

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

-Appellant

CASE NO.

PW143/2008

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

Employer

- Respondent

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. M. Forde
Mr. D. McEvoy

heard this appeal at Cork on 19th February 2009 and 6th April 2009

Representation:

Appellant: XXXX

Respondent: Mr. David Pearson, G.J. Moloney, Solicitors, City Quarter, Lapps Quay, Cork

This case came before the Tribunal by way of an employee (the appellant) appealing the Rights Commissioner Decision reference: r-057048-pw-07/GC.

The decision of the Tribunal was as follows:

The appellant's representative was given leave under S.12 of S.I. No.24 of 1968 to represent the appellant.

The Tribunal was informed that an agreement was reached between the parties concerning the end of the appellant's employment with the respondent.

Respondent's Case:

It was the respondent's case that the claim under the Act was out of time.

The payment to the appellant was made on the 19th September 2006. The Rights Commissioner service did not receive the claim until the 20th September 2007, which was outside the stipulated six-month time period but was also outside the possible extendable period for claims under the Act.

For the claim to be in time it should have been lodged to the Rights Commissioner by March 2007 or with a possible extension to the 19th September 2007. The respondent's representative submitted

that as the Rights Commissioner service received the claim on the 20th September 2007, therefore outside the twelve-month period, the Tribunal did not have jurisdiction to hear the appeal.

The Financial Controller (NM) gave evidence that he joined the company in November 2007. He said that the appellant was paid sick pay up to 19 September 2006.

Appellant's Case:

The appellant's representative accepted that the claim to the Rights Commissioner was outside the stipulated six-month time period but the appellant had submitted her claim within the twelve-month period. The amount paid to the appellant for month ending 30th September 2006 was incorrect. The incorrect amount was paid on the 25th September 2006. There were exceptional circumstances, which prevented the appellant from lodging her claim within the six-month time period. It was the appellant's case that the impact on her of bullying and harassment had prevented her from lodging her claim within the stipulated six-month time period.

The appellant gave evidence to the Tribunal. She commenced employment with the respondent in 1983 and was content in her employment for over twenty years. From 2004 onwards the appellant's work situation became difficult.

In 2006 the appellant was absent from work for a period of time due to work-related stress. The appellant was certified fit to return to work on the 30th August 2006. Her doctor said she should return to work on the basis of a three-day week for a period of one month. The company doctor concurred. During the period of September and November 2006 there was dialogue with the respondent. Part of that dialogue related to the appellant's wish to make a complaint about bullying and the appellant agreed to lodge a complaint. She returned to work full-time on the 1st November 2006.

The appellant was aware of the time factor involved with making a claim under the Payment of Wages Act, 1991 but she was too traumatised at that time to submit a complaint. The appellant's solicitor had informed her in or around October/November 2006 that there was a six-month time limit for making a claim under the legislation.

On the second day of hearing the appellant said that she was out of work due to work related stress, but was certified fit to return in August 2006. She was then forbidden to go back by the employer, in effect she was locked out. She felt that PM was trying to get rid of her based on his letter to her of 22 September 2006. Her solicitor wrote to the company saying that she was entitled to go back to work, but the company said that she presented unreasonable conditions for her return.

She received a letter from CD on 24 July 2006, which gave her some assurance that she could return, but she was still locked out until 1 November 2006, and had received no income during October 2006. When she returned to work she discovered her desk was gone and her possessions put into a box on the floor. This made her feel isolated. In December 2006 an anniversary dinner was held for staff of the respondent but she was not invited, so she felt excluded once again.

When she returned to work NA asked her to cover reception during lunchtime. This request explicitly went against what CD had said in his letter of 24 July 2006, and was unnecessary anyway as there was a facility for taking phone messages during lunchtime, which had always been the practice beforehand. NA repeatedly asked her to cover reception and failed to respond to her letter

requesting that he desist, except to initiate a disciplinary hearing, which was held on 25 November 2006. She asked her union representative to accompany her to the meeting but he was subsequently asked to leave by her employer.

She formally raised a complaint to the employer, but this was never investigated and, in addition, NA was to be involved in the investigation, which went against disciplinary procedures. On 2 February 2006 she was suspended and remained so for 8 weeks and felt terrible not knowing when she could go back to work. She said that she got a solicitor's advice in relation to the bullying and harassment she suffered.

She accepted that as per a letter from her solicitor on 12 February 2007, she had issued instructions to bring a claim to the Rights Commissioner under the Payment of Wages Act, 1991, unless she was paid her outstanding wages. She agreed that all issues other than the Payment of Wages were resolved between the respondent and herself.

Appellant's Closing submission:

The Tribunal is asked to overturn the Rights Commissioner's decision. It is clear that the claim does fall within the definition of exceptional circumstances as outlined in section 6 (4) of the act. It is irregular to pay someone for sick pay when they are still at work, as was the case in this instance. The Rights Commissioner erred in referring to the payslip of 19 September 2006, the claim does fall within the scope of the act. The appellant has given evidence of exceptional circumstances. Being asked to cover at reception by NA went against previous accepted practice within the organisation, and she had a letter from CD specifically stating that she should not be asked to do this. When she wrote to NA about this, she got no response from him except for the initiation of a disciplinary procedure upon her. The appellant was suspended on the same day that she issued a complaint about the respondent. She was subjected to a shoddy investigation, was a victim of harassment, exclusion and isolation and accused of wrongdoing which never occurred. If all these matters do not include exceptional circumstances, then he said that he did not know what does.

Respondent's Closing submission:

The employer's position is supported by the Act. The last payment to the appellant was on 19 September 2006. Under section 6 (4) of the act it refers to the date beginning from the date of contravention, which in this case was 19 September 2006, so the claim should have been lodged by 19 March 2007. The appellant had legal advice on this issue, so couldn't have been taken by surprise. The claim can only be extended for a further six months, but was lodged on 20 September 2007. So even if exceptional circumstances applied, this would only give twelve months, but the claim is outside twelve months. There are no exceptional circumstances anyway.

Determination:

The Tribunal upholds the decision of the Rights Commissioner in this case, and therefore the appeal under the Payment of Wages Act, 1991, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)