

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER – *appellant*

PW273-
PW281/2010

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

EMPLOYEE – *respondent 1*

EMPLOYEE – *respondent 2*

EMPLOYEE – *respondent 3*

EMPLOYEE – *respondent 4*

EMPLOYEE – *respondent 5*

EMPLOYEE – *respondent 6*

EMPLOYEE – *respondent 7*

EMPLOYEE – *respondent 8*

EMPLOYEE – *respondent 9*

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden B.L.

Members: Mr. W. Power
Mr. S. O'Donnell

heard this appeal in Dublin on 2nd February 2012

Representation:

Appellant: Mr Terry Cummins, IBEC, Confederation House, 84-86 Lower Baggot Street, Dublin 2

Respondent(s): In Person

The decision of the Tribunal was as follows:-

Respondent's Case:

MB began working as the Human Resource Manager in 2006. She explained that the business lost 11% of its customer base between 2008 and 2009 and sales were down by 25%. The employer began a major cost savings exercise which included a recruitment freeze, redundancies and a decision not to pay bonuses in 2009 to any staff, including those in sales, telesales, distribution and maintenance.

Between the 20th and 27th May 2009, the employees were told during face to face meetings that their bonuses would not be paid on the 24th August 2009. The aim was to ensure that all staff were informed by their managers and not by a cold letter.

The business has branches in the United Kingdom where similar cuts happened. The staff were disappointed but most could understand why the bonuses would not be paid. If bonuses were paid in 2009, it would have led to job losses and possible pay-cuts.

The company gave three months' notice and had three meetings with the staff to explain the reasons why the bonuses would not be paid.

Under cross-examination MS said staff on maternity leave or other leave, were informed over the telephone by their managers of the reason why bonuses would not be paid.

KM was responsible for the maintenance budget from 2003 to 2008. He outlined how bonuses were paid to staff. The year runs from August 1st to the 31st July and there was a budget set aside for bonuses. From 2002 the annual bonus went from €1800 to €3000. The target would be €3000 per person and would be based on the individual's performance.

In 2008/2009 output decreased and sales were down 25%. JON would have told the staff that they were not getting their bonuses. KM was at the third meeting with staff. AP told the staff that the company was not performing

Under cross-examination KM said the meeting was an open meeting. He did not recall staff asking for written notice at the meeting. Staff had a meeting with their managers, then with the plant manager and then with the Chief Operations Officer.

Determination:

This case came before the Tribunal as a result of the employer (appellant) appealing decisions of a Rights Commissioner under the Payment of Wages Act, 1991 reference:

r.084273-pw-09/RG r-084280-pw-09/RG r-084289-pw-09/RG r-084293-pw-09/RG

r-084295-pw-09/RG r-084279-pw-09/RG r-084285-pw-09/RG r-084292-pw-09/RG

r-084294-pw-09/RG

The claims before the Tribunal in each of the above cases are based on similar facts. The employees are claiming that the bonus payment given each year should have been paid in 2009 and the employer is claiming an inability to pay at that time.

The contract of employment states an employee would be entitled to earn a performance related bonus. The employer suffered a downturn of a quarter of its sales in 08/09. The employer did not cut pay and gave three months' notice of its intention not to pay bonuses in 2009. The employees had ample opportunity to deal with their concerns in relation to their bonus and did so by using the grievance procedure and engaging in all steps.

The Tribunal finds that the employer complied with its requirements under its contract of employment. Accordingly the Tribunal sets aside the recommendation of the Rights Commissioner in each of the above claims and allows the appeal of the respondent employer in each case.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)