

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

PW152/2008

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

Employee -v-

4 Employers

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Mahon

Members: Mr J. Goulding
Ms K. Garvey

heard this appeal at Wicklow on 11th February 2009

Representation:

Appellant :

In Person

Respondent :

Miley & Miley, Solicitors, 35 Molesworth Street, Dublin 2

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employee against the decision of the Rights Commissioner Ref: r-063694-pw-08/MMG under the Payment of Wages Act, 1991, dated 25th August 2008.

Preliminary issue:

Appellant's case:

It was the appellant's case that when he lodged a form T1A with the Tribunal on 8th October 2007 where he made claims under the Unfair Dismissals Acts, 1997 to 2001, Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Act, 1973 to 2001 he made reference to outstanding wages on the reverse side of that form. He also made extensive efforts to resolve the matter with the respondent at local level between June and September 2007.

Respondent's case:

The appellant's last day to work for the respondent was 13th April 2007 and his employment ceased on 31st May 2007. A complaint was made to the Rights Commissioner under the Payment of Wages Act, 1991 on 11th April 2008 which is outside the six month referral time applicable under the Act and no case was made to extend the time for referral to twelve months in exceptional circumstances. In the circumstances the Tribunal does not have jurisdiction to hear this case.

Determination:

Under the Payment of Wages Act, 1991 a complaint must be made to a Rights Commissioner "within the period of 6 months beginning on the date of the contravention to which the complaint relates". If the Rights Commissioner is satisfied that "exceptional circumstances prevented the presentation of the complaint" within the 6 month period, the Rights Commissioner may extend the time - "such further period not exceeding 6 months as the rights commissioner considers reasonable". The appellant ceased to work for the respondent on 13th April 2007 and his employment was terminated on 31st May 2007. While the appellant stated that he referred to outstanding wages due to him when he submitted form T1A to the Tribunal on 8th October 2007 in respect of claims under other Acts and he also made efforts to resolve the issue with the respondent directly, the first formal complaint was not made until 11th April 2008. The Tribunal can only deal with complaints under the Payment of Wages Act, 1991 on appeal from a Rights Commissioner's decision. As the 11th April 2008 is outside the six-month referral time applicable under the Act and the Tribunal is not satisfied that "exceptional circumstances" prevented the lodging of the complaint it does not have jurisdiction to hear this appeal. The

Tribunal therefore affirms the decision to the Rights Commissioner under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

