

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE 1 – *appellant 1*

CASE NO.  
PW286/2012

EMPLOYEE 2 – *appellant 2*

PW287/2012

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) :  
Mr Michael O'Connell, Timothy J Hegarty & Son, Solicitors,  
58 South Mall, Cork

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-111383-PW-11/JOC and R-111252-PW-11/JOC.

**Summary of Evidence**

The employees outlined to the Tribunal how the employer was regularly in arrears paying wages. The claim for payment of wages relates to the period June 2010 to October 2010. The employees received their last pay in October 2010 which was wages due for the period up to June 2010. Having concerns if they would ever receive payment they consulted a union official for advice. Both employees completed and signed the relevant documentation on the 14 December 2010 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. The Tribunal uphold the decision of the Rights Commissioner. The appeals under the Payment of Wages Act 1991 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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