

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: EMPLOYEE	- <i>appellant 1</i>	CASE NO. PW281/2012
EMPLOYEE	- <i>appellant 2</i>	PW282/2012

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: Mr K. Buckley

Members: Mr D. Hegarty
Mr D. McEvoy

heard this appeal at Cork on the 15 February 2013

Representation:

Appellant(s) :

Respondent(s) : in person

The decision of the Tribunal was as follows:-

This case came before the Tribunal by way of employees appealing against the decisions of the Rights Commissioner Reference R-116415-PW-11/JOC and R-116417-PW-11/JOC

Summary of Evidence

The employees outlined to the Tribunal how the employer was regularly in arrears paying wages. The last wages paid to the employees was in October 2010. During November and December 2010 wages were due and having concerns if they would ever receive payment they consulted a union official. Both employees completed and signed the relevant documentation in January 2011 to make a claim under the Payment of Wages Act 1991 to the Rights Commissioner service. The union official who advised them agreed to submit the claims to the Rights Commissioner Service. Having not received any communication relating to the claims they contacted the Rights Commissioner service in June 2011 and were informed no such claims were submitted. Having then sought legal advice the documentation was completed,

signed and submitted in July 2011.

The employer gave evidence of taking over the running of the business in 2002. She accepted that wages were often paid in arrears as she relied upon her customers paying her and then wages would be paid. She always ensured revenue payments were up to date in order to protect the entitlements of her employees. With regard to the claim her evidence was that as the claims were made outside the statutory time limit of six months that the Tribunal could not make any award.

Determination

In relation to the Appellants claims under the Payment of Wages Act 1991 the Tribunal carefully considered all of the evidence adduced at the hearing.

The Tribunal accepted that the Appellants had notified their claim in good time to a third party. This third party was acting as a Trade Union and the Tribunal accepts that the Appellants completed the appropriate claim forms with a view to said claims being processed on their behalf. The Tribunal is satisfied on the balance of probabilities that the third party did not submit the relevant claims within the statutory period of six months.

While the Tribunal accepted that the Appellants were not responsible for the non submission of the claim forms, the Tribunal was of the view that the Appellants themselves had a responsibility to follow up on the progress of their cases.

The Appellants did not contact the Rights Commissioners Service until June 2011. The Appellants then engaged the services of a Solicitor, but this was well after the statutory notice period had elapsed. At that stage claim forms were promptly submitted on behalf of the Appellants by their Solicitor, but these claims were made outside of the statutory time period.

The Tribunal found that exceptional circumstances did not exist to extend the time within which to file these claims and accordingly the decision of the Rights Commissioner is not upheld. The appeals under the Payment of Wages Act 1991 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)