

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

EMPLOYER *appellant*

PW2/2011

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

EMPLOYEE *respondent*

EMPLOYER *appellant*

under

**PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr P. Pierce  
Ms M. Maher

heard this appeal at Dublin on 7th June 2011

Representation:  
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Appellant(s): Mr. John Dunne Matheson Ormsby Prentice, Solicitors, 70 Sir John Rogerson's Quay, Dublin 2

Respondent(s): Mr. Ken Stafford, Management Consultancy Services, 7 Castletown Court, Celbridge, Co Kildare

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an employer (the appellant) appealing against the decision of the Rights Commissioner No. r-089561-pw-10/DI. dated 11<sup>th</sup> October 2010. The employer was seeking to have the recommendation upset whereas the employee was seeking to have the recommendation varied. (The claim for non payment of pension contributions was withdrawn during the hearing)

For clarification purposes the appellant will be referred to as employer and the respondent as employee.

## **Employer's Case**

The general manager POR told the Tribunal that he retired at the end of 2008. He undertook consultation work in 2009. The employee's bonus was paid outside of the salary scale subject to the performance of the employer and the employees. If the work undertaken by an employee was satisfactory the minimum bonus would be due. The employer reported to him and his job was to assess his work. From 2000 to 2007 an increase was paid. Each manager would take recognition of the employees under their control and if it was felt appropriate the bonus would be increased above the norm. In 2009 there was a major downturn in the company. The employees were aware of that and it had three hundred units unsold. In 2008 it endeavoured to retain employees and redundancies were implemented. In December 2008 the employer decided it could pay a bonus at a slightly reduced rate. The likelihood of a bonus being paid in 2009 was pretty low and he told the employee this in December 2008. The employee did not tell him this was a breach of the Payment of Wages Act and he did not tell him he was entitled to a minimum bonus. In 2009 the turnover was reduced. The employee did not raise any issue about bonus or salary. The witness did not receive a bonus in 2009 and no one got a bonus that year.

In cross-examination he stated that he did not retain a record of how the employees bonus was calculated. He told the employee his performance was satisfactory. He met the employee on a regular basis and he had to opportunity to raise issues. The employee received a slip of paper and he was advised of his bonus at the end of the year. He was not given a slip twice a year regarding his bonus.

In answer to questions from the Tribunal he stated that it could have happened that the employee could have received less. An amount of €1,500.00 on the contract was an interpretation an employee could take and it was not his interpretation.

The second witness on behalf of the employer, the finance director SON told the Tribunal the financial situation had been negatively impacted by the economic circumstances. In 2008 the employer sustained a loss of €3.5m. and in 2009 it sustained a loss €4.2m. The parent company injected €20 million to the company. The employer sustained a total loss of €30 million in 2009. It was not possible to pay the employee a bonus in 2009 when the company was performing at that level. Difficult decisions were made in 2008/2009.

## **Employee's Case**

The employee told the Tribunal that he considered that he was entitled to a guaranteed bonus and he was not told anything different. When the bonus was withdrawn he was gutted, as it was a substantial part of his salary. He did not know of the existence of the Payment of Wages Act. During the second week in May 2009 POR told him that his bonus was not going to be paid. He told POR this was a sham and it was a substantial part of his salary. He received his bonus twice a year. It was a shock to have his bonus taken off him. He was very busy in 2009 and his performance was as good as ever. He did not get details of his or the employer's performance. He was aware that quantity surveyors who were employed elsewhere were earning five to ten percent more than he was. If he thought his salary at the time was €83,000.00 he would have sought employment elsewhere. The bonus he received was slightly below the industry standard.

In cross-examination he stated that he received an increment over the years. He was told he would receive an increase in his bonus and his bonus did increase at times. The bonus was equivalent to

his salary. The bonus was not meant to follow a particular formula and it increased over the years. He could not recall if he spoke to anyone about the bonus. He met POR every second or third day.

At no time was he told that he could not get a bonus. A meeting was not held regarding the bonus.

He had no way of knowing the financial position in the appellant in 2009 and he was busy in 2009. When asked why he thought he should receive a bonus of €34,000.00 he replied that a bonus was part of his salary. He was entitled to it and his workload increased in 2009. He had lost two assistant quantity surveyors and he was not consulted as to why they were let go. He made a case for them to remain, as there was work to be done.

In answer to questions from the Tribunal he stated that he could not recall when the first payment of the bonus was made in 2008. When asked if there was a reduction of his bonus in December and if he asked the reason why he replied that he did not know what the bonus was and he received it in an envelope. He realised his bonus was €3,000.00 less than the previous year after POR left his office. He could not recall asking a question why it was reduced. He did not refer back to the contract he received in 2000. His performance was not discussed and he was given a bonus payment twice a year and he considered it part of his salary. Block layers, plasterers and carpenters were let go and subcontractors were brought in to do their work.

### **Determination**

The Tribunal varies the decision of the Rights Commissioner under the Payment Of Wages Act, 1991 in awarding the sum of €3,809.21 nett as specified in the contract. Additionally because there was no explanation given to the employee at any time as to the basis in which his substantial bonus over eight years was calculated the Tribunal award him an additional sum of €1,000.00. The employees claim for non-payment of pensions contributions was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

