

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER – *appellant*

CASE NO.
PW214/2009

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. P. O’Leary

Members: Mr. A. O’Mara
Mr. O. Nulty

heard this appeal at Drogheda on 20th January 2011

Representation:

Appellant: Ms. Emma Coffey of Smyth & Son Solicitors, Rope Walk, Drogheda, Co. Louth

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 against the recommendation of a Rights Commissioner r-077065-pw-09/JC.

Appellant’s Case

The managing director of the appellant gave evidence. The respondent started working for the appellant in February 2006. His salary at that time was approximately €50k per annum. He was also paid a commission on his sales. He had a contract of employment that ended in March 2008. The contract was not renewed but the respondent continued to work as before. During the summer of 2008 the appellant company started losing money. Their business was supplying to the construction industry and construction went into a downturn.

In July 2008 the managing director realised that the respondent was costing the company money. The sales he was making were not covering his salary and costs. The managing director felt that he had two choices, either make the respondent redundant or cut his salary. The managing director met with the respondent and explained the situation to him.

The managing director was satisfied that the respondent agreed to a reduction in his salary. They shook hands at the end of the meeting. In September 2008 the respondent wrote an undated letter to the appellant querying the amount of the reduction to his salary and the date on which the reduction came into effect. The managing director replied to the respondent on 01 October 2008. All members of staff have had their salaries reduced.

Respondent's Case

The respondent gave evidence. He started working for the appellant company as described in his contract. His sales figures went down. It is difficult making sales in a recession. He met the managing director and was informed that his salary would be reduced by €200 per week. He shookhands with the managing director at the end of the meeting but it was a natural reaction and did not imply his agreement.

Later he realised how deep the cut to his wages would be. His salary was reduced by 45%. At the same time he was expected to make more sales in a market where customers were disappearing fast. He was also expected to complete trip sheets.

Verbally the respondent told the managing director that it would be difficult to survive on his reduced salary. He did write the undated letter to the managing director and he received the reply dated 01 October 2008.

Determination

The Tribunal carefully considered the evidence adduced. At the meeting between the appellant and the respondent in July 2008 the respondent did not agree in writing to a reduction in his salary and therefore any agreement between the parties was not then compliant with Section (1) c of the Payment of Wages Act 1991. However in his undated letter written in September 2008 the respondent accepted the reduction in his wages while seeking clarification of some details.

The Tribunal finds that the reduction in the respondent's salary was made with his consent from 01 October 2008. The Tribunal awards the respondent €1,014.52, being 4 weeks salary reduction, under the Payment of Wages Act, 1991. The decision of the Rights Commissioner is varied.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)