

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
Employer - appellant

CASE NO.  
PW142/2008

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

under

**PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr J. Goulding  
Mr J. Moore

heard this appeal at Navan on 19th December 2008

Representation:  
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Appellant(s) :

Mr. Aaron Shearer BL instructed by Patrick Noonan & Co, Solicitors,  
Athboy, Co. Meath

Respondent(s) :

Mr. Vincent Martin BL instructed by Brennan & Company, Solicitors, Fitzwilliam  
Business Centre, 26 Upper Pembroke Street, Dublin 2

The decision of the Tribunal was as follows:-

**This case came before the Tribunal by way of an employer appealing against the recommendation of the Rights Commissioner ref: (R-060272-PW-07/RG)**

**Determination**

Under her contract of employment the employee was entitled to an annual salary of €50,000 and also “an annual bonus of 25% of the annual audited profit” of the company. On termination of her employment clause 11 (B) of the contract provided for an additional payment: “Except in circumstances justifying immediate termination of the employment and

provided that your employment continues until at least 1<sup>st</sup> January 2007, in addition you will receive a terminal bonus calculated at 25% of the average audited annual turnover of Raymond Potterton Financial Services for the three years prior to the termination of your employment. For this purpose, turnover is defined as annual gross fee income received.”

The amount due under the above clause was agreed at €111,590.00 and the company did not dispute that this sum was payable. The company appealed on the basis that “the Rights Commissioner failed to take into account in reaching her determination additional payments that were made to the Employee.” These additional payments included a fee due on the sale of her house, an advertising bill, a fee for her masters course and study leave. An agreed figure of €22,590 was put on the value of these matters. In addition there was an issue between the parties relating to shares.

Counsel for the employee argued that the bonus payable under clause 11(B) came within the definition of wages set down by section 1(A) of the Act:

“wages, in relation to an employee, means any sums payable to the employee by the employer in connection with his employment, including-

- (a) any fee, bonus or commission, or any holiday, sick or maternity pay, or any other emolument, referable to his employment, whether under his contract of employment or otherwise, and
- (b) any sum payable to the employee upon the termination by the employer of his contract of employment without his having given to the employee the appropriate prior notice of the termination, being a sum paid in lieu of the giving of such notice”:

Counsel for the company relied on the proviso to that definition:

“Provided however that the following payments shall not be regarded as wages for the purposes of this definition:

- (i) any payment in respect of expenses incurred by the employee in carrying out his employment,
- (ii) any payment by way of a pension, allowance or gratuity in connection with the death, or the retirement or resignation from his employment, of the employee or as compensation for loss of office,
- (iii) any payment referable to the employee’s redundancy
- (iv) any payment to the employee otherwise than in his capacity as an employee,
- (v) any payment in kind or benefit in kind”

Counsel argued that any payment under clause 11(B) would fall within (ii) above as it would be a “gratuity” on her resignation. The Tribunal understands that a “gratuity” in general terms means a payment which is not legally due, but the word is also sometimes used to describe a lump sum payable to certain types of employees on their retirement. Counsel for the company was unable to give any other definition to support his contention in respect of (ii) above.

The Tribunal therefore holds that any payment under clause 11(B) falls within the definition of

wages under the Act. As the company does not dispute that the payment is due we determine that the sum of €111,590.00 is payable by the company to the employee.

The Tribunal has no jurisdiction to determine the issues relating to shares or on the other matters referred to above. It is possible that on enforcement these other matters may arise by way of Set-Off, but those matters are outside the Tribunals jurisdiction.

The Tribunal upholds the decision of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_

(CHAIRMAN)

