

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

EMPLOYER *-appellant*

CASE NO.

UD670/2011

PW132/2011

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

EMPLOYEE *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S. C.

Members: Mr E. Handley
Mr. J. Dorney

heard this appeal at Dublin on 26th July 2012

Representation:

Appellant: Mr Frank Staunton, Mhos & Co Chartered Accountants, Unit 21 (D3),
Bymac Centre, Northwest Business Park, Blanchardstown, Dublin 15

Respondent: In Person

This case came before the Tribunal by way of an employer appeal of the Rights Commissioner Recommendation **r-095241-ud-10/EH** under the Unfair Dismissals Acts 1977 to 2007 and the Rights Commissioner Decision **r095240-pw-10/EH** 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.

Background

The employer is a construction company that engaged the employee as a Project Manager. The company was severely hit with the economic downturn and believes that in relation to the loss of one contract in particular, the employee directly contributed to same. As the company was in such financial difficulty the employee had not been paid wages on time, was not paid the full amount and was not paid anything in either April or May; this is accepted by the employer.

The employee was aware that the company was in financial difficulty but he could not continue to work and not receive a salary. He resigned his position on the 14th of May 2010 and claims

he was constructively dismissed. The employee gave evidence of his loss.

Determination

The company was in fundamental breach of contract by failing to pay the employee wages over a 2 month period. The employee resigned as a result. It is clear that he was 'entitled' to do so by virtue of the employers' breach of contract, and as such a resignation falls within the definition of Constructive Dismissal in the Act. The employee found immediate similar employment for 4 months and later found other work at lower pay. The Tribunal are in agreement and therefore affirm the Rights Commissioner's Recommendation **r-095241-ud-10/EH** under the Unfair Dismissals Acts 1977 to 2007 awarding €6,500.00 in compensation to the employee.

The company's representative did not dispute that between March and May the sum of €10,000.00 salary had not been paid to the employee. In addition an agreed figure of €1,676.63 was due to the employee for annual leave entitlement. The Tribunal affirms the Rights Commissioner Decision **r-095240-pw-10/EH** awarding the employee €11,676.63 under the Payment of Wages Act 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)