

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
9 Employees

CASE NO.
PW102/2008
PW103/2008

PW104/2008

PW105/2008

PW106/2008

PW107/2008

PW108/2008

PW109/2008

PW110/2008

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

9 Employees
V
Employer

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P Hurley

Members: Mr B O'Carroll
Ms H Henry

heard this appeal at Ballinasloe on 6 March 2009 and 25 May 2009

Representation:

Appellant(s): Ms. Diane Jackson
Branch Organiser
SIPTU, No. 3 Branch,
Forster Court, Galway

Respondent: Mr David McCarroll,
RDJ Glynn

Solicitors
Aengus House,

Long Walk, Galway
&

XXXX

This case came before the Tribunal by way of an employee appeal against the Recommendation of a Rights Commissioner ref: (r-0586 (85-93)-pw-07).

The decision of the Tribunal was as follows:-

Appellant's Cases:

The nine appellants work in a hospital, six in the laundry and three in maintenance. All worked regular overtime, Saturdays in the laundry, and Saturdays and Sundays in maintenance. On Thurs 6 September 2007 all were notified that overtime would cease immediately on foot of a circular from the HSE on 5 September 2007.

The appellants considered that the circular stated a cessation of additional overtime, and that the overtime worked was not additional, but rostered. An email from the hospital manager to managerial staff, dated 6 September 2007, stated that 'overtime is overtime, not additional' and that 'if any union or staff have a difficulty with this the advice is they work under protest and process their grievance through normal IR channels and mechanisms'.

On trade union advice the appellants presented for overtime work that weekend to work under protest. The appellants were informed that they would not be paid if they came to work overtime hours at the weekend. The appellants believed that bins and soiled laundry not being collected over the weekend posed a health and safety risk.

The appellants continued to work for a number of weekends until a buyout agreement was reached in relation to overtime. The appellants are seeking payment for the weekend overtime hours worked between Saturday 8 September 2007 and 21 October 2007. All appellants agreed that weekend hours were optional and they could arrange cover and that this was not the case with normal weekday shifts.

Respondent's Case:

The General Manager gave evidence. On September 2007 he, and all Managers in the respondents regional sections, received a memo from HQ concerning a financial breakeven plan. The memo set out various points but one in question, point 5, stated "*No additional utilisation of agency staff or overtime working is authorised and any planned reductions in expenditure under these headings should proceed*". His feeling was all overtime would cease.

On 6 September 2007 he sent an email to all line Managers concerning the memo stating, "*overtime was overtime, not additional. If any union or staff have a difficulty with this the advice is they work under protest and process their grievance through normal HR channels and mechanisms.*"

The Laundry Manager spoke to her staff concerning the matter. He explained that the respondent's grievance procedure in May 2004 and stated "*Where a grievance relates to an instruction by the Supervisor / Manager arising from a service imperative the employee is obliged to carry out*

the instruction “under protest”. A meeting with senior Management will be held within 3 working days of the grievance being received.*

- *Senior Management refers to with either senior line Management or the human resources department. If the issue cannot be resolved at this stage, the matter may be referred to a third party.”*

The instruction given to employees was not to come in at weekends for overtime. However, the nine named appellants continued to come in.

On 7 September 7 2007 he received a letter from the appellants’ union representative requesting employees already rostered on overtime should continue as normal. He contacted the union by telephone. He attended a meeting on 11 October 11 2007 with the union representative, the Laundry Manager and others. The issue of overtime was not resolved; the respondent could not pay for it. Employees still arrived for overtime after this meeting but soon stopped. A case was taken before the Rights Commissioners.

On cross-examination he explained that it was not compulsory overtime. He explained a lump sum for the loss of overtime was paid to the appellants in this case in 2008. When put to him that 2 staff remained on overtime after 4 September 2007 he replied that they were “on call” which was paid a flat rate and if called in the first 3 hours were paid as overtime. If they did not come in they only received a flat rate payment. He agreed he had met with Laundry Manager and one of the appellant but had not told him to work under protest; he had just highlighted the grievance procedure.

The Building and Maintenance Manager gave evidence and explained that he was Supervisor over 3 of the named appellants. He received the email from the General Manager on 6 September 2007, was not shocked to see it, as most people knew money was tight with the respondent and relayed it to all his staff by memo on the notice boards. It was the topic of conversation the following day. A meeting was held on the Friday, everyone was aware what was happening. The following Monday he heard some of his staff had turned up for work at the weekends. On hearing this he was concerned they might not have been insured to be on the premises. He spoke to them and informed them they would not get paid. He explained there was no overtime in his section but staff were “emergency on-call”.

On cross-examination he stated that his staff were aware if they worked at the weekend they would not be paid and had told them to get union advice. He explained that when the new plan was introduced a bigger collection of all the laundry and refuse was collected on Mondays.

The Laundry Manager gave evidence. She stated she was Supervisor over 6 of the named appellants. She received the memo from the General Manager and informed her staff. A staff member contacted her and she attended a meeting with him and the General Manager to be informed no overtime would be paid from then on. It was explained to all the other staff.

On cross-examination she explained that in January 2008 alternative plans were put in place as she had been informed laundry had been lying around at the weekend.

On cross-examination she explained that as patients numbers decreased so did working hours.

Determination:

Having heard all the evidence and submissions adduced over the two days of the hearing the

Tribunal finds in favour of the respondent and upholds the recommendation of the Rights Commissioner. Accordingly, the appeals under the Payment of Wages Acts, 1991 fails

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)