

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE  
PW142/2009

*-Appellant*

CASE NO.  
UD1433/2009

against the recommendation of the Rights Commissioner in the case of:  
EMPLOYER *-Respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. E. Harrington

Members: Mr. J. Hennessy  
Ms. H. Kelleher

heard this appeal at Cork on 12th April 2010

#### **Representation:**

Appellant: Mr. Jan Jaroslaw Potocki, Polish English Translation,  
"Pilawa", Office 19, 21-23 Oliver Plunkett Street, Cork

Respondent: Mr. David Browne, McNulty Boylan, Solicitors, 26/28 South Terrace, Cork

#### **The determination of the Tribunal was as follows:**

This case came before the Tribunal by way of an employee (the appellant) appealing Rights Commissioner Decisions reference: r-069890-ud-08 and r-069892-pw-08.

The appeal under the Unfair Dismissals Acts, 1977 to 2007, was withdrawn at the outset of the hearing.

The appellant was claiming a loss in wages from January 2008 to August 2008. Representation for the appellant applied to the Tribunal to extend the time limit for part of the claim under the Act. It was the appellant's case that following an accident at work on the 8<sup>th</sup> January 2008 the appellant's rate of pay was reduced to between €250 and €400 per week. Prior to the accident he had earned between €400 and €620 per week

Representation for the respondent submitted that the appellant had not met S.6 (4) as the claim under the Payment of Wages Act, 1991 was lodged to the Rights Commissioners Service on the 16

<sup>th</sup> September 2008 and part of the claim was therefore outside of the stipulated time limit.

Representation for the respondent also submitted that the appellant left his employment with the respondent on the 24<sup>th</sup> June 2008. It was submitted that the Tribunal's jurisdiction was from 16<sup>th</sup> March 2008 to 24<sup>th</sup> June 2008 as no exceptional circumstances existed to prevent the lodging of a claim. It was the respondent's case that the no underpayment occurred and that in fact the appellant received better wages in a new role than he would have in his previous role.

#### Appellant's Case:

The appellant gave evidence that he suffered an accident at work on the 8<sup>th</sup> January 2008 and he attended a doctor the following day. He was then absent for a period of two weeks. On his return to work the appellant was given different duties, which he accepted but he was unaware when he accepted the position that he would suffer a reduction in pay. When the appellant received his payslip he realised he was receiving approximately €200 less per week. The appellant stated that he did not lodge a claim under the Act within the stipulated six month limit as he was unaware that he did not have to pay make a claim. The appellant received his P45 from the respondent in August 2008 but the last day he worked was in June 2008.

During cross-examination the appellant stated that he was unavailable for work from the 24<sup>th</sup> June 2008 to the 8<sup>th</sup> August 2008.

#### Respondent's Case:

The Financial Controller gave evidence on behalf of the respondent. He stated that the respondent was unaware of the alleged accident until the Rights Commissioner hearing. The respondent had a vacant position to fill and the position was offered to the appellant but he did not suffer a financial loss by accepting the position.

In his previous position the appellant was paid €80 net per day and he also earned an incentive per bin collected. This meant the appellant could earn up to an extra €60 per week on top of his weekly pay, which increased his earnings to €510.

In the new position the appellant was chipping, scanning and delivering new bins. He was guaranteed a rate of €50 net per day and €3 per bin he delivered. He delivered approximately 100bins per week. His average pay in the new role was therefore €525 whereas the average in the old position was €510. The respondent stated that the appellant had earned €10,036 net in the new position. Had the appellant remained in the old position, he would have earned less in the same period.

#### **Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. It was acknowledged by the respondent that the Tribunal had jurisdiction to hear details of the claim relating to between 16<sup>th</sup> March 2008 and 16<sup>th</sup> September 2008. The Tribunal was not satisfied that exceptional circumstances existed to prevent the appellant from lodging the claim prior to the 16<sup>th</sup> September 2008, and therefore cannot extend the time limit to hear the remainder of the appellant's claim. The Tribunal is satisfied from the evidence adduced that the appellant suffered no financial loss during the period of 16<sup>th</sup> March 2008 to 16<sup>th</sup> September 2008. The Tribunal therefore varies the Rights

Commissioner Decision reference: r- 069892-pw-08.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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