

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

UD428/2006

TE48/2006

PW47/2007

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

Employee

-vs-

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001
TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001
PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Mr. M. McGarry

heard this appeal at Castlebar on 22nd June 2007

Representation:

Appellant(s) : Mr. Richard Grogan, P.C. Moore & Company, Solicitors,
17 South Great George's Street, Dublin 2

Respondent(s) : Mr. Noel Corduff, Corduff Gunning & Co, Solicitors,
Tone Street, Ballina, Co. Mayo

The determination of the Tribunal was as follows:-

This appeal came to the Tribunal by way of an appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1977 to 2001 in the case of Employee –v- Employer(ref: r-036912-ud-05/GF).

This appeal came to the Tribunal by way of an appeal of a Rights Commissioner recommendation under the Terms of Employment Acts 1994 and 2001 in the case of Employee –v- Employer(ref: r-036912-ud-05/GF).

This appeal came to the Tribunal by way of an appeal of a Rights Commissioner recommendation under the Payment of Wages Acts, 1991 in the case of Employee –v- Employer (ref:

Respondent's Case:

The director of the respondent company (D) gave evidence. She told the Tribunal that she and her husband ran a small family business. The business was involved in processing of crabmeat and crab claws and employed ten people in total. The appellant was employed as a general operative. She had originally been employed as a childminder to D's daughter. The arrangement did not suit so the appellant was relocated to work in the company. The appellant required a work permit and D made several attempts to procure one. On one occasion D was informed that there had been a change in the policies surrounding the work permits and she explained all of the details through an interpreter to the appellant. D's efforts were frustrated and she told the appellant that she could no longer employ her. The appellant took holidays for one week and then D gave her one week's notice. The appellant was angry at this. During her employment, D had made arrangements for the appellant to receive a lift to work each morning. For this arrangement, D deducted €2.00 per week from the appellant's wages.

Under cross-examination, D said that she had furnished the appellant with a statement of terms and conditions. At the time she felt this was sufficient as a contract of employment. While the appellant was working as a childminder, D paid her in cash and when she worked in the factory, D gave her payslips. She did not retain the appellant's passport. D was aware that the appellant had held a work permit in a previous employment. She did not issue a P45 or P60 to the appellant and did not retain any records regarding the appellant's employment.

Claimant's Case:

The claimant gave evidence. She told the Tribunal that she had taken almost two weeks' holidays and had been paid for these. She had not signed agreement for the €2.00 deduction from her wages. When she commenced employment, she was told that she would serve one month's probation and then a work permit would be applied for on her behalf. After the month, she handed D her passport, P60 and P45 from her previous employment and a photograph. D returned her passport on the 16th June 2005 which was one week prior to her dismissal. She had requested the return of her passport in March 2005 and this was denied. She was not employed as a childminder, she had commenced in the factory and only worked there. She is in difficulties obtaining employment since as her paper work has been compromised due to her employment with the respondent.

Under cross-examination, the appellant told the Tribunal that a colleague had translated for her when D needed to explain the details regarding the work permit situation. She continued to work there as she was constantly assured that the work permit was pending.

Determination:

The appellant was working in breach of the Employment Permits Act, 2003. At that time, the onus was on the respondent to rectify the situation, which she failed to do. The appellant was employed for sixteen months in total and then dismissed without due regard to the Code of Practice on Grievance and Disciplinary Procedures. The Tribunal determines that the appellant was dismissed unfairly and upholds the decision of the Rights Commissioners. Accordingly, The Tribunal awards the appellant the amount of €3,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal considered the evidence and the submissions made by the appellant and respondent in

this case. The Tribunal determines that the appellant received insufficient documentation regarding her contract and terms and conditions of employment. Accordingly, the Tribunal upsets the recommendation of the Rights Commissioner under the Terms of Employment Acts 1994 and 2001, and awards the appellant four weeks' pay of €1,120.00.

There was a hearing by the Rights Commissioners held for both parties to this case under the Payment of Wages Act, 1991. Neither party attended this hearing. An appeal was lodged to the Tribunal and evidence was adduced regarding unauthorised deductions from the appellant's wages. The appellant did not receive her full holiday entitlement (two weeks) and was not paid for the week she worked in arrears. Therefore, the Tribunal awards the appellant the amount of €1,344.00 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)