**EMPLOYMENT APPEALS TRIBUNAL**

| APPEAL(S) OF: | | CASE NO. |
|---|---|---|
| EMPLOYEE | *-Appellant A* | PW322/2011 |
| EMPLOYEE | *-Appellant B* | PW321/2011 |
| EMPLOYEE | *-Appellant C* | PW319/2011 |
| EMPLOYEE | *-Appellant D* | PW320/2011 |

against the decisions 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: Mr N. Russell

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Kilkenny on 2nd March 2012

**Representation:**

Appellants: Richard Grogan & Associates, Solicitors, 16 & 17 College Green, Dublin 2

Respondent: Ms. Muireann McEnery, Peninsula Business Services (Ireland) Ltd,
Unit 3, East Point Business Park, Dublin 3

**The decision of the Tribunal was as follows:**

These appeals came before the Tribunal by way of employees (the appellants) appealing against the decisions of a Rights Commissioner under the Payment of Wages Act, 1991 (references: r-102018-pw-10/JC, r-101925-pw-10/JC, r-104795-pw-10/JC and r-101005-pw-10/JC.)

It was the appellants' case that when the contract of employment was received by them they did not understand the entirety of the contract. They understood the contract to mean that they would be working full-time and were not aware that they could be placed on lay-off by the company. The appellants were seeking payment of wages from the company for the periods of time when they were on lay-off and short-time.

It was the respondent's case that the employee handbook contained a clause which allowed the employer to place the employees on lay-off without pay. It was further submitted that even if this clause was not contained within the employee handbook it was custom and practice within the construction industry for employees to be placed on lay-off or put on short-time.

BP a witness on behalf of the respondent stated that at the commencement of employment an employee is provided with a contract of employment and two copies of the employee handbook, one of which should be read, signed and returned but she acknowledged that there was a delay in providing the contract of employment to three of the appellants. BP stated that several meetings were held with employees regarding lay-off at which both she and the Contracts Manager were present. The minutes of one such meeting on 26 August 2010 was opened to the Tribunal at which the employees were informed that there was a lack of work. BP gave the employees a letter regarding the lay-off situation and explained that this letter should be brought to the social welfare office. BP stated that the employees seemed to assume they would not be paid during the lay-off period as they enquired from her about their social welfare entitlements. At the time it was hoped that the lay-off would be temporary but no further work materialised.

**Determination:**

The Tribunal is satisfied from the uncontested evidence of BP, witness for the respondent, that the laying off of the appellants was genuine. The issue before the Tribunal was whether the appellants were entitled to be paid during the period of lay-of.

The respondent company relied on the specific condition in the appellants' contracts of employment which allowed for a period of unpaid lay-off. While the written contract was introduced some time after employment commenced, the respondent's position was that it did not constitute a change in terms but accurately reflected the terms under which the appellants' e mployment commenced.

Though the appellants signed their contract of employment they professed that they did not understand the full provisions of same. Clearly, in circumstances where an employee is a foreign national, it is preferable that an employer would provide a version of the contract of employment to that employee in his own language thereby discharging the onus on the employer of ensuring that an employee is fully aware of his terms of employment.

However, it is established custom and practice in the respondent company's industry that employees are not paid during periods of lay-off and the Tribunal is not satisfied that the

appellants were ignorant of this. The Tribunal finds that the appellants were not entitled to payment of wages during the periods of lay-off or short-time. In the circumstances, the appeals under the Payment of Wages Act, 1991 fail. Thus the findings of the Rights Commissioner under the Act (references: r-102018-pw-10/JC, r-101925-pw-10/JC, r-104797-te-10/JC and r-101005-pw-10/JC) are upheld.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)