

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER

– *appellant*

CASE NO.
PW102/2010

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: Ms J. McGovern B.L.

Members: Mr M. Noone
Mr A. Butler

heard this appeal at Dublin on 20th April 2011

Representation:

Appellant: Christine Ryan BL instructed by Ivor Fitzpatrick & Co, Solicitors, 44-45 St
Stephen's Green, Dublin 2

Respondent: Eamonn Keenan, Sexton Keenan & Co, Solicitors, 170 Walkinstown Road, Dublin
12

This case came before the Tribunal by way of an employer (*appellant*) appealing against the
Decision of the Rights Commissioner ref:(r-088493-pw-09/GC)

The decision of the Tribunal was as follows:

Appellant's Case

The appellant representative referred the Tribunal to the Payment of Wages Act 1991 section 6 (4)

“A rights commissioner shall not entertain a complaint under this section unless it is presented to him within a period of 6 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period not exceeding 6 months as the rights commissioner considers reasonable”.

The Rights Commissioner had erred in law by making an award under the Payment of Wages Act

1991 as the original claim was out of time. The rights commissioner had awarded the respondent a pay increase under “Towards 2016” and four periods of overtime payments. The respondent was aware at the end of 2008 that she was not receiving a pay increase under the “towards 2016” agreement. The appellant’s representative set out the four periods of overtime awarded:

1. Week commencing 3rd November 2008
2. Week commencing 10th November 2008
3. 12th December 2008
4. 8th May 2009

He explained that the respondent submitted her complaint to the Rights Commissioners on the 22nd December 2009; all claims were outside of the 6-month period. Furthermore the overtime performed that was not approved would not be paid. The respondent was a salaried employee; her contract of employment makes specific reference to overtime. “You may be required to work overtime from time to time to meet the needs of the position (i.e. A.G.M., Delegates’ weekends and Information Day). Payment will be made for pre approved additional hours as per overtime policy in place at this time”. Overtime had to be pre approved by the Finance Committee and the respondent was aware of this from a meeting of same she had attended the 10th December 2008. She was further aware that non-approved overtime would not be paid.

The respondent was seeking to rely on medical grounds to have the time extended to allow her claim under the Payment of Wages Act 1991. The respondent having been made redundant on the 5th May 2009 suffered an illness. If the respondent was to rely on medical grounds a doctor’s note should be submitted. The respondent’s claim was not submitted to the Rights Commissioners until the 22nd December 2009 the claim was out of time.

Respondents Case

The respondent’s representative explained that even though the documentation produced by the appellant stated that all overtime had to be pre-approved there was no process in place to allow the respondent to do this. It was in March 2009 when the respondent was written to advising her that she would have to obtain pre approval for overtime. It was not until this time that it was made clear to her that unauthorised overtime would not be paid. While there had been a discussion on the 10th December 2008 the respondent was not made aware that there was a difficulty with overtime.

The respondent affirmed and gave evidence. She recalled the finance committee meeting in December; she was taking notes at this. One member asked if overtime on a time sheet had been authorised E a member of the committee replied no. She had spoken to E after the meeting but was not made aware that this overtime would not be paid until 25th March 2009 by letter. There was never any process in place to obtain pre approval for overtime. She had commenced a grievance procedure on the 19th April 2009 by letter but had not received a reply and sent a reminder on the 4th June 2009, but she never got a response. When she was made redundant she became ill and suspected cancer, she had an operation that took her 6-8 weeks to recover from.

Under cross examination she explained that she would complete her time sheets including her over-time and give them to the chair at the finance committee on a monthly basis. She denied that she had been informed at a 6-month performance review that it was not the policy to do overtime and that items of overtime must be pre-approved. She confirmed that she was at the finance

committee meeting on the 10th December 2008.

Determination

On the day of the hearing the Tribunal carefully considered the evidence and submissions presented in this case. The Tribunal informed the parties that the original claim under the Payment of Wages Act 1991 submitted to the Rights Commissioner was out of time and no exceptional circumstances existed to allow the time be extended. Therefore the Tribunal sets aside the Rights Commissioner decision and the appeal is allowed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)