

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *Appellant*

PW162/2010

against the recommendation 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: Ms P. Clancy

Members: Mr T. Gill
Ms H. Murphy

heard this appeal at Galway on 1st December 2011 and 28th February 2012

Representation:

Appellant(s) :Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street, Galway

Respondent(s) : Sheehan & Co, Solicitors, Augustine Court, St Augustine Street, Galway

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of an employer appeal of a Rights Commissioner recommendation under the Payment of Wages Act, 1991 reference r-078021-pw-09.

Appellants Case

MC gave evidence of hiring the respondent in May 2007 as a group sales manager with the task of increasing sales across the different areas of the company. The respondent was a business acquaintance and friend. The respondent had previously run her own company and came to MC in April 2007 seeking work. The respondent had good contacts and the necessary skills so a position was created for her. An unsigned copy of a contract of employment was referenced in particular in relation to performance related bonuses. Performance for the respondent involved her setting out agreements and objectives in writing to include €500,000 increase over existing sales levels and open a new office in Limerick in 2007. MC stated that a €15,000 bonus depended on performance. It was agreed that the bonus would be paid for 2007 although objectives were not met by the respondent. The respondent saved the company a significant amount of money by identifying a flawed paper work / invoicing system and the appellant paid the €7,500 bonus. MC told the Tribunal that objectives were not met by the

respondent in 2008 and she was not happy and was frustrated with the respondent. She was surprised by the respondent's reaction when she was told she had not performed well. In January 2009 meetings regarding the future of the company were held and significant salary reductions were agreed with management and employees. Bonuses were only paid when specific projects and goals were reached and this was the norm industry wide. The respondent was never told that the bonus was guaranteed.

In cross examination she told the Tribunal that the agreed pay was €45,000 basic salary and €15,000 bonus per annum when employment commenced. The terms of the bonus scheme were to look at sales and write down specific targets. The respondent did not come back to her with written targets. MC acknowledged the respondent as a good worker and deserving of the €7,500 bonus payment for her work in sorting out client invoicing procedures. MC said at no time did the respondent raise the issue of not having a signed contract and she could not recall receiving an email on the matter. She said she operates face to face with employees and not emailing. The performance of the respondent was below par in relation to a tender application and the respondent is aware of this. At that stage the business was not performing well and although no accounts to show losses were incurred in 2008. MC told the Tribunal a new HR Manager commenced employment at the same time as the respondent with responsibility for contracts of employment. She was unable to explain why no signed contract of employment existed and why the respondent did not bring this issue to her.

The General Manager gave evidence of the company employing over 200 people at one stage and never having a guaranteed bonus scheme. He said the respondent never achieved the targets which were agreed. A salary certificate form was introduced to the Tribunal and he confirmed his signature on the document but denied he completed the form ticking a box indicating guaranteed bonus payment of €15,000. He believes that the certificate was altered after he signed. He confirmed a payment of €7,500 was made to the respondent at dismissal / redundancy as an ex gratia payment. When put to him General Manager said he had no recollection of asking the respondent how she wished to receive her bonus payment.

Respondents Case

MF gave evidence of commencing employment with the company bringing experience and contacts to the business and skills in that she had previously run her own company. A €45,000 salary and €15,000 bonus was agreed with the bonus to be paid every six months. Her sales targets were €60,000 and she explained that the target of €500,000 referred to today was the first she heard of that figure as a target. She told how in December 2007 she was praised by the General Manager for her work in 2007 and was asked how she wished to receive her €7,500 bonus. In January 2008 she sought the payment but was fobbed off on a number of occasions. With regard to the salary certificate completed in October 2007 she told the Tribunal that she did not complete the details or tick the box which referenced guaranteed bonus. She explained that she is currently waiting to obtain the original from the bank to which she submitted the certificate in order to further clarify who completed the document. She has no recollection of being asked by MC to write down and agree a list of targets. She said MC never spoke to her about poor performance. In February 2009 she received €7,500 bonus payment for 2007.

MC indicated that she was being accused of forging a document in reference to the salary certificate.

Determination

The Tribunal carefully considered the evidence adduced by both parties at the hearing and the submissions made. The Tribunal found that there was agreement between the parties that a €15,000 bonus be paid to the Respondent, and that the Appellant failed to establish that such bonus was conditional or that any conditions were agreed, as claimed. The Tribunal also noted that no issues regarding the Respondent's performance had been raised with her during her term of employment, and the Appellant failed to establish reasonable grounds to resile from the agreement to pay the bonus. The Tribunal also noted that the Appellant had part-performed the agreement to pay the bonus in paying the Respondent the bonus sum of €7,500 in January 2009.

The Tribunal upheld the decision of the Rights Commissioner in that the Respondent is entitled to succeed in her claim in respect of payment of wages.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)