

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

PW244/09

- appellant

against the decision 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: Ms P. McGrath BL

Members: Mr B. Kealy
Mr. J. Flannery

heard this appeal at Naas on 4th January 2010.

Representation:

Appellant: Mr. Patrick Reidy, Reidy Stafford, Solicitors, Kilcullen, Co. Kildare

Respondent: In person.

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an appeal by the employer (the appellant) against the decision of the Rights Commissioner ref. r-077771-pw-09/JC.

The appellant (KJ) is a sole trader. He is an independent contractor, engaged in collecting bins and delivering skips for company A (a subsidiary of Bord Na Mona). During the respondent's tenure KJ employed five drivers, the respondent being one such driver. The respondent earned €800.00 net per week.

Due to the economic downturn in January 2009 company A reduced their price per bin from €100.00 to €85.00. KJ informed all employees of this reduction. A further 20% reduction per bin occurred in March 2009. This resulted in KJ being paid €65.00 per bin.

KJ wrote to all employees at the end of March 2009 informing them that they would have to take a pay reduction of €100.00 per week. In addition each employee would have to work one Saturday

per month for no extra wage. He hand delivered the letter to the respondent and spoke with him also. The respondent said he could not do this and that he would be fighting his case. Following a discussion with the four other employees they all accepted the reduction in their wages.

The appellant now has two lorries operating, he drives one lorry and GB works very occasionally for him. One employee left at Christmas 2009 and two other employees were made redundant. KJ's financial position has since deteriorated.

KJ told the Tribunal the reason he implemented a reduction in employees' wages was so he would not have to let any employee go.

Determination:

The Tribunal has carefully considered the evidence adduced. The issue before the Tribunal is an appeal from the Rights Commissioner's decision dated 7th September 2009.

The Tribunal accepts and agrees with the findings of the Rights Commissioner in respect of a unilateral decision by the employer to reduce a weekly wage by €100.00 per week was unlawful. In evidence both parties agreed that no negotiation or preliminary discussion took place prior to the delivery of a letter from employer to employee at some point in late March 2009. The reduction in salary was a unilateral decision made by the employer apparently faced with a downturn in his business.

The Tribunal affirms the decision of the Rights Commissioner under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)