

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER -- **Appellant (Employer)**

PW159/2010

against the decision of the Rights Commissioner R-084709-PW-09/TB  
In the case of

EMPLOYEE -- **Respondent (Employee)**

under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. O'Leary BL

Members: Ms J. Winters  
Mr T. Brady

heard this appeal at Dublin on 20 November 2012

Representation:

Employer: Ms Mairead McKenna BL, Law Library, Four Courts, Dublin 7

Employee: In person

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by the employer against a decision of the Rights Commissioner under the Payment of Wages Act, 1991 **R-084709-PW-09/TB** in the case of the employee.

#### **Determination**

There appears to be no dispute between the parties in regards to the facts of this case. The employee has been for over ten years, and continues to be, a well-regarded Helpline Support worker. As a result of financial constraints brought about by reductions in its HSE funding, in April 2009, following a period of consultation including two meetings with all staff, the employer held a ballot on proposals to implement a graduated pay rate cut and a reduction in hours of work across all staff. The pay cut and reduction in hours was implemented in May 2009.

31 of 36 staff participated in the ballot and of those 31 the employee was one of only four people to vote against the pay cut proposal. The employee brought a complaint under Section 5 (1) (c) of the Payment of Wages Act that she had not given prior consent in writing to the pay cut (deduction) in writing.

Having considered the arguments put by the parties the Tribunal is satisfied that, by having taken

part in the ballot and knowing the reason for the ballot and what was to be decided on, the employee by her conduct agreed to be bound by the result of that ballot. In such circumstances an estoppel arises and she is therefore estopped from bringing this complaint. Accordingly, the Tribunal finds that the complaint in regard to an unlawful deduction under the Payment of Wages Act, 1991 is not well founded and the decision of the Rights Commissioner is upset.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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