

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL OF:**

**CASE NO.**

EMPLOYEE

- appellant

PW167/2010

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: Ms N. O'Carroll-Kelly BL

Members: Mr J. Flanagan  
Mr A. Butler

heard this appeal at Wicklow on 9th November 2011.

#### **Representation:**

Appellant: Mr. Peter Leonard BL, instructed by Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amien Street, Dublin 1

Respondent: Ms Maeve O'Sullivan, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

This appeal came before the Tribunal by way of the employee (the appellant) appealing against the decision of the Rights Commissioner under the Payment of Wages Act, 1991 (ref. r-082942-pw-09/MMG).

#### **Determination:**

The Appellant/ claimant (herein after referred to as the claimant) by determination of the Tribunal dated the 29<sup>th</sup> April 2009 reference UD1180/2008 was re-instated to her employment on the 29<sup>th</sup> April, 2009. During a portion of the period prior to her re-instatement, the claimant had a baby and was claiming maternity benefit amounting to € 220.00 per week. This payment was paid for a period of twenty six weeks ceasing on the 20<sup>th</sup> February, 2009. It was agreed previously between the parties that the claimant's gross weekly pay on the date of dismissal was € 250.00 per week.

It is the claimant's case that she was not properly compensated for the period between the date

of her dismissal and the date when she recommenced her employment. She states that she is entitled to the full amount of € 250.00 for the twenty six week period and that the €220.00 she received as maternity benefit should not be taken into consideration. She further states that the reduced hours of work staff for the Respondent hotel were put on do not apply to her and that the correct remuneration for the relevant thirteen week period is not € 183.00 per week but €250.00 week as agreed.

Section 7 Unfair Dismissals Act 1977 states:

7.—(1) Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers appropriate having regard to all the circumstances:

- (a) re-instatement by the employer of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or
- (b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances, or
- (c) payment by the employer to the employee of such compensation (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under [section 17](#) of this Act) in respect of any financial loss incurred by him and attributable to the dismissal as is just and equitable having regard to all the circumstances.

Section 6 Unfair Dismissals ( Amendment) Act 1993 states:

**Section 6.** (c) of the 1993 Amendment Act inserts Section 2(A) directly after Section 7 (2) of the principal Act:

“(2A) In calculating financial loss for the purposes of subsection (1), payments to the employee—

- (a) under the Social Welfare Acts, 1981 to 1993, in respect of any period following the dismissal concerned, or
- (b) under the Income Tax Acts arising by reason of the dismissal,

shall be disregarded.”.

Subsection 2(A) specifically relates to calculating financial loss when an award of compensation under Section 7 (1) (c) is made. It is not relevant to Section 7 (1) (a) or (b).

Therefore the Tribunal can take the maternity benefit payment into account. Section 7 (1) (a) seeks to put the employee into the position as if she had never lost her employment. The Tribunal accept on that basis that there is a short fall of €30.00 per week for twenty six weeks due to the claimant, amounting to €780.00.

The claimant was paid the sum of €183.00 for a twelve week period following the cessation of her maternity benefit. By virtue of the fact that she was re-instated to her employment she must be placed into the position which she held immediately before her dismissal on the same terms and conditions on which she was employed immediately before her dismissal. Her financial terms at the time of the dismissal were that she be paid € 250.00 per week. Any changes made to other members of staff financial remuneration terms during her period of absence cannot apply to her because to do so would mean that she would return to the position she held on different terms and conditions. The claimant is entitled to the difference of €67.00 per week for twelve weeks amounting to € 804.00.

The Tribunal note that the respondent has paid to the claimant the sum of €409.00.

The Tribunal varies the Rights Commissioner's recommendation and awards the Claimant €1,175.00 under the Payment of Wages Act, 1991.

Sealed with the Seal of the  
Employment Appeals Tribunal

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