

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

PW35/2006

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

Employee and

Employer

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr D. Moore
Mr B. Byrne

heard this appeal at Dublin on 1st February 2007

Representation:

Appellant(s) The appellant in person

Respondent(s): Mr. David Farrell, IR/HR Executive, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows: -

This appeal came before the Tribunal by way of an appeal of a Rights Commissioner hearing reference r-038530-pw-05/TB

Appellant's Case

The appellant told the Tribunal that he worked forty-eight hours a week, which was greater than the normal working hours and he worked unsociable hours. His rate of overtime was calculated at forty-eight hours per week and it should have been calculated at forty-four hours. He brought a case to the Labour Court dated the 26 October 2004. The Labour Court recommendation was that in the light of any potential changes which may take place in the company in January 2005, which may impact on his working conditions, his position must be capable of being reviewed at the time. He brought an appeal to the Rights Commissioner and the rights commissioner recommended on 16

May 2005 that the respondent pay the appellant the sum of €1000 in compensation for loss of overtime earnings during the period December 2003 to July 2004. In January 2005 a transfer of undertaking took place in the company and there was no change in his terms and conditions of employment. In January 2005 he worked twelve hours shifts, he previously worked from 8 to 8 and he now worked from 7 to 7. He worked from Tuesday to Friday. He had an issue in that he should be working a thirty-nine hour week. In 2005/2006 he worked 600 hours overtime over a fifty-two week period.

Respondent's Case

Ms. C.D on behalf of the respondent told the Tribunal that the company transferred from Danza to DHL in 2005. The appellant transferred to DHL. Ms. C.D joined the respondent company in 2004.

In October 2004 the respondent had an agreement with the trade union regarding the transfer of undertaking. The respondent informed its employees in November 2004 that a transfer of undertaking would take place in January 2005. The appellant and his colleagues were always employed to work forty-eight hours a week. When she commenced employment with the respondent the appellant worked forty-four hours. The appellant he had four hours paid lunch and that was the agreement that was in place. In January 2005 the respondent had different sections of business and negotiations took place regarding the Terms and Conditions of Employment. These negotiations were quite complicated. Changes were implemented in May 2005 and all staff were paid the new pay agreements. After June 2005 all staff were given the last phase of the national pay deal which was 2 ½ per cent. In 2006 the respondent wanted to change the working hours to a forty-hour week but warehouse operatives wanted to remain working a forty-four hour week and that is what is now in place.

Determination

The appellant brought his case under the Payment of Wages Act, 1991 and argued that the nub of his appeal was that his overtime should be calculated at 1/44 instead of 1/48 of the rate.

He also argued that his weekly hours were forty-eight even though he worked forty-four hours.

The appellant had sought to pursue a solution to this grievance culminating in the Rights Commissioner's hearing which gave rise to this appeal.

The respondent gave a detailed explanation as to the hours of work and method of wages calculations.

On the evidence adduced the Tribunal finds that the Appeal under the Payment of Wages Act, 1991 fails and it upholds the recommendation of the rights commissioner dated 22nd May 2006.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

