

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER
-appellant

CASE NO.
PW95/2011

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

EMPLOYEE *-respondent*

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr R. Murphy
Mr F. Keoghan

heard this appeal at Dublin on 13th July 2012

Representation:

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

Respondent: In Person

This case came before the Tribunal by way of an employer appeal of the Rights Commissioner Decision **ref: r-096195-pw-10/RG** under the Payment of Wages Act 1991. As this is an employer appeal hereinafter the appellant will be referred to as the employer and the respondent the employee.

Appellant's (employer's) Case

The employer company is a factory that operates 24 hours a day on a shift basis. The employee applied for a general operative position advertised via FÁS with a corresponding pay of €483.99 weekly including a shift premium. The employee was interviewed and it was again stated that €483.99 would be his weekly pay including the shift premium. The employee commenced employment and 10 months later again queried the shift premium portion of his weekly wages through his Union representative. A letter was posted to the employee in response, clarifying that €483.99 included his shift premium. The Finance Director also explained the weekly rate to the employee and the Union representative; they were both satisfied with the explanation. All the employees on the same shift earned the same weekly wage as agreed with the Union. The employee's Contract of Employment states an incorrect rate of pay; the base rate stated actually includes

the shift premium. The registered employment agreement rate is a base of €387.73 plus €66.97 shift premium totalling €454.70. The company pay above this rate.

Respondent's (employee's) Case

The employee's contract stated that his base rate would be €483.99 plus a shift premium. He did not receive this shift premium. The employee queried why he wasn't getting the shift premium and was shown a letter by his Union representative dated the 12th of October saying that his weekly wage included the shift premium. The employee's colleagues were paid the same rate as him. The employee does not recall discussing his pay at the interview stage for the position.

Determination

Section 4 (3) of the Payment of Wages Act 1991 states that,

‘4.—(1) An employer shall give or cause to be given to an employee a statement in writing specifying clearly the gross amount of the wages payable to the employee and the nature and amount of any deduction therefrom and the employer shall take such reasonable steps as are necessary to ensure that both the matter to which the statement relates and the statement are treated confidentially by the employer and his agents and by any other employees.

(3) Where a statement under this section contains an error or omission, the statement shall be regarded as complying with the provisions of this section if it is shown that the error or omission was made by way of a clerical mistake or was otherwise made accidentally and in good faith.’

In this case the employer has admitted there was an error in the Contract of Employment but the rate of pay was discussed at the interview stage. The Tribunal accept that the issue was raised and accepted by the Union and a further notice issued in October further clarifying the matter.

In the circumstances the Tribunal upset the decision of the Rights Commissioner Decision **ref: r-096195-pw-10/RG** under the Payment of Wages Act 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)