

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:

CASE NO:

Employer

PW69/2009

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

Employee -v-  
Employer

under

**PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty  
Mr J. Flavin

heard this appeal at Cork on 9<sup>th</sup> March 2010

Representation:  
\_\_\_\_\_

Appellant/Employer :

Mr Eoin Clifford B.L., instructed by Mr Seamus Hickey,  
Hickey Fitzgerald, Solicitors, O'Brien Street, Mallow, Co. Cork

Respondent/Employee :

Ms Ilona Majdak, 8 Kingsfort Square, Castlepark Village,  
Mallow, Co. Cork

Mr. Barry Murphy, Eugene Carey & Co., Solicitors,  
Courthouse Chambers, Mallow, Co. Cork

The determination of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employer against the decision of a Rights Commissioner Ref: r-059681-pw-07/DI -dated 3<sup>rd</sup> February 2009

**Preliminary issue:**

At the outset Counsel for the employer raised the question as to the Right's Commissioner jurisdiction to hear the claim and the Tribunal's jurisdiction to hear this appeal under the Payment of Wages Act, 1991. It was stated that a claim under the Organisation of Working Time Act, 1997 was made to the Rights Commissioner which was subsequently appealed to the Labour Court and the claim was allowed. The claim for notice should have been made under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and not under the Payment of Wages Acts, 1991.

**Determination:**

There was an implied contract and based on the definition of "wages" in Section 1(1)(a) Payment of Wages Act, 1991 "*...any sum payable to the employee by the employer in connection with his employment, including – ...any holiday.. -pay, referable to his employment, whether payable under his contract of employment or otherwise*",

And 1(1)(b) "*any sum payable upon the termination by the employer of his contract of employment without his having given to the employee the appropriate prior notice of termination, being a sum paid in lieu of the giving of such notice*"

Therefore the employee is entitled to claim compensation in respect of holidays and minimum notice under the Payment of Wages Act, 1991.

The Tribunal therefore affirms the decision of the Rights Commissioner and the employee is to be paid €346.67 in compensation for non-payment of outstanding holiday leave entitlement and €1,040.00 in compensation for the non-payment of two week's minimum notice under the Payment of Wages Act, 1991.

The Tribunal is mindful of the fact that as an award has also been made in respect of the employee under the Organisation of Working Time Act, 1997 in another forum he is not entitled to receive payment twice in respect of the outstanding holidays.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

