

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL OF:**

**CASE NO.**

EMPLOYEE

PW101/09

- appellant

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: Ms P. McGrath BL

Members: Mr J. Horan  
Mr. J. Dorney

heard this appeal at Naas on 8th March 2010.

#### **Representation:**

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

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

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employee (the appellant) against the decision of the Rights Commissioner ref. R-066339-pw-08/JT.

#### **Appellant's Case:**

The appellant gave evidence. She commenced employment on 3 February 2006. She signed a contract of employment on 23 February 2007. Her contract read that she was employed on a permanent part-time basis. She spoke to the General Manager in relation to her working full time and this contract was amended to read that she was employed on a permanent full-time basis. She considered herself to be employed full time even though her hours fluctuated. After some time working with the company she worked more hours. She attended a meeting with the General Manager and other full time deli assistants on 21<sup>st</sup> March 2007. At that meeting the reduction of

working hours from 39 hrs to 35 hrs a week was discussed with the assistants. The hourly rate was to be increased from €8.50 to €9.30.

The appellant could work up to 39 – 45 hrs per week. If the appellant worked a 39 hr week she earned €331.50. In working a 35 hr week she would earn €325.50 per week. The appellant became aware that there would be a shortfall of €6.00 per week in her salary. She discussed this with the General Manager who said she would revert to her. The General Manager did not revert to her.

The appellant normally took four weeks holidays. Her holiday entitlements changed because of the reduction in her hours but this had not been explained to her. Her winter week was reduced to two days. She deemed a full-time employee to be one who worked a 39 hr week.

**Respondent's Case:**

The respondent contended that the appellant never worked a set 39 hr week. Her hours varied. The meeting held on 21 March 2007 was geared towards those assistants working a 39 hr week and the appellant attended this meeting. The nine-hour day changed to a seven-hour day. The appellant never raised an issue about the reduction in her hours until 20 May 2008.

**Determination:**

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

The appellant knew as of 23<sup>rd</sup> February 2007 that she was recognised as a full time deli assistant as per her contract of employment.

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

The appellant 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)