

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**

**CASE NO.**  
PW196/2010

EMPLOYER- *appellant*

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: Mr T. Taaffe

Members: Mr. N. Ormond  
Mr F. Barry

heard this appeal at Dublin on 1st December 2011

Representation:

Appellant: Oliver O'Sullivan & Co, Solicitors, Castlepollard, Co Westmeath

Respondent: Warren Parkes, Solicitors, Unit 1, The Capel Building, Mary's Abbey, Dublin 7

This case came before the Tribunal by way of an employer (*appellant*) appealing against the Decision of the Rights Commissioner ref:( r-078666-pw-09/JT)

The decision of the Tribunal was as follows:

The time period in question in relation to this claim was from October 2008 to April 2009. The employee maintained he was owed €2670.00 for this period.

The employee commenced employment with the employer in May 2005 as an artic truck driver. At the commencement of his employment the employee agreed his wages as €120.00 per day or €600.00 per week. In September 2008 the employer circulated a letter to all his employees including the claimant advising them that because of the downturn in business that they would have to put them on a shorter working week which could vary from week to week from 2 to 4 days. At this time the employer had nine employees. Currently the employee is his only employee still on a short-time. The employee accepted that he had received this letter and he claimed social welfare for the days he did not work. The

employee maintained he never agreed to working short-time. The employee recalled that at the end of 2008 the employer's wife informed him that he would be paid by the load from now on and not by the day as per his conditions of employment. The employee informed her that this was against the law and did not agree to this change. The employer maintained that the employee was never paid per load but was paid per half day worked. The employee had been paid for all hours worked and no wages were due to him. The employer explained that at the beginning of 2009 he had three drivers in Dublin including the claimant and he had approached them and asked would they be interested in working for half days. The claimant was the only one who agreed to work these half days as he said he would rather be working than sitting at home. The first half day the employee worked was 23<sup>rd</sup> April 2009.

The employer explained that the employee was an honest individual, he had expressed his unhappiness with the shorter working week and in the last three weeks previous to this hearing he had only worked one day a week for him.

Both parties furnished the Tribunal with documentation in support of their cases.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing and the documentation provided. Having deliberated the matter the Tribunal concluded that the employee was placed on short-time in September 2008. Whilst the employee was not happy working a shorter working week, he continued to work for his employer. The employee is seeking unpaid wages in respect of a period on which he was on short-time and was paid for the hours that he worked. Therefore the Tribunal sets aside the Rights Commissioner Decision.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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