

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER
-appellant

CASE NO.
PW215-PW216/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE *-respondent 1*

EMPLOYEE *-respondent 2*

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S. C.

Members: Ms J. Winters
Ms M. Finnerty

heard this appeal at Navan on 17th December 2010
and 29th April 2011

Representation:

Appellant:

Respondent: Ms. Bernadette Thornton, SIPTU, Membership Information and Support Centre,
Liberty Hall, Dublin 1

This case came before the Tribunal by way of an employer appeal of Rights Commissioner Decisions r-066015-pw-08/JW and r-066010-pw-08/JW. Hereinafter the appellant shall be referred to as the employer and respondent 1 and 2 will be referred to as employee 1 and 2.

Background

The employer is an organisation operated by a voluntary Board of Management and funded by various state bodies. The employees were paid in line with salaries set down by Pobail, the state funding body and paid through the Social Inclusion Programme. After a detailed audit by Pobail, it came to light that employee 1 was in receipt of an additional €15,000.00 on his salary and employee 2 was in receipt of an additional €10,000.00 on her salary. These additional monies were paid from an 'extension' fund and not through the main Social Inclusion Programme's funds and consequently neither the Board of Management nor Pobail were aware of the salary increase until it came to light through the audit in 2007.

The employees maintain that due to a significant increase in their workload a salary increase was sanctioned by the employer and approved by the Board of Management. Both employees received new contracts to reflect the salary increase. The new contracts were signed by a member of the Board. The employees were informed that their salaries were being reduced effective from the 1st of January 2008 without agreement. This prompted the employees to take a case to the Rights Commissioners. The Rights Commissioner found in favour of the employees, consequently this case came before the Tribunal by way an employer appeal.

Respondent's (employee's) Case

Employee 1 was the manager with the company from 2000 and employee 2 was an administrator with the company from 2003. Both employees were responsible for managing and administering the Social Inclusion Programme within the employer's geographical remit. In 2006 the duties of both the manager and administrator significantly increased. An extra €200,000.00 was provided to the company to fund the consultation process necessary to expand the company's remit into the rest of the county, therefore expanding its responsibility from 25,000 to 65,000 people.

Up until 2005 it was the responsibility of the employers 'staffing committee' to approve and sign any new contracts of employment. This procedure changed when the staffing committee was abolished by the then Chairman and going forward, all staff contracts were signed by a member of the Board. In January 2007 the employees presented their new contracts to BM who was a Board Member. BM regularly signed cheques and other documents on behalf of the employer and was aware of what a contract of employment was. BM signed the new contracts of employment, and was informed that there was a salary increase for both the employees. In addition to this authorisation a 'work-plan' was given to the Board at the meeting of the 10th of July 2006, which included the proportion of the new salaries payable to the employees from June of that year. The employees provided the Tribunal with a copy of a spread sheet which was given to the Board. This spread sheet highlights a payment of €7,500.00 to employee 1 and €5,000.00 to employee 2 decided by the Board of (county) Partnership Sub-Committee and was queried and authorised by the employer Board at that meeting. All the employers' staff are paid monthly; a detailed spread sheet is put before the monthly Board meeting for approval and authorisation.

Pobail wrote to the employees directly regarding being on the incorrect point on the salary scale and reduced the pay accordingly without authorisation. The salary increase was in addition to the employee's salary on the correct point. Employee 1 immediately contacted the Chairman of the Board as he had not consented to the reduction in pay. The Board would not engage with Pobail on behalf of employee 1 and declined to send a letter drafted by employee 1 to Pobail. There were 5 other staff who also received salary increases.

Appellant's (employer) Case

BM, a member of the Board of Management gave evidence that she often signed cheques, letters and reports on behalf of the employer. BM acknowledges that it is her signature on the employees Contracts of Employment with the salary increase included but was unaware that the salary level had increased.

PM, a member of the Board of Management gave evidence that she was unaware that the 'extension fund' existed or that the employees were being paid from two different funds.

PMacknowledges that the work-plan spread sheet was given to her at each Board meeting but thatshe did not look at it closely. PM did not notice the two separate figures. The additional pay forthe employees was never presented to the Board as ‘increases.’ It was the direction of Pobailthat if the salary increases were not reversed , no further funding would be realised to theemployer. PM is not aware of who signed the staff’s contracts or how regularly they were issued.

Determination

The question of the Tribunal to consider is whether the employees were contractually entitled to the increased salaries received from June 2006 to the 1st of January 2008. The relevant Contracts of Employment dated the 22nd of January 2007 were signed by a member of the Board of Management who regularly signed letters and cheques as a matter of convenience as she was more easily available than other Board members. However she was not authorised to sign Contracts of Employment. Her evidence was that she had no recollection of signing these documents but admits her signature is on both.

We also bear in mind that the employees in question are not ordinary low level employees but two key people who managed and were in control of the operations. It is clear to us that they were fully aware that the Board member in question was not fully authorised to sign the Contracts of Employment. The Contracts of Employment were drafted by these two employees, and they made wage changes from the earlier contracts by inserting a substantially increased rate of pay without the authority, agreement or even knowledge of the Board members and they presented this document to the Board member for signature. The Board member said she should have made herself aware of what she was signing, and accepts her fault in that regard. However it was her practice to sign cheques and other documents presented to her and that she relied on the two employees who presented the documents.

The Tribunal is of the view that the employees took advantage of the Board member whom they knew regularly signed documents which they presented to her. Thereby they broke the trust and confidence which she had reposed in them and used undue influence upon her. A contract may be set aside for fraud, duress or undue influence. In the present case we find that undue influence was applied and determine that the contracts of employment be set aside.

By majority decision, the Tribunal allows the employer’ s appeal and upsets the Rights Commissioner Decisions r-066015-pw-08/JW and r-066010-pw-08/JW.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)