

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

- appellant

PW365/2011

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 P. McGrath BL

Members: Mr C. Lucey
Mr M. O'Reilly

heard this appeal at Naas on 17th January 2012.

Representation:

Appellant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens
Street, Dublin 1

Respondent: No appearance by or on behalf of the respondent.

The decision of the Tribunal was as follows:-

This case came before the Tribunal as a result of an appeal by the employee (the appellant) against a decision of the Rights Commissioner under the Payment of Wages Act, 1991 ref. r-094324-pw-10/GC.

Determination:

The Tribunal is satisfied that the respondent was duly notified of the hearing. Neither the respondent nor a representative appeared on their behalf at the hearing.

The appellant seeks to establish that during a period of lay off commencing 1st March 2010 and lasting until 8th June 2010 he was entitled to be paid his weekly wage by his employer. The case law demonstrates that, at common law, there is no general right to lay off without pay. Such a practice can only be allowable where the contract of employment provides for it or

where such a custom has been clearly established and that custom is reasonable, certain and notorious.

The case of John Lawe –v- Irish Country Meats (Pig Meats) Ltd. [1998] ELR 266, has been relied upon by the appellant to advance his case.

It seems to the Tribunal that the lay offs which were implemented in the respondent company were lawfully implemented. The company’s workload was diminishing and the company was not in a position to pay a workforce for work it did not have. The Tribunal recognises that during 2010 many companies were in a similar position and that lay off was a means by which employers could preserve their status quo in the hope and expectation that more work would come along.

There is no evidence to suggest that the respondent herein did not believe that the situation would not change and it would be in a position to bring its workforce back into the workplace in due course.

This common place practice is easily distinguishable from the John Law case and the other case opened to the Tribunal – Industrial Yarns Ltd. –v- Leo Greene and Arthur Manley [1984] 15ILRM wherein the purported lay offs were in fact being implemented as part of a wider industrial relations issue and were in effect a means to an end.

The Tribunal is perfectly satisfied that the respondent as a company operating in association with the construction industry qualifies as a company wherein lay offs are unfortunately commonplace and in constant operation. There can be no entitlement to pay when a lawful lay off is underway.

The Tribunal upholds the decision of the Rights Commissioner under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)