

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE

CASE NO.  
PW62/2010

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

EMPLOYER

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. G. Andrews  
Mr. O. Wills

heard this appeal at Tralee on 16th September 2011

Representation:

Appellant: Ms. Anna Kowalczyk, 23 Fountain Court, Tralee, Co. Kerry

Respondent: No representation listed

**This appeal came before the Tribunal as an appeal by the employee of the Decision of the Rights Commissioner reference number r-080327-pw-09/POB. In this case the appellant is referred to as the employee the respondent as the employer.**

#### **Appellant's/Employee's Case**

The employee worked for the employer for 6 months from 1st November 2008 to 28 April 2009 in his pizza business. It was a take-away and she did everything from preparing vegetables to cleaning. She had also worked in his home as a cleaner. She worked eleven hours a day, seven days a week and in the last six months of her employ with the employer she only had one day off. Everybody knew she worked at the fast food establishment; she used her phone in connection with pizza deliveries. She received some wages from the respondent. She provided the Tribunal with a list of hours worked and payments made to her over the time of her employment with the employer. She later discovered that she had not been registered for tax or P.R.S.I. The last day she worked for the employer was 28 April 2009. She fainted from exhaustion that day and was taken to hospital. When she rang the employer from the hospital he told her she was dismissed. She did not have any relationship with the employer; that was all in his imagination.

## **Respondent's/ Employer's Case**

The employer had a take-away pizza business. The employer claimed that there was no employment relationship between the employee and himself that she had never worked for him. He was introduced to the employee by her sister and he offered to help her learn English. His wife was pregnant at the time so he thought she might help in the house and learn English so she worked a few hours in his family home with his wife and children. He had the apartment in town, over his business, where the employee spent some time with him and a relationship developed between them. While the employer agreed that the employee sometimes gave him a hand preparing vegetables and cleaning the business premises that was because she was spending time with him because of their relationship. In cross-examination the employer accepted that the employee sometimes locked the premises. Another girl worked for him on a part-time basis.

## **Determination:**

The Tribunal prefers the evidence of the employee. It is satisfied that she was employed by the respondent/employer from 1 November 2008 until 28 April 2009. It accepts her record of the hours she had worked and the payments already made to her by the respondent/employer. Accordingly, the appeal under the Payment of Wages Act, 1991 succeeds. The Tribunal sets aside the decision of the Rights Commissioner and awards the appellant/employee compensation in the sum €10,500.00 under the Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

