

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYER

CASE NO.  
PW121/2010  
TE138/2010  
WT438/2010

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

**PAYMENT OF WAGES ACT, 1991  
TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. P. Casey  
Mr. D. McEvoy

heard this case in Cork on 25 July 2011

Representation:  
\_\_\_\_\_

Appellant(s):  
No legal representation

Respondent(s):  
Mr. Noel Murphy, Independent Workers Union, 55 North Main Street, Cork

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an appeal: against Rights Commissioner Decision r-084336-pw-09/EH under the Payment of Wages Act, 1991; against Rights Commissioner Recommendation r-084338-te-09/EH under the Terms of Employment (Information) Act, 1994 and 2001; and against Rights Commissioner Decision r-084337-wt-09/EH under the Organisation of Working Time Act, 1997.

The appellant submitted that he had never employed the respondent stating that the respondent was not resident or domiciled in Ireland and that he (the appellant) had been trying, to no avail, for two years to find out the respondent's address and phone number.

A notice of appearance sent by a representative on behalf of the respondent expressed agreement with the Rights Commissioner's decisions.

On the day of the Tribunal hearing the Tribunal was furnished with a copy of an e-mail from the respondent apologising for not being able to attend the hearing in person.

At the beginning of the Tribunal hearing the appellant stated that he had met the respondent but had never spoken to him. The respondent's representative stated that he had not spoken to the respondent. The appellant submitted that the respondent had been employed by a limited company (hereafter referred to as KNVRX) and that he had been looking for an address for him for some years. The appellant said that he had just engaged with the respondent out of charity in that the appellant had gone to one of his companies and said to give the respondent a job. The appellant employed many Poles through KNVRX. The appellant asserted that the respondent did not have a word of English but that the respondent's girlfriend e-mailed the respondent's representative.

The respondent's representative stated to the Tribunal that the appellant was secretary and director of KNVRX. The appellant replied that he had many companies in Ireland and Spain but that he himself personally had never employed the respondent. The appellant alleged that the complaints were untrue but that he had no address to sue the respondent.

The appellant asserted that he was a chartered accountant who had employed the respondent through KNVRX to protect himself (and that KNVRX was not a construction company as had been suggested). The appellant said that he owned KNVRX and that the respondent "can go after" KNVRX but that the respondent, by suing the appellant, had sued the wrong legal entity.

Giving sworn testimony, the appellant said the respondent had done cleaning in the office premises of KNVRX and that he regarded the respondent as having been an employee of KNVRX. The appellant furnished tax documentation indicating that the respondent had been employed by KNVRX. This documentation included a signed declaration by the respondent. The appellant did acknowledge that, on his instruction, a manager in KNVRX had given the respondent a job with KNVRX.

Asked why he had not attended Rights Commissioner hearings, the appellant replied that he had written saying that he was not the employer.

**Determination:**

On the uncontested evidence of the appellant in the absence of the respondent, the Tribunal finds that the appellant was not the correct legal person for the respondent to claim against. Given that the Tribunal was furnished with documentation indicating that the respondent's employment was not for the appellant personally and that the respondent had even signed such documentation, the Tribunal has no alternative but to unanimously allow the appeals: against Rights Commissioner Decision r-084336-pw-09/EH under the Payment of Wages Act, 1991; against Rights Commissioner Recommendation r-084338-te-09/EH under the Terms of Employment (Information) Act, 1994 and 2001; and against Rights Commissioner Decision r-084337-wt-09/EH under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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