

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – **appellant**

PW182/2011

against the decision of the Rights Commissioner, **R-094922-PW-10/DI**
in the case of:

EMPLOYER -**respondent**

under

PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms B. Glynn

Members: Mr D. Morrison
Mr T.J. Gill

heard this appeal at Carrick on Shannon on 4 October 2012

Representation:

Appellant:
In person

Respondent:

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by an employee (the appellant) against a decision of a Rights Commissioner under the Payment of Wages Act, 1991 **R-094922-PW-10/DI**, in the case of an employer (the respondent).

Determination

The Tribunal had reservations in respect of their jurisdiction to hear this matter with regard to the time frame set out in the Payment of Wages Act 1991. However, prior to determining same, the Tribunal invited submissions from both parties, which, they were told, could be in the form of written submissions, if the parties so desired, in which case the matter would be adjourned for

hearing at a later date. In the event both parties elected to give oral submissions after a short recess.

The Respondent's Solicitor referred to S.6 (4) of the 1991 Act which states that a complaint under this section must be lodged ... "within the period of 6 months beginning on the date of contravention to which the complaint relates". The Respondent's Solicitor stated that this date was 4 September 2007 so argued that the Claimant's claim must fail as it was out of time.

The Applicant was of the view that his complaint was ongoing. He further stated his interpretation of Section 6 (4) was that the complaint did not have to be made on the first occasion the contravention occurred. In reply to the vice-chairperson's query as to whether the FEMPI 2 Act had played any part in his deciding to lodge his complaint with the Rights Commissioner on 17 May 2010, he replied that it did not. He stated that he made his application at that time as it "became apparent to him then that the pay rise was not going to be honoured".

The Tribunal has considered the submissions made by each party, against the background of the implementation of the 1991 Act, and with particular reference to Section 6 (4) thereof. This section makes it clear that the time frame of 6 months within which the complaint must be made runs from the beginning of the date of contravention of the complaint, or, where exceptional circumstances prevented the making of the complaint within the time frame, "...such further period of six months as the Rights Commissioner considers reasonable..." The language used in this section is clear and unambiguous. In particular, the use of the word "beginning" in the third line is no accident and was used deliberately by the draftsman to make it clear that the time frame of six months runs from the start of the contravention and no other point. Accordingly, the appellant's contention that the complaint can be made at a subsequent time to the beginning of the complaint is unfounded and without merit, as it could lead to a farcical situation where a claim can never be out of time, and this was clearly not the draftsman's intention.

Following on from this, we must now look at the date the appellant lodged his application with the Rights Commissioner, which was 17 May 2010, to determine if this was the beginning of the contravention from which the period of six months would run.

The appellant's claim is in relation to a pay increase awarded to Hospital Network Managers pursuant to report Number 42 of the Review Body on Higher Remuneration in the Public Sector, which increase was to be implemented on 14 September 2007 in three phases. However, at that time, while other staff in the public service received the increase, the Hospital Network Managers did not. This was due to the increase requiring sanction from the Department of Health and Children, and due to disagreement with IMPACT regarding such pay increases, this sanction was not forthcoming. Unfortunately, in the intervening period the FEMPI 2 Act was enacted which prohibited salary increases for public servants from 1 January 2010, and while the Minister for Finance could approve an exemption under this Act and allow payment of the increase, he did not do so. While the appellant refers to these matters in his TIB, he clearly sets out under the heading "Reasons for Appeal" that his application is for payment of the increase with effect from 14 September 2007. No argument was made for the consideration of a later date based on intervening events. Neither was this dealt with or mentioned by the appellant in his oral submissions to the Tribunal.

In the circumstances and relying on the contents of the appellant's TIB and the oral submissions made by him at the hearing of this appeal, it is clear that the beginning of the date of contravention of this complaint is 14 September 2007 and as the applicant's application to the Rights Commissioner is dated 17 May 2010 this is outside the time frame of six months, as set out in the Act and outside the further six months allowed in extenuating circumstances and accordingly, albeit for a different reason, upholds the decision of the Rights Commissioner under the Payment of Wages Act, 1991.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)