

EMPLOYMENT APPEALS TRIBUNAL

Appeal Of:
EMPLOYEE

-Appellant

Case No.
PW79/2009

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. T. Taaffe

Members: Mr. J. Browne
Ms. M. Mulcahy

heard this appeal at Carlow on 26th January 2010

Representation:

Appellant: Mr. Blazej Nowak, Polish Consultancy Enterprise,
19 Talbot Street, Dublin 1

Respondent: Ms. Muireann McEnery, Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The decision of the Tribunal was as follows:

This appeal came before the Tribunal by way of an employee (appellant) appealing the decision of a Rights Commissioner (reference: r-069262-pw-08/SR).

Appellant's Case:

It was advanced by the appellant's representative that the minutes of a disciplinary meeting held with the appellant were not agreed as accurate as had been stated in the Rights Commissioner's Decision.

Representation for the appellant submitted that the respondent had not complied with S.5 of the Payment of Wages Act, 1991 which states,

An employer shall not make a deduction from the wages of an employee in respect of-

(a) any act or omission of the employee

Unless-

- (i) *the deduction is required or authorised to be made by virtue of a term (whether express or implied and if express, whether oral or in writing) of the contract of employment made between the employer and the employee, and*
- (ii) *the deduction is of an amount that is fair and reasonable having regard to all circumstances (including the amount of wages of the Employee), and*
- (iii) *before the time of the act or omission the employee has been furnished with-*

and

has been furnished in least the deduction in respect of the deduction of the employee in writing of the act of omission and the amount of the deduction

The appellant's employment was terminated following an investigation into stock errors. The respondent made a deduction from the appellant's wages in payslip dated the 19th September 2008. The appellant had not been given notice of the deduction. He received the sum of €160.20 as wages on the 19th September 2009. The sum of €3,268.63 was owing to the appellant.

The appellant did offer to pay for the missing stock out of his wages during the disciplinary meeting held on the 19th August 2008 but he was not provided with notice of the deduction or the calculations used by the respondent to determine the amount of the deduction. Therefore the respondent had not complied with S.5 (2)(iv) of the Act, which states,

in case the deduction is in respect of an act or omission of the employee, the employee has been furnished, at least one week before the making of the deduction, with particulars in writing of the act or omission and the amount of the deduction

Respondent's Case:

The appellant was summarily dismissed for gross misconduct after an investigation into stock irregularities. As part of the investigation the appellant was notified that a disciplinary meeting would take place on the 19th August 2008. At that meeting the appellant admitted he was responsible for the missing stock and he offered to pay for the stock from his wages. This was documented in the minutes of the meeting. The appellant was provided with a copy of the minutes immediately after the meeting. There was agreement at the Rights Commissioners hearing that the minutes were an accurate account of the disciplinary meeting.

Representation for the respondent submitted that the requirement to give notice of the deduction was fulfilled by virtue of the fact that the minutes of the meeting were shown to the appellant after the disciplinary meeting. The minutes clearly stated that the appellant had offered to pay for missing stock from his wages and the respondent had replied, "it will be done." This constituted notice given to the appellant of the deduction. The respondent's letter to the appellant (dated the 20th August 2008) again stated that the appellant had said at the disciplinary meeting that the respondent could recoup the missing stock from his wages.

Representation for the respondent also referred the Tribunal to S.5 (5)(b) of the Act, which states

(5) Nothing in this section applies to—

(b) a deduction made by an employer from the wages of an employee, or any payment received from an employee by an employer, in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision

Determination:

The Tribunal notes that while the appellant disputed the assertion in the finding of the Rights Commissioner (reference: r-069262-pw-08/SR) that the minutes of the disciplinary meeting of the 19th August 2008 were agreed by both of the parties to be accurate, no evidence was adduced by the appellant to substantiate this. It is therefore accepted that these minutes are accurate.

The appellant was summarily, as distinct from, instantly dismissed and therefore had the opportunity to prepare and present to his disciplinary meeting his submissions in respect of his employment with the respondent, including matters such as the payment of wages, in response to the investigation that was being conducted by the respondent.

The minutes referred to clearly contain and refer to an unsolicited offer by the appellant to pay for the missing stock out of his wages and it is the view of the Tribunal that a reasonable interpretation of this offer, in the absence of any submission by the appellant to the contrary, is that the appellant was in effect authorising the respondent to deduct their loss from his wages.

The Tribunal therefore determines that the proposed deduction of wages by the respondent was unlawful. The agreed loss to the appellant is €3,268.63. Deducting the loss of €1,000.00 alleged by the respondent in the agreed minutes which was not disputed by the appellant, the Tribunal awards a sum of €2,268.63 to the appellant thus upsetting the decision of the Rights Commissioner reference: r-069262-pw-08/SR.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)