

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER
-appellant

PW175/2010

For appeal of the recommendation of the Rights Commissioner,
R-084378-pw-09/SR, in the case of:

EMPLOYEE
-respondent

AND

EMPLOYEE
-appellant

PW190/2010

For appeal of the recommendation of the Rights Commissioner,
R-084378-pw-09/SR, in the case of:

EMPLOYER
-respondent

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. F. Murphy

Members: Mr. D. Morrison
Mr. M. McGarry

heard this appeal at Castlebar on 17 January 2012

Representation:

Appellant: John Brennan, IBEC West, Ross House, Victoria Place, Galway

Respondent: Callan Tansey, Solicitors, Law Chambers, 3, Wine Street, Sligo

These cases came before the Tribunal by way of appeal by both the employer and employee against the recommendation of the Rights Commissioner Ref:R:084378-pw-09/SR and R-084378-pw-09/SR. The employee was seeking to have the recommendation varied and the employer seeking to have the recommendation upset.

The determination of the Tribunal was as follows: -

Background:

The employee commenced employment in 1971 and was promoted through the years to the position as Office Manager in the employer's car dealership.

Business declined by 65% in 2008 due to the economic climate. Management had various meetings and it was decided cost cutting measures had to be introduced.

In February 2009 the employee was informed by the owner of the company (JH) that she was to go on a 3-day week. There was no prior consultation. The owner's daughter (AH), who was also the Financial Accountant and the General Manager (PF) were also present. The employee asked who would do her work on the 2 days she was not to work and was told she could come in on her day off to do it. Other staff were put on a 3-day week. Others had their wages reduced and 3 were let go. AH and PF were also put on a 3-day week.

In August 2009 the employee was asked to attend a management meeting, which was quite unusual. Questions were asked as to why she was not able to keep up with her workload. She replied that she was only on a 3-day week. JH said that she should be only too happy to attend work on Saturday.

Business improved and the reduction in staff wages was reversed. Some of the staff returned to full-time work and some new staff were hired.

The employee remains working as the Office Manager on a 3-day week for the respondent and is in receipt of a Department of Social Protection benefit of € 75 per week. She has no contract of employment. AH and PF also remain on a 3-day week.

The employee took a claim under the Payment of Wages Act, 1991 which was taken before the Rights Commissioner. Under Section 6 (4) of the Act the relevant period to be considered for the purpose of the complaint, which was from April 5th 2009 to October 5th 2009.

The Rights Commissioner found in the employee's favour and awarded her the sum of € 10,941.58 this being six months total in the reduction of her weekly wages of € 322.08.

Both parties appealed the award to the Employment Appeals Tribunal.

The employee gave sworn evidence, however, the employer decided not to give any sworn evidence. Submissions were given by both representatives.

Employer's Position:

The employee was put on a 3-day week. The employer stated there is no provision under the Payment of Wages Act, 1991 to deal with any losses the employee incurred as a result of this. The employer's representative also stated that the Tribunal were also bound by Section 6 (4) of the Act where only six months prior can be taken into consideration in relation to the complaint.

Employee's Position:

The employee's position is that the Rights Commissioner erred in law and failed to award the full amount of wages, bonuses and fuel allowance owed to her. The employee's representative gave a breakdown of the monies lost to the employee due to reduction in her hours from February 2009 to May 2010. The breakdown is as follows:

Salary:	€ 20,960.58
Weekly Bonus:	€ 1,657.50
Fuel Allowance:	€ 1,300.00
Bi-Annual Bonus:	€ 3,809.22
TOTAL:	€ 28,258.19

Determination

The Tribunal have carefully considered to the sworn evidence of the employee and submissions adduced by both representatives in this matter. The employer in this matter adduced no sworn evidence. The Tribunal finds no grounds to upset the decision of the Rights Commissioner. The employer's appeal under the Payment of Wages Act, 1991 fails. The Tribunal awards the employee the sum of € 10,941.58 under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)