

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYER

- appellant

UD526/09
PW57/2009

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

EMPLOYEE

- respondent

under

PAYMENT OF WAGES ACT, 1991 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr J. Horan
Mr. J. Dorney

heard these appeals in Naas on 8th March 2010.

This case came before the Tribunal by way of an appeal by the employer against the recommendation of the Rights Commissioner ref. R-067092-ud-08/JW and the decision of the Rights Commissioner ref. R-066331-pw-08/JW.

Representation:

Appellant: Ms Joanna Howells B.L., instructed by Ms. Rioghnagh Bracken,
R Bracken & Co., Solicitors, Main Street, Clane, Co. Kildare

Respondent: Mr. Willie Hamilton, Mandate, O'Lehane House, 9 Cavendish
Row, Dublin 1

At the outset of the hearing the appeal under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn by the employer. The findings of the Rights Commissioner stand. The issue of minimum notice was not dealt with by the Right Commissioner in the course of the hearing held on 9th February 2009.

The determination of the Tribunal was as follows:-

Appellant's Case:

The General Manager gave evidence. She was in this role since 2006. She was responsible for the back office, shop floor, bookkeeping, purchasing, display and rosters. On the shop floor staff could work between five hours and thirty five/thirty nine hours depending on their roles. Employees were accommodated generally and there was some flexibility.

In 2007 the General Manager became aware that the deli counter was extremely busy during the hours of 1.00 pm and 2.30 pm. Queues were long during these times and customers were leaving without ordering food.

The main concern was that there were not enough staff behind the deli counter during the lunch time period. They could not cope with the level of demand. The counter was not being run efficiently and they were losing money. Shifts were looked at in the deli. The existing shifts were 7 to 5 and 11 to 8 pm.

The General Manager invited the deli assistants to a meeting. Staff originally had an unpaid sixty-minute lunch break. She discussed changing the lunch hour from sixty minutes to a new paid lunch hour of 30 minutes and changing the shifts from 7 to 2 and 1 to 8. She proposed changing the daily hour rate from €8.50 to €9.30. She received very positive feedback from staff. They were happy with a shorter working day and more money. No one objected to the proposed changes. The changes were implemented the first week in May 2007.

As far as the company was concerned they had a win win situation. After some time due to the fall off in customers coming into the deli, they stopped serving food at 5 and the evening shift ended at 6 pm.

The respondent's shifts changed constantly. She never complained about her hours and they varied. The company received a letter dated 20th May 2008 from the respondent's union representative indicating that the respondent's hours had been reduced with a consequential loss of earnings. As the company did not recognise the claimant's union they tried to engage with the respondent but she refused to engage with the company.

The General Manager contended that the respondent had received a zero hour contract of employment.

In relation to payment of back pay, the company does not operate on a back week basis. When the respondent commenced work she was paid by cheque at the end of that week.

Respondent's Case:

The respondent commenced employment on 4th June 2001 as a deli assistant initially in a part-time capacity and after some time worked in a full time capacity. She worked full time and a 39 hr week. She did not receive a contract of employment. She had never seen a contract or signed it. It was only at the Rights Commissioner hearing that she became aware of the contract of employment. She believed the signature on the contract of employment to be forged and was advised to seek legal advice in the matter.

She did not attend the staff meeting on 21st March 2007 as she was off that day. The following day her supervisor informed her of changes in her working hours. She met the General Manager who informed her that the decision had been made to reduce deli assistants' hours of work to 35 per week. She objected to this reduction and had not agreed to it.

The respondent contended that all staff worked a back week. She said she commenced work on 4th June 2001 and did not get paid until the following week.

Determination:

The Tribunal has carefully considered the evidence adduced by the parties herein.

The employee knew as of 23rd February 2007 that she was recognised as a full time deli assistant as per the contract of employment.

Towards the end of March 2007 certain changes were made to the workplace rostering practice as a consequence of which the employee's hours were reduced. From the first week of May 2007 this new practice had been fully implemented.

The employee subsequently believed that the change in shifts gave rise to a diminution in her wages.

The appeal under the Payment of Wages Act 1991 related to hours of work governed by the Employment Regulation Order/Retail Grocery and Allied Trades Joint Labour Committee. Under the Industrial Relations Act, 1946 the Labour Court has jurisdiction to register such orders and to interpret them if issues arise.

The Tribunal has no jurisdiction to decide the issue referred to the Tribunal in the appeal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)