

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *claimant*

PW117/2011

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. K.T. O'Mahony B.L.

Members: Mr D. Hegarty

Ms H. Kelleher

heard this appeal at Cork on 2nd August 2012

Representation:

Appellant : In person

Respondent(s) : Mr Barry Coughlan, O'Flynn Exhams Solicitors, 58 South Mall, Cork

This case came before the Tribunal by way of the employee appealing a decision of a Rights Commissioner Ref: R-096607-10 JOC.

Summary of Evidence

A number of trade unions called for a national day of industrial action to take place on 24 November 2009. The respondent's position was that following guidelines issued by the Department of Finance and approved by the Institutes of Technology Ireland, staff were written to on 19 November 2009 outlining that they would not be paid for periods of unauthorised absence due to industrial action and informing them of the arrangements put in place for employees who did not wish to take part in the industrial action to sign in on the day. The letter went on to state: "*Those who are absent on 24 November 2009 and do not have pre-arranged approved leave or a medical certificate ... will be deemed to be absent without leave and deductions of pay and service will occur.*" The appellant, a member of its academic staff, did not sign in on the day and was therefore deemed absent. A deduction in the sum of €264.32 was made from his pay in February 2011 in accordance with Section 5 (5) (e) of the Payment of Wages Act, 1991.

The appellant's position was that he was not a member of a trade union, he did not agree with the action, did not support it and did not wish to take part in it. Only the Administration Building was open on 24 November and students had no access to the college on the day. He

notified the respondent that he was available for work on 24 November 2009. As a member of the academic staff he often works from home and, as he had never previously been asked to sign in, he worked from home on 24 November 2009. He did not give prior written consent to the respondent to make a deduction from his pay.

Determination

The relevant subsections of section 5 of the Payment of Wages Act, 1991 - provide

5.—(1) An employer shall not make a deduction from the wages of an employee (or receive any payment from an employee) unless—

(c) in the case of a deduction, the employee has given his prior consent in writing to it.

...

(5) Nothing in this section applies to—

(e) a deduction made by an employer from the wages of an employee, or any payment received from an employee by his employer, where the employee has taken part in a strike or other industrial action and the deduction is made or the payment has been required by the employer on account of the employee's having taken part in that strike or other industrial action,

As there was no evidence before the Tribunal that the employee took part in strike action on the 24 November 2010 the exception in Section 5 (5) (e) of the Payment of Wages Act, 1991 to the general prohibition on making deductions does not therefore apply in this case. The Tribunal in applying Section 5(1) (c) of the Act holds that as no prior written consent was given by the appellant to making the deduction from his wages, it was an unlawful deduction under the Act. The Tribunal is of the view that other more appropriate action may have been open to the respondent for dealing with the problem that had arisen in this case.

Accordingly, the Tribunal upsets the Rights Commissioner's Decision (reference - R-096607-10 JOC) and upholds the appeal under the Payment of Wages Act, 1991. It awards the appellant the sum of 1 day's net pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)