

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER -**Appellant (Employer)**

PW254/2009

against the decision of the Rights Commissioner **R-074935-PW-09/GC**
In the case of

EMPLOYEE -**Respondent (Employee)**

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. Clancy

Members: Mr. B. O'Carroll
Ms. H. Murphy

heard this appeal at Galway on 21 June 2011

Representation:

Appellant:

Mr. Mark Connaughton SC, instructed by Ms. Rhona Murphy,
IBEC West, Ross House, Victoria Place, Galway

Respondent:

Mr. Noel Maguire, SIPTU, Galway No.2 Branch,
Forster Court, Galway

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by the employer (the appellant) against a decision of the Rights Commissioner under the Payment of Wages Act, 1991 **R-074935-PW-09/GC** in the case of an employee (the respondent).

The respondent is a professor at the appellant's university. In or around October 2005 he took on an additional position as vice-president of research (VP) and as a result began to receive an allowance for acting in this role. While it is accepted that the appellant agreed to this allowance the appellant's position is that the Higher Education Authority (HEA) did not approve of the allowance. The respondent continued as VP until 30 June 2008 when he retired from that position and was therefore no longer in receipt of the allowance.

The remuneration of university professors came under the consideration of the Review Body on Higher Remuneration in the Public Sector (the Review Body) for the first time in report 42 of the Review Body (the report). The report was published on 14 September 2007; it was adopted by

Government in October 2007 and was implemented by the appellant in December 2008. Chapter 16 of the report deals with Higher Posts in the Third Level Education Sector and paragraphs 16.7 to 16.10 deal with the question of allowances. It is clear from reading these paragraphs that even though allowances are subject to the approval of the Minister for Education and Science and the consent of the Minister for Finance they had been and continued to be paid without this approval and consent. Paragraph 16.10 states

“In any situation where an unauthorised allowance is being paid, no increase in salary arising from this report should be applied until the allowance is withdrawn”.

When the appellant implemented the findings of the report it only gave retrospection of the salary increase to the respondent from the date of his retirement from the position of VP, that is from 1 July 2008. The respondent’s position is that he should have received retrospection of the salary increase back to 14 September 2007 and that failure to do so represented an unlawful deduction under section 5 (6) of the Payment of Wages Act from wages, which were properly payable to him.

Determination

The Tribunal has analysed the remuneration received by the respondent and is satisfied that in terms of the allowance this was properly payable to him from October 2005 until June 2008 as it represented an agreement between the parties. This still leaves the question of whether the allowance was authorised in accordance with paragraph 16.10 of the report. No evidence was adduced to the Tribunal to show that the allowance had the approval of the Minister for Education and Science and the consent of the Minister for Finance. In such circumstances the Tribunal is satisfied that paragraph 16.10 had to be considered when implementing the report in the case of the respondent and it follows that the respondent was not entitled to benefit from the increases awarded in the report whilst in receipt of the allowance. Accordingly, the increases awarded in the report were not properly payable whilst the respondent was in receipt of the allowance and the Tribunal sets aside the decision of the Rights Commissioner and finds that the complaint under the Payment of Wages Act, 1991 was not well-founded.

A preliminary issue was raised by the appellant regarding section 6 (4) of the Act in regard to the time of lodgement of the complaint with the Rights Commissioner and the date of the contravention to which it related. In light of the finding of the Tribunal on the substantive issue it is not necessary for the Tribunal to deal with this matter.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)