

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.

PW473/2011

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 T. Taaffe

Members: Mr F. Moloney
Mr J. Maher

heard this appeal at Dublin on 13th February 2013

Representation:

Appellant(s) : Ms Bernadette Thornton, SIPTU Membership Information & Support Centre,
Liberty Hall Dublin 1

Respondent(s) : Ms Sinead Mullins, IR/HR Executive, IBEC, Gardner House,
Bank Place, Charlotte Quay, Limerick

This case came before the Tribunal by way of an appeal by the employee (appellant) against the decision of the Rights Commissioner (r-103956-pw-10/JT) under the Payment of Wages Act 1991.

Appellant's Case

An economic advisor at SIPTU gave evidence that she met three directors of the respondent company in February 2010 and was given access to the company's profit & loss account and balance sheet. In that regard she was required to sign a confidentiality agreement and her role was to identify the precise financial situation of the company. She told the Tribunal that there was a significant decrease in the turnover of the company between 2007 and 2009 and there was a 30% decrease in sales. The company had lost some significant key accounts and there was a degree of uncertainty over the re-orientation of the company's

business. The company also had a large overhanging debt which had to be serviced. She was aware that there had been redundancies in the company in the previous year and the company was seeking further cost saving measures. Following her examination of the company's financial situation she provided a report for the members of the union.

The appellant gave direct evidence that he worked as a warehouse operative for the respondent company and is a member of SIPTU. He did not give his agreement to the company to make a 5% deduction from his wages and there was no collective agreement within the company to make such a deduction. There was no decrease in his workload in the warehouse. The 5% reduction which was introduced in February 2010 resulted in a €33.49 reduction in his basic weekly pay which greatly impacted on his ability to provide for himself and his family. He was aware that the previous witness had met with company management but he was never provided with any information concerning the financial position of the company other than just vague information which came from the company. He never met with the previous witness during the process as he received the information via his trade union representative. He confirmed that he is now a shop steward in the union but was not so at the time of the reduction in his wages. He accepted that there were ongoing discussions between SIPTU and the company between December 2009 and December 2010 and recalled attending a power point presentation given by the Managing Director of the company in October 2010. He accepted that the company made a number of employees redundant in 2009 and a further 27 employees accepted voluntary redundancy in January 2010. He gave evidence that there were efforts from both sides to reach a resolution. He was unable to confirm if the company had lost 30% of its handling work.

Respondent's Case

The Group H.R manager gave evidence that the company experienced a decrease in sales and turnover and during 2009 the company was engaged in industrial relations discussions with SIPTU in an effort to reduce costs. A full review of all costs was undertaken as the company had become uncompetitive. It was losing business and had failed in a number of tenders. In 2009 the company made 15 employees redundant which was followed by up to a further 30 redundancies in 2010. An introduction of a three day week was proposed but this proposal was defeated in a ballot of union members. Towards the end of 2009 the company had no alternative but to implement a pay cut due to the drop in sales and turnover. The pay cuts ranged from 5% -15% with the lower paid employees incurring a 5% pay cut and the pay cuts became effective from February 1 2010. The company continued in negotiations with SIPTU throughout 2010 and the Managing Director of the company briefed all employees of the situation on 4 and 24 February 2010. Discussions took place with a conciliation officer at the Labour Relations Commission in an effort to find a resolution to the company's difficulties but the company's position continued to be loss making. Employee's positions in the warehouse are now being outsourced.

He accepted that the briefings given by the Managing Director in February 2010 took place after the pay cuts were implemented. He told the Tribunal that the grievance procedure had not been fully exhausted prior to the implementation of the pay cuts and SIPTU had not referred the matter to the Labour Court. He accepted that the claimant had not given written consent to a reduction in his wages.

Determination

The Tribunal carefully considered the evidence adduced both verbal and written. The subject matter of the appellant's appeal is a wage deduction by the respondent. It is agreed that this took place without the appellant's consent. The appellant in addition asserts that the consultative process set out in an agreement between his representative and the respondent was not exhausted before the imposition of the deduction and that this agreement was therefore breached.

The respondent maintains that the decision to deduct was proportionate to the circumstances which presented to them and that they additionally, following the decision acted fairly and reasonably in addressing the issue and thus to make any award would be unreasonable under the Act.

The Tribunal is satisfied that (a) prior to the imposition of the wage cut that the appellant was made aware of significant difficulties being experienced by the respondent, difficulties which contained serious financial implications and which by definition therefore had the potential to impact upon the appellant's employment (b) that the respondent contemporaneously attempted to address the issue by giving consideration to the alternative of a three day week and (c) obtained a number of redundancies.

It is clear that following the imposition, the respondent conducted a sustained dialogue with the appellant for some time which ultimately resulted in the formulation of a proposal which was in turn some weeks after followed by a second proposal which was intended as an improvement on the first. At the outset of this dialogue reasonably detailed financial information was made available to an accounting expert nominated by the appellant for scrutiny which was availed of.

After careful consideration of the above mentioned the Tribunal determines that (1) in the absence of evidence to the contrary that the respondent based their decision to deduct on difficulties which presented to them, that these difficulties were both genuine and significant and that therefore the decision to impose the deduction was both reasonable and proportionate in the circumstances. (2) That the response to the issue after the deduction in addressing the appellant's concerns was fair and reasonable. (3) In these circumstances the decision to award no compensation is reasonable pursuant to section 6 (2) of the Act.

The recommendation of the Rights Commissioner is therefore upheld and the Tribunal so determines.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)