

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

EMPLOYEE *-appellant*

CASE NO.
PW42/2012
TE13/2012

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

EMPLOYER *-respondent*

under

PAYMENT OF WAGES ACT, 1991 TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr D. Moore
Mr O. Nulty

heard this appeal at Mullingar on 19th December 2012

Representation:

Appellant: Ms Cathy Hamilton B.L. instructed by,
Mr. Blazej Nowak, Polish Consultancy Enterprise, 107 Amiens Street, Dublin 1

Respondent: John J Quinn & Company, Solicitors, Earl Street, Longford

Background

This case came before the Tribunal by way of an Employee appeal of the Rights Commissioner decisions **ref: r-110553-te-11/JC** and **r-110544-pw-11/JC**. The appeal **ref: r-110553-te-11/JC** under the Terms of Employment (Information) Act, 1994 and 2001 was withdrawn at the outset. The only appeal to be decided is **ref: r-110544-pw-11/JC** under the Payment of Wages Act, 1991.

The appellant was put on short-time and maintains that the resulting reduction in his weekly wages is equivalent to an unauthorised deduction as per Section 5 of the Payment of Wages Act, 1991. He maintains that he should have been paid for the two days lay-off per week. The respondent disputes this reasoning.

Respondent's Case

There is no dispute as to the facts in this case. The respondent company got into difficulty in 2009. In January 2010, in order to avoid a redundancy situation the appellant was put on

short-time in accordance with the provisions of his contract. The appellant and 2 other staff members were put on short-time at the same time. All three agreed to the change and produced the forms for the respondent to sign in order for them to claim Social Welfare for the 2 days they were not working with the respondent. The appellant never made a complaint about being on short-time or asked to be put back to full-time work. The appellant was paid a daily rate of €90.00 which equates to €270.00 per week while on short-time. The respondent business did not improve and the appellant's position was made redundant as of 05 April 2010.

The respondent accepts that the appellant's contract does not specify that while working short-time hours, weekly wages will be reduced in line with the reduction in hours. As per the June 2008 contract as specified under 'remuneration', the appellant is paid weekly based on a daily rate. The respondent verbally agreed the amount of €90.00 per day with the appellant; he could work more or less than a standard 5 day week. The appellant informed the respondent on a weekly basis how many days he had worked.

Appellant's Case

The appellant gave his sworn evidence through an interpreter. The appellant did not make a complaint about being on short-time. On the occasions he worked more than five days a week he got paid for the extra day. He earned €370.00 for 4 days, €450.00 for 5 days and €550.00 for 6 days work; *'that's always the way it was; definitely.'* The appellant did not sign anything agreeing to be paid less when put on short-time.

At the start of his employment the appellant was mostly paid €550.00 per week as he usually worked 6 days a week. As his employment progressed his weekly wage changed according to the amount of days worked; *'it wasn't the same every week depending on how many days'*.

The appellant submitted payslips and P60's to the Tribunal for consideration.

Determination

Evidence was given by the Respondent that the appellant was paid €90.00 per day actually worked. The appellant gave evidence that he was paid €450.00 for a 5 day week and €550.00 for a 6 day week and €370.00 for a 4 day week. The appellant was not paid if he was out sick and only paid for days worked. The appellant's Terms & Conditions of Employment dated the 2nd of June 2008 under 'remuneration' sets out the position;

'Your commencing salary will be agreed in advance. If a net daily rate has been agreed, your pay will be calculated by multiplying your daily rate by the number of shifts for the week less any deductions.'

It is clear even from the appellant's own evidence that he was paid by the day for the days he actually worked. In the section of the Terms & Conditions of Employment dealing with 'hours of work' there is provision made for short-time and lay-off;

'Where due to circumstances outside the control of the company, there is insufficient work, the Company reserves the right to place staff on Lay Off or Short Time Working.'

Having carefully considered the evidence the Tribunal unanimously determines that the

Respondent did not breach the Payment of Wages Act, 1991. The Tribunal upholds the decision of the Rights Commissioner **ref: r-110544-pw-11/JC** under the Payment of Wages Act, 1991.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)