

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER - *appellant*

CASE NO.
PW279-PW280/2012

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

EMPLOYEE – *respondent 1*

EMPLOYEE – *respondent 2*

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) : in person

Respondent(s) :

The decision of the Tribunal was as follows:-

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

Summary of Evidence

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.

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 27 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.

Determination

The Tribunal carefully considered all of the evidence adduced at the hearing. Having heard that the claims were originally completed and signed by the employees in January 2011 and were not submitted at that time the Tribunal accept that not submitting the claims was the fault of a third party. The employees themselves had a responsibility to follow up on the progress of the claims and did not contact the Rights Commissioner service until June 2011. The appeals were submitted in July 2011 outside the statutory time limit of six months. The Tribunal found that exceptional circumstances did not exist to extend the time within which to file these claims and accordingly the Tribunal does not uphold the decision of the Rights Commissioner.

The appeal by the Employer under the Payment of Wages Act 1991 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)