

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL OF:**  
EMPLOYEE – appellant

**CASE NO.**  
PW16/2010

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

EMPLOYER – respondent

under

**PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O’Leary BL

Members: Mr. T. O’Grady  
Mr. F. Barry

heard this appeal at Dublin on 11th April 2011.

Representation:

Appellant: Mr. Frank Watters, Thomastown, Kilkenny, Dundalk, Co. Louth

Respondent: XXX

This appeal came before the Tribunal as an appeal of the decision of the Rights Commissioner reference number r-070187-pw-08/JT

The decision of the Tribunal was as follows:-

Both parties agree that this appeal arises from a disagreement about how part of an agreement between the XXX and the XXX should be implemented.

An Additional Hours System was put in place to organise working of overtime. Members of staff were asked to voluntarily make a commitment to work a specified number of additional hours per annum by opting for one of the 4 overtime bands available. Under certain circumstances a staff member can be assigned to an overtime band. This circumstance did not apply to the appellant. In return the XXX guaranteed payment for the additional hours contained in the particular band,

whether the hours were worked or not.

The appellant is a clerical officer who does administration work and not security work. The appellant was not satisfied that the Additional Hours System was implemented in accordance with the agreement in relation to clerical staff. He felt that the system would not normally require staff to work additional hours outside their usual areas. Also he belonged to a small pool of staff members and therefore was required more hours than if he belonged to a larger pool. He raised his concerns through the XXX with local managers but felt that his issues were not resolved. The appellant then did not report for his assigned additional hours for a period of 6 months. He was not paid for the additional hours he was scheduled to work but did not work. The appellant is seeking payment for these hours. He argues that payment is due for agreement to the system.

The XXX says that the appellant's perception that clerical staff had a higher liability for additional hours is incorrect. The agreement encapsulates a no work – no pay understanding. The control mechanism specifically allows for no payment when an employee does not report for work. This was the only consequence invoked by the XX. The disciplinary procedure was not required to apply this consequence.

### **Determination**

The Tribunal, having carefully considered the submissions made, decide that the appeal must fail. The facts of the case are straightforward. There is an agreement between the staff association and the employer, which required staff members to be available for overtime and they had a choice of four bands of overtime. The appellant had a dispute with the employer over the implementation of the agreement and he believed that the employer was not implementing the agreement properly. He determined that the employer was operating the agreement among smaller bands of staff rather than among the total number of staff members who elected to operate within a particular band. Staff members may not have had to work the full number of hours within their chosen band, however they were paid for any hours not worked within the band. By reason of the fact that the appellant operated within a smaller pool of clerical officers he may have had to work more overtime than those operating within a bigger pool.

The appellant decided unilaterally to refuse to work overtime. The employer decided to refuse to pay the appellant for the hours within the band by reason of the fact that the appellant refused to work. The Tribunal determines that the appellant by refusing to work overtime is estopped from claiming payment.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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