

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employer

CASE NO.
PW1/2008

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. P. O'Leary B L

Members: Mr R. Murphy

Mr O. Nulty

heard this appeal at Navan on 9th June 2008

Representation:

Appellant: XXXX

Respondent: Mr. Eddie Cassidy, Divisional Organiser, Mandate Trade
Union, O 'Lehane House, 9 Cavendish Row, Dublin 1

This case is before the Tribunal by way of an employer appealing a Decision of a Rights Commissioner (ref: r-05137-pw-07/TB).

Employee's case:

The Tribunal heard evidence from the former employee. He told the Tribunal that he was a head chef in a kitchen and he was given targets to achieve and if he did so, he would obtain a bonus. In cross-examination the witness explained that the bonus arose, as his salary was €35,000, which would normally be €45,000.00, and he was told at his interview that this salary would be €35,500.00 and a provision for a bonus.

The Tribunal asked the witness if there were four conditions to be met for the bonus to be payable and he agreed that was the case. He agreed that one of these conditions were not met in August 2007, although he elaborated that the bonus was guaranteed when he found out that the 2nd Chef wages were more than his wages. He was asked if the conditions were not then applicable and he replied, "yes I found out he was on €39,000.00 plus".

Employer's case:

The Tribunal heard evidence from the general manager. He told the Tribunal that the employee was definitely not offered a bonus. He was the head chef and was therefore responsible for the kitchen and the rotas; it was common sense that he had those goals as the head chef. He did sign a document that the employee earned a certain amount but that was as a favour to the employee to enable him to obtain a loan.

The Tribunal heard evidence from an accountant for the company who gave evidence as to the financial aspects of the company.

Determination:

On the basis of his own evidence and evidence adduced one of the conditions precedent to the granting of the bonus was that the Hygiene Management System test be passed. The test was first passed on 05th October 2007 and it is the Tribunal's finding that the payment of the bonus should begin on that date. Therefore the Tribunal award him the sum of €3,300.00 and vary the decision of the Rights Commissioner to reflect that sum.

The claim in respect of overtime fails as no evidence was adduced to the Tribunal's satisfaction that there was any amount outstanding in respect of that claim, during the hearing.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)