

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

PW13/2006

against the decision of the Rights Commissioner R-035546-PW-05/JC
In the case of

Employer

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy B.L.

Members: Mr. P. Pierson
Mr. S. O'Donnell

heard this claim at Athlone on 15 February 2007

Representation:

Appellant:

Mr. W. Fennelly B.L. instructed by
Mr. Thomas F. Farrell, Farrell and Partners, Solicitors,
O'Connor Square, Tullamore, Co. Offaly

Respondent:

Mr. Tom Mallon B.L. instructed by
Mr. Seamus Given, Arthur Cox,
Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by an employee (the appellant) against a decision of the Rights Commissioner under the Payment of Wages Act, 1991, R-035546-PW-05/JC, in the case of XXXX (the respondent).

The respondent employed the appellant as a part-time Assistant Lecturer from September 1999. Over the next two years she was paid for 497 hours in 1999/2000 and 535 hours for 2000/2001. From 1 September 2001 the appellant was appointed to a temporary fixed-term whole time post and was placed on the first point of the pay scale. This contract was renewed in both September 2002

and September 2003. The appellant was then given a contract of indefinite duration from 1 September 2004. The appellant's position is that she was entitled to incremental credit in respect of her service in a part-time capacity in the two years prior to 1 September 2001 and should have been placed on the third point of the scale on her appointment to the whole time position in 2001.

The appellant's position, not disputed by the respondent, is that she approached the Human Resources Manager of the respondent (HR) in September 2001 about the question of incremental credit and was refused this by HR, a refusal she accepted at the time. In the Spring of 2004 the appellant became aware of a letter, from the Department of Education and Science (the Department), dated 21 October 2002 to the Directors of each Institute of Technology. This letter refers to the implementation of the Protection of Employees (Part-Time Work) Act 2001. The appellant contended that this letter showed that she was entitled to incremental credit in respect of her part-time service as it talked of instrumental credit being granted from 20 December 2001 (the date that the Act came into effect). The appellant wrote to her line manager about this on 29 April 2004. HR then wrote to the Department on 19 May 2004 seeking clarification on this matter. The Department replied on 24 May 2004 to confirm that the letter of 21 October 2002 did not convey sanction to the respondent to award incremental credit for part-time service prior to 20 December 2001. Through her legal representative the appellant wrote to HR on 13 August 2004 to pursue the matter. HR replied on 30 August 2004 to say that for part-time service prior to 20 December 2001 incremental credit was only to be given where the part-time worker had worked a total of 800 hours in a session (year) and that from May 2001 this requirement had reduced to 735 hours. An initial review of the respondent's records revealed that the appellant did not meet this requirement. This position was confirmed in a letter to the appellant from the Department dated 1 March 2005, this letter confirmed that the number of hours required to be worked in a year by a part-time assistant lecturer in order to qualify for incremental credit was 630, a figure that the appellant had not achieved in either of her years in a part-time capacity. The appellant's claim under the Payment of Wages Act, 1991 was received by the Rights Commissioner service on 12 July 2005.

The respondent's position was that, as provided in section 6 (4) of the Payment of Wages Act, 1991, *A Rights Commissioner shall not entertain a complaint under this section unless it is presented to him within the period of six months beginning on the date of the contravention to which the complaint relates or (in a case where the Rights Commissioner is satisfied that exceptional circumstance prevented the presentation of the complaint within the period aforesaid) such further period not exceeding six months as the Rights Commissioner considers reasonable.* This had the effect of making a claim lodged on 12 July 2005 out of time when the complaint related to an event on 1 September 2001. It was further submitted on behalf of the respondent that, as section 5 (6) (a) of the Payment of Wages Act, 1991 provides that *where the total amount of wages that are paid on any occasion by an employer to an employee is less than the total amount properly paid by him to the employee on that occasion* then it was up to the appellant to show that in September 2001 that incremental credit was properly payable to her. The respondent contended that as the appellant had ceased to be a part-time worker from 1 September 2001, she was not able to rely on the Protection of Employees (Part-Time Work) Act 2001 in regard to claiming that she had been treated in a less favourable manner than a comparable full-time employee, as that Act had not then come into effect.

Determination

Having considered both the evidence and the extensive submissions in this case the Tribunal rejects the arguments of the respondent in regard to the lodging of the claim as it finds that the claimant was not aware of any contravention of the Act until she received the letter from the Department dated 1 March 2005. Accordingly there does exist jurisdiction for the appeal to be heard. On the substantive issue the Tribunal finds that the requirement for the appellant to have worked at least 630 hours in a year, in order to qualify for incremental credit, was a correct assessment by the respondent for the purposes of arriving at the total amount to be properly paid to her. It being accepted by both sides in this case that the appellant did not meet that requirement it must follow that the question of a deduction does not arise. Accordingly the Tribunal must find that the complaint is not well founded. The Tribunal upholds the decision of the Rights Commissioner and the appeal under the Payment of Wages Act, 1991 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)