

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYER

PW72/2011

Appellant

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

EMPLOYEE

Respondent

and

EMPLOYER

Appellant

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr T. O'Grady
Ms M. Maher

heard this appeal at Dublin on 12th December 2011
and 23rd February 2012
and 24th February 2012

Representation:

Appellant(s): Ms. Mary Honan BL instructed by O'Mara Geraghty McCourt, Solicitors,
51 Northumberland Road, Dublin 4

Respondent(s): Ms. Lorna Lynch BL instructed by Ms June Green, Green And Company,
Solicitors, Amber Hill, Kilpedder, Co Wicklow

The decision of the Tribunal was as follows:-

This appeal came before the Tribunal by way of an employer appealing against the decision of the rights commissioner reference r-090597-pw-10/DI dated 16th November 2010.

For clarification purposes the appellant is referred to as the employer and the respondent as the employee

Determination

The employee's terms of employment are clear in that they provide her salary would increase from €37,000.00 per annum to €39,000.00 per annum from 30th April 2009 on satisfactory review of performance. No evidence was submitted by the employer to show that the employee's performance at that time was unsatisfactory. The employer argued that the terms of employment agreed with the employee were subject to increased income from consulting fees. While the document of April 2008 did provide for rises in consulting and review fees, it is not stated that the employee's wages are conditional on increase in consultancy and review fees generating a particular amount of income.

Having considered the submissions by both parties the Tribunal finds the employee should be compensated for the non-payment of her contractual wage increase over the pay periods between the 1st of May 2009 and the 10th of March 2010 in the amount of €816.60 net.

The employee's contract of employment provided that she had an entitlement to the "Equivalent of Plan D VHI Healthcare to be provided by the employer". The employer argued that by paying the cost of Plan B the employee has received her full entitlement as Plan B is the equivalent of Plan D for all day cases and admissions. While there are parts of Plan B that have comparable benefits with Plan D the Tribunal does not accept that Plan B is equivalent to Plan D in all respects. The Tribunal finds that this payment to be an emolument and not a benefit in kind and therefore requires the employer to pay the employee the sum of €1,050 in compensation for the non-payment of her VHI allowance.

The Tribunal therefore affirms the decision of the Rights Commissioner under the Payment of Wages Act, 1991 and the appeal fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

