Payment of Wages Act – Appeals – Getting It All Wrong

Claim under the Payment of Wages Act were ones which in the last 5-7 years were invariably dealt with wither before the Rights Commissioner or compromised before they came on for hearing. Appeals of Payment of Wages claims were relatively few in number. An employer received a Payment of Wages claim, the employer obtained the services of a Solicitor and matters were dealt with. Now because of the size of claims or because the employer has simply ignored the initial complaint to the Rights Commissioner Service appeals are having to be considered.

One issue which is consistently coming to light in respect of appeals is that the procedures in relation to appeals to the Employment Appeals Tribunal are not being complied with.

Section 7 (2) (b) of the Payment of Wages Act, 1991 provides;

" an appeal under this section shall be initiated by a party by his giving, within 6 weeks of the date on which the Decision to which it relates was communicated to him

(a) A notice in writing to the Tribunal containing such particulars (if any) as may be specified in regulations under sub section (3) and stating the intention of the party concerned to appeal against the Decision, and
(b)A copy of the notice to the other party concerned".

There is a misconception that simply lodging the appeal with the Employment Appeals Tribunal is sufficient. Service on the EAT is not sufficient in itself. See Riehn –v- Royale PW 21/205 and Tirmova –v- Vitra Ireland Limited PW72/206.

The provisions of Section 7 (2) by the use of the word "shall" contains a mandatory requirement of service on the other party concerned within the 6 week period. (see Shahid Sultan –v- Nasem [2001] E.L.R. 302) The use of the word "his" before the word "giving" indicates that there is a requirement that the party personally serve a copy on the other party. It is not sufficient to believe that service on the EAT is sufficient.

Where the person making the Appeal gives uncontested evidence of having effected service by ordinary posy the EAT has held that the onus is on the other party to establish that it did not receive it. See Morris –v- Department of Justice Equality and Law Reform PW 24/205.

Where the provisions of Section 7 (2) (a) have not been complied with the EAT will hold that it does not have jurisdiction to hear the appeal of a Rights Commissioner Decision under the Payment of Wages Act 1991. The fact that the party against whom the appeal has been taken has entered an appearance, is in attendance and has been notified of the appeal by the EAT is irrelevant. The party against whom the appeal has been taken simply has to put it to the EAT that no notification has been received by the party against whom the appeal has been taken directly from the party appealing.

It is then a matter for the party appealing to show that the served the proceedings directly upon the other party within the 6 week period of time. There is no provision in the Legislation to allow for an extension of time. The use of the word "shall" it mandatory.

Because of the importance of appeal documentation being sent and having a record of same it is important that the appeal documentation is either hand delivered to the other side against whom you are appealing or is sent by recoded registered mail. In the alternative a certificate of posting by ordinary prepaid post would be sufficient.

This is not an academic issue. It is arising weekly before the EAT. I would refer practitioners to two recent cases being PW31/2009 and PW200/2009. In both cases the party appealing and the party against whom the appeal had been brought were in attendance. In neither case had the respondent claimed that they had not received a copy of the notice of appeal from the Tribunal.

In one case the party appealing appeared in person. In the second they were represented by a firm of Solicitors. In PW31/2009 the respondent was represented by this office. In PW200/2009 that respondent was represented by a Citizens Right Centre. In both cases the defence at the outset was raised under the provisions of section 7(2). In neither case could the appellant show compliance with service directly upon the respondent. In both cases the appeals were dismissed on the basis that the Tribunal had no jurisdiction to hear the appeals. This particular defence is notorious. By this I mean that it is known by both those of us who practice in the legal profession and by non-legal practitioners.

While this defence is one which the EAT rightly does not like it is one which we as practitioners must utilise for the purposes of representing our clients. It is a simple matter to get it right. The consequences of not getting it right can be that an employer who has a good defence to a Payment of Wages claim or an employee who has a good appeal against a decision by a Rights Commissioner will effectively be denied an opportunity to do so because of failure to comply with a very simple procedure.

Pending the law on this issue being changed it is a matter of getting it right or it going horribly wrong.

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