

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.

EMPLOYEE PW27/2010

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

EMPLOYEE

*appellant*

EMPLOYER

*respondent*

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr F. Cunneen  
Ms M. Mulcahy

heard this appeal at Dublin on 30th March 2011

Representation:

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Appellant(s): No attendance or representation by or on behalf of the appellant

Respondent(s) Ms. Jennifer O'Sullivan, Ronan Daly Jermyn, Solicitors, 12  
South Mall, Cork

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an employee appealing against the decision of a Rights Commissioner under the Payment of Wages Act 1991 reference: r-080192-pw-09/GC

#### **Respondent's Case**

The appellant did not attend the hearing.

The appellant's claim was in respect of notice and a bonus which he said was payable under a Site Compensation Scheme Policy (SCSP).

The appellant was given his contractual notice of four weeks on 8 April 2009 and worked this period. A number of other employees were paid in lieu of notice. However the appellant's right to notice was satisfied where his services were needed for this period and his claim failed before the

Rights Commissioner.

The second part of the claim was in relation to a Site Compensation Scheme Policy (SCSP), which gave employees an entitlement to a retention payment where he remained with the company between assignments. This was specifically to encourage retention where the employees were required to return to office work between assignments and to prevent them leaving between jobs. This was clearly stated in the wording of the scheme.

The respondent imposed cost cutting measures in December 2008. All employees were given either a ten per cent pay cut or they lost their entitlement under the SCSP. The SCSP was withdrawn in December 2008. The respondent's position was that the SCSP never applied to the appellant. The SCSP did not form part of his terms and conditions of employment.

Fundamentally, the appellant did not meet the fundamental criterion of the Scheme, which required that he remain with the company between assignments. The Scheme could never have applied to him where he was on specified purpose contracts. He did complete on assignment, spent a period in the office and then took up a subsequent assignment. The appellant did not meet the retention qualification of the SCSP.

An employee would not qualify for the SCSP unless they were retained between assignments. The SCSP would not be payable in a dismissal, resignation or where there was an expiry of a fixed term or specified purpose contract.

The definition of wages under the Payment of Wages Act 1991 is "any sums payable to the employee by the employer in connection with his employment". The SCSP was not payable to the appellant under his contract of employment or under the terms of the scheme itself and therefore there was no deduction of wages under the 1991 Act.

The appellant's case was that he should not be penalised for not being retained due to the economic downturn. It was submitted that this is irrelevant to the claim in respect of an unlawful deduction of wages, where the payment was not payable under the terms of the Scheme itself.

The Tribunal also examined papers submitted and in particular the contract of employment and papers in relation to the Scheme.

As the appellant did not attend to present any argument to the contrary the Tribunal affirms the decision of the Rights Commissioner under the Payment of Wages Act, 1991 and the appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

