

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

CASE NO.  
PW353/2011

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

EMPLOYER  
under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. P. Casey  
Mr. J. Flavin

heard this appeal in Cork on 7 November 2012

Representation:  
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Appellant(s):

Mr Frederick Gosnell, Frederick V Gosnell, Solicitors,  
Pembroke House, 2 Pembroke Street, Cork

Respondent(s) :

Mr. Frank O'Connell, C.F. O'Connell & Company, Solicitors,  
55 Grand Parade, Cork

The decision of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal against Rights Commissioner Decision PW104641/11/MR under the Payment of Wages Act, 1991, in which the Rights Commissioner found, in accordance with Section 6 (2) of the said Act that the employee's complaint was "out of time".

The background to this case was that on 20 January 2011 the Rights Commissioner Service of the Labour Relations Commission received a letter from the employee's solicitor (hereafter referred to as FG) enclosing complaints against the respondent under various statutes. In subsequent correspondence with the Rights Commissioner Service the respondent objected to a Rights Commissioner investigating under two of the statutes. A hearing to deal with complaints under two other statutes was arranged for 1 July 2011.

At the commencement of the 1 July 2011 Rights Commissioner hearing FG said that he wished to proceed under the Payment of Wages Act, 1991, rather than under working time legislation.

The respondent's representative said that he wished to make a preliminary point to the effect that this complaint was out of time because of the terms of Section 6 (4) of the Act. The employee had left this employment on 15 February 2010 and his complaint had not been submitted to the Rights Commissioner Service until 20 January 2011.

In response FG said that the employee was a truck driver who had been involved in a very serious road traffic accident in 2007. He had not been at fault for this accident but had sustained serious personal injuries. He had been on sick leave for an extended period and his employment had been terminated by the company in March 2010. He had not been in a position, for medical reasons, to submit this complaint until January 2011.

The Rights Commissioner who heard the case concluded that it would not be reasonable for him to extend the time-limit in this case and found that the employee complaint was out of time under Section 6 (2) of the Payment of Wages Act, 1991, whereupon an appeal was made to the Tribunal.

At the Tribunal hearing it was submitted on behalf of the appellant employee that he had had no knowledge of his rights and that he had had no proper advice in that his previous representatives (hereafter referred to as PS) had acted for him in his personal injury case but had not said anything to the appellant about employment rights. PS had said that it was just dealing with the appellant's personal injury claim. It was submitted that the appellant had not been told of statutory time limits.

Giving sworn testimony to the Tribunal, the appellant said that he had approached his present representative (FG) in January 2011 after PS had acted for him until late 2010 without telling him of the six-month time limit for a payment of wages claim.

Asked about the period from September 2010 to January 2011, the appellant replied that he had been represented by PS who "were not into employment rights".

It was now submitted on behalf of the appellant that he had only heard about time limits when he went to FG in January 2011.

Under cross-examination, the appellant said that he had been unemployed at the relevant time but that he had been "out and about".

### **Determination:**

Having heard sworn testimony from the appellant, the Tribunal determines that, on balance, there was insufficient evidence to extend the six-month time limit for the bringing of a claim under the Payment of Wages Act, 1991. Therefore, the Tribunal finds that the appeal against Rights Commissioner Decision PW104641/11/MR under the Payment of Wages Act, 1991,

fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)