

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.  
PW212/2009

EMPLOYEE            *-appellant*

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

EMPLOYER           *-respondent*

EMPLOYER           *-respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman:    Mr. P. O'Leary B L

Members:    Mr. M. Flood  
               Ms M. Maher

heard this appeal at Dublin on 15th December 2010

#### **Representation:**

\_\_\_\_\_

Appellant:    In Person

Respondent:  In Person

This case came before the Tribunal by way of an employee appeal against the Rights Commissioner Recommendation **r-072446-pw-08/JT**.

#### **Background**

The appellant is a teacher employed by the respondent. The appellant's method of pay is by cheque. As part of the modernisation programme contained in the 'Towards 2016' agreement all comparable staff are required to be paid by electronic transfer. The appellant refused to transfer to the new method of payment and as a result he did not receive the pay increase directly associated with adherence to the modernisation programme. The acceptance of electronic transfer as a payment method was a portion of the modernisation programme. The appellant contends that the non-payment of the pay increase constitutes a deduction as per section 5 of the Payment of Wages Act, 1991.

The facts in this case are not in dispute. Both the appellant and the respondent made detailed submissions for their case.

## **Determination**

The Tribunal considered the submissions made by both the appellant and the respondent in this matter. The appellant informed the Tribunal that he did not receive the final 2.5% of the 10% increase gained under the 'Towards 2016' agreement. The appellant informed the Tribunal that he had taken part in the vote that took place on the 'Towards 2016' agreement and voted no, as did his union. The vote in respect of this agreement was carried. In the circumstances the Tribunal decide the appellant is estopped from claiming that he was not bound by that agreement.

The final payment of 2.5% was withheld because of the appellants failure to comply with one of the provisions of the 'Towards 2016' agreement i.e. electronic transfer of wages. In the circumstances his employer was entitled to withhold the payment and therefore that sum was not 'properly payable' to him as part of his wages. The Tribunal upholds the Rights Commissioner Recommendation **r-072446-pw-08/JT**.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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