behalf appeared at the hearing. The Tribunal is satisfied that the respondent was duly notified of this hearing. On the day of hearing the secretary to the Tribunal rang the telephone number of the respondent but was unable to make contact.

The appellant claimed that he ought to have been paid at the electrician's rate as provided under the Registered Employment Agreement for the electrical contracting industry and not at the rate at which he had been paid.

The appellant submitted documents disclosing his qualifications as an electrician in Poland. For the appellant it was admitted that the appellant was never a member of the TEEU and had not applied for membership. The appellant had not applied to any Irish body for recognition as an electrician on the basis of his foreign qualifications. It was also accepted that the appellant had not qualified separately in Ireland.

The appellant claimed to have worked for the respondent from 31st January 2007 to 20th December 2007. The Tribunal notes that in the Form T2B the respondent alleges that the appellant was employed by it for a period of 12 weeks and in the role of a labourer. As there was no appearance by the respondent the Tribunal finds the period of employment was as claimed by the appellant.

The Tribunal finds that the appellant was not an electrician for the purposes of the Registered Employment Agreement as he was not a member of the TEEU as required under that agreement. The Tribunal also finds that the appellant was engaged in an employment covered by the Registered Employment Agreement for the construction trades and determines that the appropriate categorisation for the appellant is that of General Operative at the D rate, as was submitted in the alternative by the representative for the appellant.

The claim under the Payment of Wages Act was lodged with the Rights Commissioner service on 21st January 2008 and therefore the Tribunal is limited to the underpayment of wages in the period of the six months prior to the making of this claim. The appellant accepted that he had been laid off for a number of periods totalling approximately two and a half weeks during the entirety of his employment and agreed that an equitable apportionment of these lay-offs would involve allocating one of these weeks to the statutory period. The Tribunal therefore calculates that the respondent employed the appellant for a period of 21 weeks during the statutory six months limit. The Tribunal finds that the appropriate rate of pay was €14.52 per hour and that the appellant was in fact paid €8.55 per hour resulting in an underpayment of €5.97 per hour. The Tribunal also finds that the appellant worked 39 hours per week and therefore the total underpayment was €4889.43 for the period. The Tribunal finds that the appellant was entitled to one week's notice and awards to the appellant the additional sum of €566.28 resulting in a total award of €5455.71 under the Payment of Wages Act 1991.

The Tribunal finds that the appellant was not provided with a statement of his terms of employment as required in accordance with the Terms of Employment (Information) Acts 1994 and 2001. The representative for the appellant indicated that it would be a sufficient statement for the Tribunal to state the grade and rate of pay of the appellant. The Tribunal finds the appellant was employed as a general operative in the construction industry at grade D and his correct rate of pay was €14.52 and the Tribunal also finds that the appellant suffered a loss arising out of the failure of the respondent to provide a statement of terms and conditions of employment resulting in the appellant being deprived of the benefit of the monies which he ought to have received. The Tribunal awards €500 compensation under the Terms of Employment (Information) Acts 1994 and 2001 for the loss of the benefit of timely payment to the appellant of his correct wages arising out of the failure of the respondent to provide a statement of terms of employment.

Accordingly, the Tribunal sets aside both the decision of the Rights Commissioner under the Payment of Wages Act 1991 and the recommendation under the Terms of Employment (Information) Acts, 1994 and 2001.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)