

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

PW155/2009

*- appellant*

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

EMPLOYEE

*- respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL  
Members: Ms J Winters  
Ms A Moore

heard this appeal at Dublin on 25<sup>th</sup> June 2010

#### **Representation:**

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

Respondent: No appearance or representation on behalf of the respondent

**This case came before the Tribunal by way of an appellant appeal against the recommendation of a Rights Commissioner r-073541-pw-08/EH.**

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

The appellant appeals specifically against the following findings in the Rights Commissioner decision:

*'Deductions: There were the following deductions made, Jan €160.92, Feb €160.92, March €402.30, May €414.20, July €165.68, Sept €207.10 and Oct €82.84 totalling €1,593.96.'*

The appellant explained that the above deductions were not unlawful and arose because the respondent was on sick leave. The appellant does not operate a sick pay scheme and therefore the respondent had no entitlement to payment while out sick. Despite this the respondent was paid her usual salary automatically even though she was not at work due to illness and this overpayment was then lawfully deducted from the respondent's salary afterwards. The appellant used this method because it was administratively convenient not to disturb the regular payments.

The appellant stated that the respondent did not work any overtime other than the overtime that had

been paid. The appellant submitted work records to the Tribunal showing the overtime actually worked does not match the extra overtime that the respondent had claimed and for which the respondent had been awarded €213.67 by the Rights Commissioner. The appellant stated that the Rights Commissioner had asked for further documentation to be furnished to the Rights Commissioner subsequent to the hearing and that this has been done but the Rights Commissioner did not confirm receipt of these documents nor refer to these documents in his decision.

The appellant also stated that the respondent left her employment without giving notice and yet was paid for some of that period subsequent to the termination of her employment.

### **Determination**

The Tribunal is satisfied that the respondent employee had been properly notified of this hearing. The secretary to the Tribunal attempted telephone contact but there was no answer from the respondent.

The total award made by the Rights Commissioner to the respondent was €800.14 net of tax based on a finding of unlawful deductions amounting to €930.40 gross.

The Tribunal accepts the uncontroverted evidence of the appellant (including the documentary evidence of the appellant which may not have reached the Rights Commissioner). The Tribunal finds that sum of €1,593.96 was lawfully deducted for sick leave. The Tribunal also finds that there was no underpayment of overtime hours worked. The Tribunal further finds that there was an overpayment in respect of the period subsequent to the termination of employment. The Tribunal does not vary the other elements of the Rights Commissioner calculation. As these sums exceed the award of the Rights Commissioner and therefore the Tribunal finds that the respondent had in fact been overpaid.

The Tribunal are satisfied that overall there was no underpayment and therefore sets aside Rights Commissioner decision r-073541-pw-08/EH.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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