

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

- appellant

CASE NO.
PW151/2008

Against

Employer
- respondent

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. R. Prole
Mr. P. Woods

heard this claim at Dublin on 5th December 2008 and 10th March 2009

Representation:

Appellant : Ms Cathy Maguire BL instructed by
Ms. Aileen Fleming, Daniel Spring & Co., Solicitors, 50 Fitzwilliam Square, Dublin 2

Respondent : Mr. Ken Stafford, 7 Castletown Court, Celbridge, Co. Kildare

This appeal came before the Tribunal following an appeal of a Rights Commissioner's decision r-060983-pw-08.

Appellant's Case

The appellant gave direct evidence that he worked as a printer for the respondent company and has twenty-one years service in the printing industry. He qualified as a printer from Bolton Street College. Prior to working for the respondent he worked on top of the range technology in the printing industry. He was approached by the respondent company and started working for them in November 1997. When he started working for the respondent he earned £550 per week and had a great relationship with this employer. He worked from 8am until 4pm daily and shift work was not part of his working week. He worked a total of 39 hours per week. He received two pay increases, one of which was approx €5,000.00 per year.

Following a merger of the respondent with another entity in 2005 the appellant's work pattern changed from a five-day working week to three daily shifts of a twelve hourly duration. This shift was described by the appellant as a continental shift. He was asked by the Managing Director to stick with the company but was not paid a shift premium. He was given a goodwill payment of €2,000.00 and agreed to continue working for the respondent.

Approximately one year later the witness approached the Managing Director seeking an increase in his wages. The Managing Director again asked him to stick with the company and paid a further €2,100.00 to the witness over a four-week period. The witness accepted this payment and, as the company had purchased a new digital technology printer he wanted to be included in the new digital operation.

In or about April 2007 the witness again approached the Managing Director seeking agreement on a shift rate premium. He was told by the Managing Director "I would rather close this place down than pay you a shift rate". Around Christmas 2007 the witness had a meeting with the Managing Director was told that his work performance had decreased and he does not smile anymore. He was told that the directors had lost faith in him and asked why he does not get a new job. It was a very negative meeting and it was the last occasion that the Managing Director spoke to him even though he continued working for the respondent for another six months. His working relationship with his employer deteriorated after this meeting and the witness subsequently lodged a claim under the Payment of Wages Act with the Rights Commissioner service. He was under great stress at this time and his father was also seriously ill something which was known to his employer.

Under cross examination the witness agreed that there is no reference to a continental shift in the Registered Employment Agreement which sets pay and conditions in the printing industry. He confirmed that after the merger occurred in 2005 he worked fewer hours per week than he had worked prior to the merger. He never received written confirmation from his employer that he would be paid a shift premium. He never received a contract of employment from the company. In reply to questions from the Tribunal the witness accepts that he was paid a higher rate of pay than the rates stipulated in the Registered Employment Agreement.

A witness for the appellant gave evidence that he worked as a production manager for the respondent until February 2006. He was the appellant's production manager. When the merger occurred in 2005 the appellant told him that he was not receiving a shift rate but he had a gentleman's agreement with the company. The witness was aware that the appellant was receiving a higher rate of pay than the other printers working for the respondent.

The next witness for the appellant gave evidence that he is a Regional Officer with AMICUS trade union. He was contacted by the appellant around Christmas 2007 and represented him thereafter in his negotiations with the respondent. In reply to questions the witness confirmed that there is no mention of a continental shift in the Registered Employment Agreement but it is standard practice in the printing industry.

Respondent's Case

The respondent merged with another entity in 2005 and while the appellant's wages were regarded as uncompetitive they were nevertheless not reduced. The managing director at the relevant time referred to shift allowances, bonuses, and other payments but emphasised that no shift allowance was paid for a continental shift.

The production manager outlined the background to the reasoning behind making the appellant redundant. Orders were decreasing and there was a general downward in business from early 2008. By the end of March that year he warned some of the workforce including the appellant of the possibility of redundancy. The appellant had the shortest service of the three printers and the witness felt that that factor had to be taken into consideration for the selection process. By May 2008 the respondent decided to cease with his services. The witness told him at that time that there were no further work opportunities for him with the respondent. He was not prepared to offer him a “menial” position and since there were no other suitable jobs available the appellant was made redundant. The appellant’s shift allowance issues had no bearing on that decision.

Determination

No evidence was established in this case that the appellant was entitled to an 18% shift differential and over the period he worked the continental shift he made no official claim in respect of this except in his application to the Rights Commissioner in March 2008.

The Tribunal did not receive any evidence that a continental shift attracted a shift differential and the evidence of the trade union official was to the effect that no continental shift differential existed within the industry. The registered employment agreement confirms this and the Tribunal must find that the appellant was not entitled to compensation for that shift.

Consequently, the appeal under the Payments of Wages Act, 1991 fails and the decision of the Rights Commissioner is upheld.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

