

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE - appellant

CASE NO.
PW373/2012

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 D. Donovan B.L.

Members: Mr J. Browne
Mr F. Dorgan

heard this appeal at Wexford on 20 November 2012

Representation:

Appellant: Patrick Geoghegan, Ferrycarrig Heights, Park Road, Wexford

Respondent: In Person

The decision of the Tribunal was as follows:-

This hearing comes by way of appeal by the appellant (employee) of a Rights Commissioners recommendation against the respondent (employer) under the Payment of Wages Act, 1991 reference number r-120236-pw-12/EH.

Background:

The claimant was initially employed in a County Council in another county from 1983 and transferred to the respondent on 4th December 1995.

She was on certified sick leave from June 2011 to November 2011. However her condition worsened and she again went on certified sick leave from 5th December 2011. She was removed from the payroll on 16th December 2012. She was advised not to submit any more sick certificates on 14th December 2011.

The appeal in this case is whether the appellant not being paid sick leave was an unlawful deduction of wages.

Determination:

The Tribunal determines that in order for the appellant to succeed in her appeal under the Payment of Wages Act 1991 she had to firstly establish that she had an entitlement either contractually or statutorily to be paid wages whilst absent from work on sick leave.

Having carefully considered the evidence adduced at the hearing and the submissions of the parties the Tribunal finds that the statutory position is governed by the Local Government (Officers) Regulations, 1943, Article 21(1) of which provides that a manager may pay salary during sick leave to a permanent officer, or to a temporary officer whose period of service is not less than ten years, in accordance with the certain rules. The Tribunal notes the use of the word “may” which means that the power given to a manager under Article 21(1) is discretionary. Thus the decision whether sick leave is to be granted with or without pay is a matter for the Head of each Department. The Tribunal is satisfied that this is the correct interpretation of Article 21(1) and notes that Ministerial Circular 25/1978 which is one of the main provisions dealing with sick leave in the civil service provides that the decision whether, in respect of absence on sick leave is to be with or without pay is a matter for the Head of Department. This Circular also provides that the production of a medical certificate does not in itself entitle an officer to sick leave and that no officer has any claim whatever to be allowed the full periods of sick leave set out in the circular. Accordingly the Tribunal finds that the appellant has no statutory entitlement to be paid wages whilst absent on sick leave but rather there is a discretion vested in the respondent subject to certain limiting rules as to whether sick leave will be with or without pay.

As regards any contractual right she may have to be paid wages whilst on sick leave the appellant relied on *Department of Public Expenditure and Public Service Committee of ICTU* a Labour Court Recommendation [LCR No. 20335 19th July 2012] regarding sick pay arrangements for the Public Service taken pursuant to section 26(1) of the Industrial Relations Act 1990 and wherein it is stated that the current sick pay arrangements in place in the public service are of “long standing and while they may not amount to a contractual entitlement in the strict sense they are an established condition of service of those to whom they apply”. However, the Tribunal notes that the current sick pay arrangements in place for the public service is as set out in Article 21(1) and that is that there is a discretion whether to pay or not to pay wages to an officer absent on sick leave. This Recommendation is thus of no avail to the claimant.

The appellant also sought to rely on a Rights Commissioners Recommendation *John Galvin v Department of Justice Equality & Law Reform* [No. PW20498/04]. However, the Tribunal notes that this was an uncontested recommendation and that the respondent successfully appealed this decision to the Employment Appeals Tribunal.

The Tribunal notes that the respondent’s Attendance Management Policy and Procedures document dated June 2008 does provide at clause 4.1.1 that “payment for absence on sick leave is normally granted in line with Wexford Local Authorities Sick Leave Scheme”. However, no evidence was adduced as to what is provided as regards pay in the said Scheme because the appellant sought to exclude the said Management Policy and Procedures document on the basis that it did not form part of her contract. The Tribunal acceded to this request and makes no finding as to whether this document is part of the appellant’s contract or not.

Accordingly, the Tribunal finds that the appellant did not have an entitlement to be paid

wages whilst absent on sick leave and the Tribunal upholds the recommendation of the Rights Commissioner.

In the circumstances the Tribunal did not find it necessary to make any finding as to whether the claimant was on unauthorized absence or not.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)