

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO. PW66/2007

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

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J O'Connor

Members: Mr M Forde
Mr K O'Connor

heard this appeal at Killarney on 26th June 2008

Representation:

Appellant: Mr Patrick Enright,
Lees, Solicitors, 45 Church Street, Listowel, Co. Kerry

Respondent: XXXX

This case came to the Tribunal by way of an appeal of a Rights Commissioner, ref: PW45962/06/MR. The employee was seeking to have the Right's Commissioner's decision upset.

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant took a voluntary severance package from the company in 1997, which consisted of receiving half his salary, less his superannuation payment, until eligible for his pension when he is aged 60. The appellant contended that an increase in his superannuation deduction since 2006 is unlawful.

The appellant contended that the payments he receives are wages and that he is an employee, and he is therefore covered under the Payment of Wages Act 1991, as he:

- Receives a payslip
- Receives a P60 annually
- Has never received a P45
- Receives pay increases given to active employees

- Does not go to work by agreement
- Has not resigned or retired
- Has not been put on a pension

In evidence the appellant stated that he received a letter in April 2006 informing him that, in order to enable the company to meet its pension commitments, his superannuation deduction would be increased to by 1%. Active staff members were compensated by a 2% wage increase plus a lump sum payment. The appellant expected the deduction to be 1% of his current income, but he found that it was actually 2.14% amounting to an extra €12.22 per week. He believed that this is more, proportionally, than active employees pay and that it was unfair not to receive the increase and lump sum paid to active staff.

When the appellant signed up to the severance package he received a letter indicating that he would receive 46.75% of his wages, half his pay less his superannuation payment, until he became eligible for his pension. The appellant did not understand that the percentage of his superannuation contribution could increase and believed that this should have been made clear to him. He believed that he should have been consulted on the changes. He is not a member of a union.

Respondent's Case:

In submissions the respondent company disputed that the appellant is an employee or that the payments he receives can be defined as wages, and therefore, argued that the appellant was not entitled to bring the appeal under the Payment of Wages Act 1991. The respondent company contended that the increased deduction for superannuation was lawful.

In evidence a company manager (CM) stated that the company does not control the pension scheme. The scheme allows for amendments, which the appellant gave permission for when he signed up for it in 1981. Changes to the scheme were provided for in the explanatory booklet provided. The company is not obliged to consult employees on changes to the scheme. The board consults with the committee and any changes have to be approved by the Minister, which this was.

The appellant is entitled to increases under the National Pay Agreements, as are pensioners. The appellant will cease to contribute in 2010 when he will reach age 60.

In 2005, the deficit of the pension fund became an issue, and talks on increasing contributions was held together with two other issues 'pay and change'. It was agreed that members of the pension scheme would increase their contribution by 2% and company by 4.5%. A 2% payment increase and a lump sum payment under 'Pay and Change' was for active employees only, for improvements in the workplace, and the appellant was not entitled to them. The company has staff in two different pension schemes and all active staff received the 2% increase and lump sum.

CM explained how superannuation deductions are calculated. When the appellant took the severance package superannuation for employees was 6.5%. Under the severance scheme the appellant deferred his pension until age 60 and is in receipt of half his pay less superannuation until that time. The calculation was 100% less 6.5% equalling 93.5% divided by two for half pay, 46.75%. An extra 2% increase meant that the appellant received half of 91.5%, equalling 45.75%. Not 1% of 46.75% as the appellant thought at first.

Determination:

Having heard all the evidence, the Tribunal finds the following:

- The appellant is entitled to pursue his grievance under the Payment of Wages Act 1991.
- The payments that the appellant was receiving were wages for the purpose of the Payment of Wages Act, 1991.
- The deductions by the respondent company were in accordance with the superannuation scheme, were not illegal and were not in contravention of Section 5 of the Payment of Wages Act, 1991.

Accordingly, the Tribunal upholds the decision of the Rights Commissioner and the appeal under the Payment of Wages Act, 1991, fails. The Tribunal is further satisfied that the lump sum payment and increase of 2% payable to current staff was intended by the parties to apply to those working in the employment at the relevant time, as part of an overall package agreed between the parties.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)