

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

- *appellant*

CASE NO.
PW208/2009

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 M. Gilvarry

Members: Mr. D. Morrison
Mr M. Mc Garry

heard this appeal at Castlebar on 18th November 2010

Representation:

Appellant: Cllr Michael Kilcoyne, SIPTU, 9 Turlough Road, Castlebar, Co Mayo

Respondent: In person

This case came before the Tribunal by way of an employee appealing against the Decision of the Rights Commissioner ref:(r-075411-pw-09/EOS)

The decision of the Tribunal was as follows:

At the commencement of the hearing the appellant's representative explained that he had sent the formal notice of appeal to the respondent on the 9th September 2010 on the same day he lodged the appeal with the Tribunal. This notice of appeal was sent to the Department Of Education And Science "the Department" by ordinary post. The respondent explained that they had no record of receiving this notice of appeal.

The appellant gave direct sworn evidence. She is employed as a special needs assistant at a National School; the Department pay her while the board of management of the school employed her. She commenced employment in September 2006, then two years later the Department wrote to her informing her that she had been overpaid and wanted to deduct €100.00 per fortnight from her wages. Six months later they started to deduct €40.00 per fortnight. The appellant maintained she could not afford to pay this overpayment back.

In August 2008 the Department had become aware of the error and invited the appellant to contact them on numerous occasions to resolve the issue as provided in their "Policy and Procedures

or dealing with Overpayment of Salary/Allowances". The appellant had been paid a full-time rate but should have been on the infant day rate. The Department commenced taking a €40.00 deduction on the 19th February 2009 from the appellant's fortnightly wage, which is less than 4% of her gross salary.

The appellant's representative did not accept it was an overpayment and that her salary was the rate agreed with the Department. It was the respondent's position that because public funding was involved they were statutorily obliged to recoup this over-payment.

Determination

The Tribunal carefully considered the evidence and the submissions given at the hearing. The Tribunal accepts the evidence of the appellant's representative as to the service of the appeal on the respondent.

The appellant in this case was paid at a full-time rate while her work was on an infant day basis which entitled her to a lesser rate of pay. This additional pay arose through no fault of the appellant or the board of management of the school who had correctly notified the Department of the appellant's hours and position. The Department's case was that it is not the appellant's employer and any responsibility for the overpayment and its subsequent deduction lay with the board of management of the school.

The error arose within the Department and the Tribunal accept that the appellant was unaware that an error was made in her favour.

The Tribunal is very sympathetic to the plight of the appellant in this instance but are obliged to apply the law as laid down in the Payment of Wages Act 1991. The error in this case was clearly an overpayment to the appellant and therefore section 5.5(a) i I applies

"Nothing in this section applies to-

- (a) a deduction made by an employer from the wages of an employee, or any payment received from an employee by an employer, where-
 - (i) the purpose of the deduction or payment is the reimbursement of the employer in respect of -
 - (I) any overpayment of wages, or....."

The Tribunal therefore has no jurisdiction to make an award in the appellant's favour, and the Appeal is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)