EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
Employee PW76/2006

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

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy SC

Members: Mr. J. Walsh
Ms. K. Warnock

heard this appeal in Navan on 18 September 2007

Representation:

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Appellant(s) :
Mr. Brian Gormley, Amicus, Aeeu House, 5 Whitefriars, Aungier Street, Dublin 2

Respondent(s) :
Mr. Liam Collins, Gore & Grimes, Solicitors, Cavendish House, Smithfield, Dublin 7

This case came to the Employment Appeals Tribunal by way of appeal against Rights Commissioner Recommendation R-033974-PW-05/GF.

The decision of the Tribunal was as follows:-

The issue involved the stopping of allowances previously paid to the appellant. The respondent said that it had taken advice and felt that it was entitled to make the deduction. The rights commissioner found in the respondent's favour as he was satisfied that the appropriate notice had been given to the appellant when the respondent decided to make the deduction and that, therefore, the respondent was not in breach of the Act and the complaint was not well founded.

At the Employment Appeals Tribunal hearing the appellant's representative stated that sixteen hundred euro had been deducted and that compensation was sought.

The respondent's representative referred the Tribunal to a written defence. The respondent raised,

by way of preliminary point, the defence of per rem judicatam on the basis that the appellant had indicated (through the same representative that he now had before the Tribunal) to the rights commissioner at the hearing of his case on 3 August 2005 that he was withdrawing his claim for unlawful deductions. It was submitted that the withdrawal of a claim was tantamount to a default or consent judgment in that, where a claimant had withdrawn his claim, he could not subsequently appeal the finding of a court or tribunal as he had not afforded that court or tribunal an opportunity to consider the merits of his case. It was argued, therefore, that the judgment of the rights commissioner at first instance was conclusive and that the appellant was precluded from re-litigating the matter as he had previously withdrawn his claim.

A further preliminary point of defence was raised on the grounds that the appellant brought a claim for unlawful deductions by way of counterclaim to proceedings brought by the respondent in the District Court and which proceedings were heard on 20 October 2006. Judgment was given against the appellant and in favour of the respondent in respect of monies wrongfully retained by the appellant from an expenses float. It was submitted to the Tribunal that it was worth noting that Brophy J., at some length, explained to the appellant why he was not entitled to recovery of any alleged unlawful deductions and explained the basic computations to him in layman's terms.

Furthermore, it was submitted that, if the appellant felt aggrieved by the finding of Brophy J. in the District Court, it was open to him, within the rules of the District Court, to bring an appeal of that decision to the Circuit Court. However, the appellant had chosen not to do so within the time allotted for delivery of a notice of appeal and, given that the claim had been brought before the District Court, the Circuit Court was the only court of appeal with jurisdiction to hear an appeal of that issue. Therefore, it followed that the appellant was prevented from bringing an appeal of the decision of the rights commissioner by reason of the fact that he had tried this issue before the District Court. It had long been held that a party was precluded from re-litigating matters decided by judgment of a court by means other than through the appellant procedures set down by that court. This doctrine was firmly rooted in the public policy considerations of ensuring the finality of litigation and preventing vexatious litigation. These concerns were commonly encapsulated in the twin Latin maxims of "interest rei publicae ut sit finis litium" (it is in the public interest that there should be an end to litigation) and "nemo debet bis vexari proeadem causa" (no-one should be sued twice in respect in respect of the same cause).

Rights Commissioner Recommendation R-033974-PW-05/GF contained the following paragraphs:

"**Background**
The issue involved the stoppage of allowances previously paid to the claimant. The employer said they had taken advice from the relevant parties and felt they were entitled to make the deduction. The claimant explained the circumstances over the claims/allowances when he was away in the country.

Recommendation
I am satisfied the appropriate notice was given to the claimant when the employers decided to make the deduction. The company were not in breach of the Act. The complaint is not well founded. I find in the employer's favour."

At the Employment Appeals Tribunal hearing, the appellant's representative contended that the claim to the rights commissioner had not been withdrawn and that it had now been appealed to the Tribunal. It was also argued that the appellant had not been represented at the District Court and

that the amount of money involved was not the same.

The respondent's solicitor now conceded that he had not been at the rights commissioner's hearing and that he was relying on his client's instruction that the appellant's representative had withdrawn that claim on the day of that hearing.

The Tribunal was furnished with a booklet of documents prepared for the Tribunal hearing and with a copy of another booklet entitled "PAYMENT OF EXPENCES (sic) AND OVERTIME". The booklets included inter alia a copy of a letter dated 1 August 2005 from the appellant to the managing director of the respondent. In the letter the appellant wrote that he had "written a chart of all the dates, places and hours I have worked overtime this year" and that he had "gone through all my expence (sic) claims and account statements for both of my accounts and found that there is a discrepancy in the figures that you have and in what I have."

Determination:

We rule against the respondent regarding withdrawal because the Rights Commissioner does not record a withdrawal. The Rights Commissioner made a finding.

The second question is whether this was already decided by the District Court. The Rights Commissioner heard the claim before the District Court did. We have it after that.

There was a claim for a deduction of €1,640.00, being country money, and Section 5 (1) would appear to govern it. The respondent's solicitor says that the substance of the claim in the District Court was the payment of expenses and overtime. We have seen the book of documents submitted by the claimant to the District Court. In substance it is about country money. The District Court ruled that the claim failed and has decided the matter. We, therefore, are debarred from proceeding further.

The appeal under the Payment of Wages Act, 1991, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)