

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP499/2012

PW690/2012

and

Employer

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
PAYMENT OF WAGES ACT, 1991**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms B. Glynn

Members: Mr B. O'Carroll
Ms H. Henry

heard these appeals at Roscommon on 14 November 2012

Representation:

Appellant:

Mr Tom McDonnell, Leo F. Branigan & Co. Solicitors,
6 New Street, Longford, Co. Longford

Respondent:

Ms Judy McNamara, Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

It was common case that the employee had worked for the respondent until January 2012 when her employment came to an end by reason of redundancy and therefore the only point between the parties under the Redundancy Payments Acts was in regard to the level of the gross weekly pay.

The employee had taken a complaint about her level of pay to the Rights Commissioner Service under the Payment of Wages Act and the employer had appealed the finding of the Rights Commissioner to the Tribunal. It followed that, essentially, the matter for consideration was the employer's appeal of decision **R-121779-PW-12**

The employee worked in the hotel from May 2006, initially as receptionist, and then later as manager of the hotel which at the time was operated by a different company (DC) of which the father of the directors (FD) of the employer was a director. It was the employee's position that from January 2009 she had an arrangement with FD whereby she was paid €500-00 net per week and that this did not always correspond with her payslip.

Unfortunately FD died suddenly in February 2011 and it fell to his widow and children to attend to

the affairs of the hotel. It was discovered that DC was insolvent and it was placed in liquidation from 9 May 2011. Before the liquidation the operation of the hotel was transferred to the employer on 19 April 2011.

The employee's position was that following the transfer to the employer she no longer received €500-00 per week net apart from the first week when she complained to FD's daughter a director of the employer (DD) and her pay was made up to €500-00. The employer's position was that, on checking the records of the hotel, there was no evidence to support the employee's contention about her pay arrangements and accordingly the employee's pay had been limited to the level shown in the hotel records. A net reduction of €100-00 per week.

Following her dismissal by reason of redundancy on 10 February 2012 the employee produced a copy of her contract of employment which provides for her net pay to be €500-00 per week.

Determination:

Whilst there was a conflict of evidence in regard to the employee's remuneration, under questioning by the Tribunal DD accepted that, when the employer took over the running of the hotel, she had to attend to irregular payments to several members of staff in order to regularise the situation. It was accepted that FD had been involved in these irregular payments. In those circumstances the Tribunal is satisfied that, on the balance of probabilities, the employee was paid €500-00 net per week when DC operated the hotel. Accordingly, the Tribunal upholds the decision **R-121779-PW-12** of the Rights Commissioner under the Payment of Wages Act, 1991 and awards the employee €800-00.

In light of this finding the Tribunal is satisfied that the employee is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth	17 October 1953
Employment commenced	3 May 2006
Employment ended	10 February 2012
Gross weekly pay	€605-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period. It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)