

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employer

CASE NO.
PW18/2007

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

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. M. Forde
Mr. D. McEvoy

heard this appeal at Cork on 8th November 2007

Representation:

Appellant(s) : Mr. Duncan Inverarity, BCM Hanby Wallace, Solicitors,
88 Harcourt Street, Dublin 2

Respondent(s) : Ms Lorraine O'Brien, Mandate Trade Union,
I.B.S. House, 1/2 Emmet Place, Cork

The decision of the Tribunal was as follows:-

This matter came before the Tribunal by way of an employer appealing against the decision of a Rights Commissioner in the case of Employee –vs- Employer (ref no. r-040400-pw-06-DI) under the Payment of Wages Act, 1991.

The respondent's (the employee's) original claim arose out of the fact that on the 6th of December 2005 she received vouchers to the value of €295.00 in respect of her Christmas bonus. She objected to the method of payment of the bonus and referred the matter to the Rights Commissioner under the Payment of Wages Act 1991.

It is common case that the Christmas bonus forms part of a collective agreement reached between the parties in 1997. Consequently, what is referred to as a bonus, is in fact an entitlement and there is no dispute about this fact.

The Rights Commissioner found that under Section 1 (1) of the 1991 Act, that cash means "legal tender", and he went on to find that the Appellant's (the employer's) vouchers were clearly not legal tender and in the circumstances found the Respondent's claim to be well founded and ordered the payment of €295.00 by way of compensation.

It appears that the Appellant, in appealing the decision of the Rights Commissioner, makes three points:

1. That the application as drafted by the employee (the Respondent) cited “*changes in the method of payment of Christmas bonus*” as being the basis for her application. The Appellant has argued that this does not give jurisdiction to the Rights Commissioner or the Tribunal to hear the case under the Payment of Wages Act 1991. The Tribunal rejects this argument. It would be inappropriate and indeed against the ethos of the Tribunal to hold against an Applicant solely on the manner in which he or she expressed their complaint. It is clear that the substance of the Respondent’s complaint is that there was a deduction from her wages in that she received her bonus in vouchers rather than in cash.
2. The Appellant argues that by her conduct, the Respondent is essentially estopped from making her complaint as she had accepted vouchers in previous years. The Tribunal does not accept that this conduct precludes or prohibits the Respondent from exercising her rights under the Act.
3. The Appellant argues that they have discharged their obligations under the Act by the use of vouchers and rely on prior decisions of the Employment Appeals Tribunal to support this argument. In particular they rely on the decision in case number PW44/2005 in which the EAT expressed the opinion that the bonus comes within the definition of wages, thus giving the Tribunal jurisdiction to hear and determine the particular case. It seems to this Division of the Tribunal that the observation that “vouchers are interchangeable for cash” was merely that, an observation and is not binding in anyway on this Division. Consequently, this Division upholds the finding of the Rights Commissioner in that vouchers are not legal tender within the meaning of Section 1 (1) of the 1991 Act.

Furthermore, this Division of the Tribunal finds that in the context of an Employer’s obligation to pay wages under the Payment of Wages Act that the provision by an Employer of vouchers for its own goods or services, in lieu of cash, does not discharge its obligation under the Act, and this Division observes that it is extremely doubtful that the nominal value of a gift voucher has the same value in cash.

In all the circumstances the Tribunal upholds the recommendation of the Rights Commissioner. A difficulty however that arises in this case since the decision of the Rights Commissioner, is that the Respondent has in fact encashed the bonus vouchers for the year in respect of which she made her complaint. Whereas the Tribunal upholds her right to be paid in cash it varies the Recommendation of the Rights Commissioner and awards a nil amount in the particular circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)